

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 8/12/2021 4:44:16 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

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| Document Lodged: | Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2 |
| File Number: | VID734/2021 |
| File Title: | AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522) |
| Registry: | VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA |
| Reason for Listing: | To Be Advised |
| Time and date for hearing: | To Be Advised |
| Place: | To Be Advised |



Sia Lagos

Dated: 8/12/2021 4:55:08 PM AEDT

Registrar

Important Information

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

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

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



Form 2
Rule 2.2 and 15A.3

ORIGINATING PROCESS

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

NO VID **OF 2021**

IN THE MATTER OF AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

ACN: 005 357 522

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

(ACN 005 357 522)

Defendant

A. DETAILS OF APPLICATION

This application is made under sections 19 and 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), sections 12GBA(1), 12GJ(1) and 12GLB(1)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) (as in force prior to 13 March 2019), sections 12GBA(1), 12GBB(1) and 12GLB(1)(a) of the ASIC Act (as in force from 13 March 2019), sections 1101B and 1337B(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), and section 187 of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**).

The Plaintiff seeks declarations of contraventions of the ASIC Act, the Corporations Act and the NCCP Act, pecuniary penalty orders, adverse publicity orders and ancillary orders, including costs.

In this originating process, terms which are defined in the Statement of Agreed Facts and Admissions dated 8 December 2021 (**SAFA**) and the affidavit in support of the originating process dated 8 December 2021 (**Supporting Affidavit**) have the same meaning as they do in those documents.

On the facts stated in the Supporting Affidavit, the Plaintiff seeks:

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

File ref: 19004728

Prepared by: Jody Marshall
AGS lawyer within the meaning of s 551 of the *Judiciary Act 1903*

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The Australian Government Solicitor,
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Declarations

1. A declaration under s 21 of the FCA Act or s 1101B of the Corporations Act that from 10 December 2015 to 30 September 2021:
 - 1.1. on each occasion that ANZ issued documents setting out terms and conditions governing the Breakfree Package (**Breakfree Contractual Documents**) to a customer who opened the Breakfree Package and who subsequently did not receive benefits to which the customer was entitled under the Breakfree Contractual Documents (**Breakfree Benefits**); and
 - 1.2. on each first occasion after 10 December 2015 that ANZ sent an updated version of the Breakfree Contractual Documents to a customer who held an open Breakfree Package as at 10 December 2015 and who subsequently did not receive Breakfree Benefits in accordance with the customer's entitlement under the Breakfree Contractual Documents,

ANZ, acting in trade or commerce in connection with the supply of financial services:

- 1.3. made implied representations that it had, and would continue to have, adequate systems and processes in place to administer Breakfree Benefits, each of which were financial services within s 12BAB(1)(g) of the ASIC Act in relation to 16 financial products within the meaning of s 12BAA of the ASIC Act (**Relevant Breakfree Products**) (as applicable), in accordance with the Breakfree Contractual Documents; and
- 1.4. made those representations when it did not have adequate systems and processes and did not have reasonable grounds (within the meaning of s 12BB(1) of the ASIC Act) for stating it would have systems in the future to administer the Breakfree Benefits on Relevant Breakfree Products in accordance with the Breakfree Contractual Documents,

and ANZ therefore on each occasion it made the representation engaged in conduct in relation to financial services that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act.

2. A declaration under s 21 of the FCA Act or s 1101B of the Corporations Act for the period 10 December 2015 to 12 March 2019, and under s 12GBA(1) of the ASIC Act for the period 13 March 2019 to 30 September 2021, that:
 - 2.1. on each occasion that ANZ issued Breakfree Contractual Documents to a customer who opened the Breakfree Package and who subsequently did not receive Breakfree Benefits in accordance with the customer's entitlement under the Breakfree Contractual Documents; and
 - 2.2. on each first occasion after 10 December 2015 that ANZ sent an updated version of the Breakfree Contractual Documents to a customer who held an open Breakfree Package as at 10 December 2015 and who subsequently did not receive Breakfree Benefits in accordance with the customer's entitlement under the Breakfree Contractual Documents,



ANZ, acting in trade or commerce in connection with the supply of financial services:

- 2.3. made implied representations that it had, and would continue to have, adequate systems and processes in place to administer Breakfree Benefits on Relevant Breakfree Products (as applicable) in accordance with the Breakfree Contractual Documents; and
- 2.4. made those representations when it did not have adequate systems and processes and did not have reasonable grounds (within the meaning of s 12BB(1) of the ASIC Act) for stating it would have systems in the future to administer the Breakfree Benefits on Relevant Breakfree Products in accordance with the Breakfree Contractual Documents,

and ANZ therefore on each occasion it made the representation made false and/or misleading representations in connection with the supply of financial services concerning the benefits of services in contravention of s 12DB(1)(e) of the ASIC Act.

3. A declaration under s 21 of the FCA Act or s 1101B of the Corporations Act that from 10 December 2015 to 22 September 2020:
 - 3.1. on each occasion that ANZ issued documents setting out terms and conditions governing offset accounts (**Offset Contractual Documents**) to a customer who opened an offset account and who subsequently did not receive benefits to which the customer was entitled under the Offset Contractual Documents (**Offset Benefits**); and
 - 3.2. on each first occasion after 10 December 2015 that ANZ sent an updated version of the Offset Contractual Documents to a customer who was entitled to receive Offset Benefits as at 10 December 2015 and who subsequently did not receive Offset Benefits in accordance with the customer's entitlement under the Offset Contractual Documents,

ANZ, acting in trade or commerce in connection with the supply of financial services:

- 3.3. made implied representations that it had, and would continue to have, adequate systems and processes in place to administer Offset Benefits, each of which were financial services within s 12BAB(1)(g) of the ASIC Act in relation to 17 financial products within the meaning of s 12BAA of the ASIC Act (**Relevant Offset Products**) (as applicable), in accordance with the Offset Contractual Documents; and
- 3.4. made those representations when it did not have adequate systems and processes and did not have reasonable grounds (within the meaning of s 12BB(1) of the ASIC Act) for stating it would have systems in the future to administer the Offset Benefits on Relevant Offset Products in accordance with the Offset Contractual Documents,

and ANZ therefore on each occasion it made the representation engaged in conduct in relation to financial services that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act.



4. A declaration under s 21 of the FCA Act or s 1101B of the Corporations Act for the period 10 December 2015 to 12 March 2019, and under s 12GBA(1) of the ASIC Act for the period 13 March 2019 to 30 September 2021, that:
 - 4.1. on each occasion that ANZ issued Offset Contractual Documents to a customer who opened an offset account and who subsequently did not receive Offset Benefits in accordance with the customer's entitlement under the Offset Contractual Documents; and
 - 4.2. on each first occasion after 10 December 2015 that ANZ sent an updated version of the Offset Contractual Documents to a customer who was entitled to receive Offset Benefits as at 10 December 2015 and who subsequently did not receive Offset Benefits in accordance with the customer's entitlement under the Offset Contractual Documents,

ANZ, acting in trade or commerce in connection with the supply of financial services:

 - 4.3. made implied representations that it had, and would continue to have, adequate systems and processes in place to administer Offset Benefits on Relevant Offset Products (as applicable) in accordance with the Offset Contractual Documents; and
 - 4.4. made those representations when it did not have adequate systems and processes and did not have reasonable grounds (within the meaning of s 12BB(1) of the ASIC Act) for stating it would have systems in the future to administer the Offset Benefits on Relevant Offset Products in accordance with the Offset Contractual Documents,

and ANZ therefore on each occasion it made the representation made false and/or misleading representations in connection with the supply of financial services concerning the benefits of services in contravention of s 12DB(1)(e) of the ASIC Act.
5. A declaration under s 21 of the FCA Act or s 1101B of the Corporations Act that, on each occasion that ANZ contravened ss 12DA(1) and 12DB(1)(e) of the ASIC Act as set out in paragraphs 1 to 4 above, ANZ breached its general obligation to comply with financial services laws in contravention of s 912A(1)(c) of the Corporations Act.
6. A declaration under s 21 of the FCA Act that, on each occasion that ANZ contravened ss 12DA(1) and 12DB(1)(e) of the ASIC Act as set out in paragraphs 1 to 4 above, ANZ breached its general obligation to comply with credit legislation in contravention of s 47(1)(d) of the NCCP Act.
7. A declaration under s 21 of the FCA Act or s 1101B of the Corporations Act that by ANZ's conduct, from 10 December 2015 to 30 September 2021, in:
 - 7.1. failing to maintain adequate systems and processes to apply Breakfree Benefits or bonus interest, discounts or fee waivers on ancillary Breakfree package products (**Breakfree Ancillary Benefits**) to customer accounts; and



- 7.2. failing to conduct adequate monitoring or analysis of its systems and processes and therefore not identifying in a timely way instances of customers not receiving Breakfree Benefits or Breakfree Ancillary Benefits,

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 s 912A(1)(a) of the Corporations Act.

8. A declaration under s 21 of the FCA Act that by ANZ's conduct, from 10 December 2015 to 30 September 2021, in:

- 8.1. failing to maintain adequate systems and processes to apply Breakfree Benefits or Breakfree Ancillary Benefits to customer accounts; and
- 8.2. failing to conduct adequate monitoring or analysis of its systems and processes and therefore not identifying in a timely way instances of customers not receiving Breakfree Benefits or Breakfree Ancillary Benefits,

ANZ breached its obligation to do all things necessary to ensure that the credit activities authorised by its Australian credit licence were engaged in efficiently, honestly and fairly, and thereby contravened s 47(1)(a) of the NCCP Act.

9. A declaration under s 21 of the FCA Act or s 1101B of the Corporations Act that by ANZ's conduct, from 10 December 2015 to 22 September 2020, in:

- 9.1. failing to maintain adequate systems and processes to apply Offset Benefits to customer accounts; and
- 9.2. failing to conduct adequate monitoring or analysis of its systems and processes and therefore not identifying in a timely way instances of customers not receiving Offset Benefits,

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 s 912A(1)(a) of the Corporations Act.

10. A declaration under s 21 of the FCA Act that by ANZ's conduct, from 10 December 2015 to 22 September 2020, in:

- 10.1. failing to maintain adequate systems and processes to apply Offset Benefits to customer accounts; and
- 10.2. failing to conduct adequate monitoring or analysis of its systems and processes and therefore not identifying in a timely way instances of customers not receiving Offset Benefits,

ANZ breached its obligation to do all things necessary to ensure that the credit activities authorised by its Australian credit licence were engaged in efficiently, honestly and fairly, and thereby contravened s 47(1)(a) of the NCCP Act.



Penalties

11. An order pursuant to s 12GBA(1) of the ASIC Act (as in force prior to 13 March 2019) and s 12GBB(1) of the ASIC Act (as in force from 13 March 2019) that, within 30 days of the order, ANZ pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of ANZ's conduct declared to be contraventions of s 12DB(1)(e) of the ASIC Act occurring after 10 December 2015.

Other orders

12. An order pursuant to s 12GLB(1)(a) of the ASIC Act that, within 30 days of the order, ANZ take all reasonable steps to cause to be published, at its own expense, a notice stating that it has been ordered to pay a pecuniary penalty because it has made false or misleading representations, in a manner and form approved by the Court.
13. An order that the Defendant pay the Plaintiff's costs of and incidental to the proceeding.
14. Such further or other orders as the Court considers appropriate.

Date: 8 December 2021

Jody Marshall
AGS lawyer
for and on behalf of the Australian Government Solicitor
Lawyer for the Plaintiff

This application will be heard byat the Commonwealth Law Courts Building, 305 William Street Melbourne VIC 3000 at *am/*pm on

B. NOTICE TO THE DEFENDANT

TO: AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
ANZ Centre Melbourne, Level 9, 833 Collins Street, Docklands, Victoria 3008,
Australia

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

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



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

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

D. FILING

Date of filing: 8 December 2021

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Registrar

E. SERVICE

The Plaintiff's address for service is:

Australian Government Solicitor,
Level 11, 145 Ann St, Brisbane, QLD 4000
Email: Jody.Marshall@ags.gov.au

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

Tel: 07 3360 5751

Fax: 07 3360 5795

DX 119 Brisbane

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