



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID285/2022

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

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

Defendant

ORDER

JUDGE: JUSTICE BEACH

DATE OF ORDER: 26 September 2023

WHERE MADE: Melbourne

THE COURT DECLARES THAT:

1. From 27 May 2016 to 16 November 2018, ANZ, in trade or commerce, and in connection with the supply of financial services, made false or misleading representations on ANZ's internet banking platform, mobile application and ATMs (Key ANZ Channels) with respect to the price of cash advances made using an ANZ consumer credit card product listed in Appendix 1, and therefore contravened s 12DB(1)(g) of the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act), in circumstances where:
 - (a) a deposit was made into a customer's credit card account but was not yet processed (Deposit); and
 - (b) the Key ANZ Channels displayed:
 - (i) the customer's "Available Funds", "Available", "Available Balance" or "Avail Bal" (Available Funds) as including the amount of the Deposit and as being above the customer's credit card limit; and



- (ii) the customer’s “Current Balance”, “Current”, “Account Balance” or “Balance” (Current Balance) as including the amount of the Deposit and as being positive; and
- (c) the terms and conditions which governed the credit card product provided that, if the customer’s credit card account was in credit at the time ANZ processed the cash advance, that credit amount would offset the amount of the cash advance in the calculation of the fee and the customer may not be charged interest for the cash advance,

by representing that the customer could, at that time, make a cash advance of up to the amount by which the customer’s Available Funds exceeded the customer’s credit card limit without incurring fees or interest in relation to such cash advance whereas, in fact, if the cash advance was processed before the Deposit, the Deposit did not offset the amount of the cash advance in the calculation of the fee, and in some cases interest was charged.

- 2. From 17 November 2018 to 18 April 2021, ANZ, in trade or commerce, and in connection with the supply of financial services, made false or misleading representations on Key ANZ Channels with respect to the price of cash advances made using an ANZ Rewards Travel Adventures Card account opened on or after 17 November 2018, and therefore contravened s 12DB(1)(g) of the ASIC Act, in circumstances where:
 - (a) a deposit was made into a customer’s credit card account but was not yet processed (i.e. the Deposit); and
 - (b) the Key ANZ Channels displayed:
 - (i) the customer’s Available Funds as including the amount of the Deposit and as being above the customer’s credit card limit; and
 - (ii) the customer’s Current Balance as including the amount of the Deposit and as being positive; and
 - (c) the terms and conditions which governed the credit card product provided that, if the customer’s credit card account was in credit at the time ANZ processed the cash advance, that credit amount would offset the amount of the cash advance in



the calculation of the fee and the customer may not be charged interest for the cash advance,

by representing that the customer could, at that time, make a cash advance of up to the amount by which the customer's Available Funds exceeded the customer's credit card limit without incurring fees or interest in relation to such cash advance whereas, in fact, if the cash advance was processed before the Deposit, the Deposit did not offset the amount of the cash advance in the calculation of the fee, and in some cases interest was charged.

3. From April 2018 to 23 September 2021, in circumstances where there was a risk that customers would misapprehend the circumstances in which fees and interest were charged on cash advances made on Key ANZ Channels using an ANZ consumer credit card product listed in Appendix 1, ANZ failed to do all things necessary to ensure that the credit activities authorised by its credit licence were engaged in efficiently, honestly and fairly, and therefore contravened s 47(1)(a) of the *National Consumer Credit Protection Act 2009* (Cth) by:
 - (a) not amending the labels that it used to display a customer's "Available Funds" and "Current Balance" on the Key ANZ Channels until September 2021;
 - (b) amending its letters of offer in November 2018 (except for customers who opened an ANZ Rewards Travel Adventures Card account from that time) and its fees and charges booklet in September 2018 in a way that was not sufficient to make clear to customers the circumstances in which fees would be charged for cash advances;
 - (c) not amending its letters of offer for customers who opened an ANZ Rewards Travel Adventures Card account from November 2018 until April 2021;
 - (d) reversing in September 2019 the amendments made by ANZ in September 2018 to its fees and charges booklet, with the result that between September 2019 and September 2021 the letters of offer and the fees and charges booklet contained inconsistent descriptions of the circumstances in which fees would be charged for cash advances; and



- (e) not removing all descriptions of the term “Available Funds” from its website in June 2018 and reinstating two web pages containing that description in July 2019 which appeared until July 2020 and October 2021 respectively.

THE COURT ORDERS THAT:

4. Within 30 days, ANZ pay to the Commonwealth a pecuniary penalty of \$15 million in respect of ANZ’s conduct declared to be contraventions of s 12DB(1)(g) of the ASIC Act.
5. Within 30 days, ANZ pay ASIC’s costs of and incidental to the proceeding.

Date that entry is stamped: 26 September 2023

Sia Lagos
Registrar



Appendix 1 – Relevant ANZ consumer credit card products

ANZ Low Rate MasterCard
ANZ First Low Interest Visa
ANZ Platinum
ANZ Low Rate
ANZ Rewards Platinum
ANZ Rewards
ANZ Low Rate MasterCard Platinum
ANZ First Free Days
ANZ Frequent Flyer
ANZ Frequent Flyer Visa Platinum
ANZ Frequent Flyer Gold
ANZ Rewards Travel Adventures
ANZ Rewards Black
ANZ Frequent Flyer Black