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## **Settlement Agreement**

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**Financial Markets Authority**

**ANZ Bank New Zealand Limited**

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Settlement agreement dated 25 November 2020

## Parties

**Financial Markets Authority**, a Crown entity established under s 6 of the Financial Markets Authority Act 2011 (the **FMA**).

**ANZ Bank New Zealand Limited**, a company having its registered office at 23-29 Albert Street, Auckland (**ANZ**).

(collectively, the **Parties**)

## 1 Introduction

1.1 The FMA has filed proceedings in the High Court against ANZ alleging that ANZ made misleading representations in connection with the supply of credit card repayment insurance (CCRI). The conduct resulted from ANZ having:

- (a) arranged for some customers who held an existing CCRI policy to be issued with one or more additional CCRI policies, which did not confer additional benefits on those customers; and
- (b) charged premiums to customers who were ineligible to hold CCRI policies on account of their age.

1.2 In the Proceeding, the FMA seeks a pecuniary penalty and declarations that the conduct breached s 22 of the Act.

1.3 Since the Proceeding was filed:

- (a) the FMA has filed the Amended Statement of Claim; and
- (b) ANZ has filed the Notice of Admissions, in which ANZ has admitted the facts and causes of action pleaded in the Amended Statement of Claim in their entirety.

1.4 The Parties have reached a settlement regarding the matters remaining to be determined in the Proceeding, on the terms set out in this Agreement.

1.5 This agreement may be made public by the FMA (including on the FMA's website) following the public release of the Penalty Judgment.

## 2 Interpretation

2.1 For the purposes of this Agreement:

- (a) **Act** means the Financial Markets Conduct Act 2013.

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- (b) **Admitted Causes of Action** means the first and second causes of action in the Amended Statement of Claim;
- (c) **Agreed Recommended Penalty** means the pecuniary penalty set out in clause 3.4(a);
- (d) **Agreement** means this settlement agreement and the schedules attached to it;
- (e) **Amended Statement of Claim** means the amended statement of claim dated 26 August 2020, annexed as Schedule 1 to this Agreement;
- (f) **Court** means the High Court of New Zealand or, on appeal, the Court of Appeal of New Zealand or the Supreme Court of New Zealand;
- (g) **Defaulting Party** has the meaning as set out in clause 6.1;
- (h) **Default Notice** means a written notice issued under clause 6.3 by one Party giving notice that the other Party is in breach of the Agreement;
- (i) Dollar amounts stated are New Zealand dollars;
- (j) **Information** includes all information, documents, material and evidence of any kind whatsoever, including all oral, written and electronic material in relation to the Proceeding;
- (k) **Notice of Admissions** means the notice of admissions dated 2 September 2020, annexed as Schedule 2 to this Agreement;
- (l) **Notifying Party** has the meaning set out in clause 6.1;
- (m) **Penalty Hearing** means the hearing or fixture in the Proceeding at which the FMA and ANZ will ask the Court to approve the order set out in clause 3.4;
- (n) **Penalty Judgment** means a judgment of the Court determining the pecuniary penalty payable by ANZ in the Proceeding. Where a Penalty Judgment of a particular Court is specified, it is the judgment of that Court;
- (o) **Person** extends to non-natural persons and includes any association of persons whether incorporated or not;
- (p) **Proceeding** means the civil proceeding brought by the FMA in the High Court of New Zealand in CIV-2020-404-819 against ANZ, and includes any appeals from that proceeding;
- (q) **Working day** has the definition set out in r 1.3 of the High Court Rules.

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### **3 Imposition of the Agreed Recommended Penalty**

#### **Progression to Penalty Hearing**

- 3.1 Within one working day of the execution of this Agreement, the Parties will file the joint memorandum requesting a penalty hearing in the form attached as Schedule 3 to this Agreement.
- 3.2 The Parties will cooperate and use all reasonable endeavours to ensure that the Penalty Hearing proceeds on the first available date that the Court proposes.

#### **Consultation on penalty submissions**

- 3.3 The FMA and ANZ will:
- (a) circulate to the other a draft of any submissions or memorandum they propose to file in relation to the Agreed Recommended Penalty at least ten working days before that party is to file the submissions or memorandum with the Court;
  - (b) provide any comments on a submission or memorandum received in accordance with clause 3.3(a) not more than five working days after receiving those submissions or that memorandum; and
  - (c) consider in good faith any comments that the other Party may have in connection with the submission or memorandum.

#### **Agreed Recommended Penalty and content of penalty submissions**

- 3.4 The FMA and ANZ agree and undertake that:
- (a) the Agreed Recommended Penalty for the Admitted Causes of Action is a final penalty of \$280,000;
  - (b) the Agreed Recommended Penalty is an appropriate pecuniary penalty in view of the conduct and the circumstances;
  - (c) they will make written and oral submissions recommending to the Court that it impose the Agreed Recommended Penalty; and
  - (d) they will otherwise support the Agreed Recommended Penalty before the Court.

#### **Court Costs**

- 3.5 The Parties:
- (a) acknowledge that the final penalty will be first applied to paying the FMA's actual costs in bringing the Proceeding, given the effect of s 493 of the Act; and
  - (b) agree to ask the Court that there be no further order for costs.
- 3.6 The Parties agree that neither Party will seek any other costs award in the Proceeding, other than costs arising from any breach of this Agreement and/or following the service of a Default Notice in accordance with clause 6.3.



## **4 Confidentiality and comment**

### **Comment on settlement of proceedings**

- 4.1 Subject to clause 4.2, either Party may issue a press release or make a public comment stating that:
- (a) the Parties have entered into a settlement to resolve the Proceeding on terms acceptable to all parties; and
  - (b) a penalty hearing before the High Court will take place in due course.
- 4.2 ANZ will not issue any media release or make any public comment permitted by clause 4.1 until after the FMA has made a media release or public comment as permitted by clause 4.1.
- 4.3 The Parties will not otherwise disclose the terms of this Agreement (including the Agreed Recommended Penalty) prior to the outcome of the Penalty Hearing.

### **Comment after release of Penalty Judgment**

- 4.4 Subject to clause 4.5, either Party may issue a press release or make a public comment in relation to this Agreement or the outcome of the Penalty Hearing after the public release of any Penalty Judgment.
- 4.5 ANZ will not issue any media release or make any public comment permitted by clause 4.4 until after the FMA has made a media release or public comment as permitted by clause 4.4.
- 4.6 In relation to any media release or public comment made by either Party under 4.4:
- (a) the parties agree to make only media releases or public comments that reflect the admissions made and the spirit and intent of this Agreement;
  - (b) the Party issuing the press release or making a public comment will provide the content of any media release or public comment to the other Party twenty-four hours in advance of the release or comment being published; and
  - (c) any media release or public comment by the FMA will include acknowledgements that ANZ identified the relevant errors, disclosed them to the FMA, cooperated with the FMA's investigation and compensated affected customers.

## **5 Appeals from the Penalty Judgment**

- 5.1 If the Court imposes the Agreed Recommended Penalty, no party may appeal or apply to recall or set aside that Penalty Judgment on the basis that the Agreed Recommended Penalty should not have been imposed.
- 5.2 If, following submissions from the Parties consistent with clause 3.4, the Court imposes a penalty that differs from the Agreed Recommended Penalty, any Party may appeal the Penalty Judgment.

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- 5.3 In the event that an appeal is brought under clause 5.2:
- (a) the terms of this Agreement will remain binding on the Parties, including, for the avoidance of doubt, clause 3.4; and
  - (b) the Parties will each bear their own costs on any appeal (subject to any order from the Court directing otherwise), and shall not apply for, or otherwise seek, costs to be ordered against the other.

## 6 Non-compliance with Agreement

### Default Notice for breaches of the Agreement

- 6.1 If any Party (the **Notifying Party**) suspects or believes that the other party (the **Defaulting Party**) is in breach of the Agreement, or will in the future breach the Agreement, the Notifying Party must notify the Defaulting Party in writing:
- (a) of the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will likely occur; and
  - (b) that the Notifying Party is contemplating issuing a Default Notice.
- 6.2 After notifying the Defaulting Party, the Notifying Party must:
- (a) give the Defaulting Party a reasonable opportunity to:
    - (i) respond to the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will occur; and
    - (ii) take steps to remedy any breach of the Agreement that has occurred or would otherwise occur; and
  - (b) have regard to the Defaulting Party's response, the nature of the suspected breach and the remedial action taken, if any.
- 6.3 If the Notifying Party has followed the process in clauses 6.1 and 6.2, and the Defaulting Party fails to comply with any term of this Agreement, the Notifying Party may give written notice that the Defaulting Party is in breach of the Agreement (a **Default Notice**).
- 6.4 Following service of a Default Notice, the Notifying Party may:
- (a) take any further steps in or relating to the Proceeding, including taking steps in accordance with clause 5 applying to set aside or appeal the Penalty Judgment;
  - (b) take any steps to enforce the obligations outlined in this Agreement;
  - (c) seek an award of costs in respect of the matter giving rise to the Default Notice; or
  - (d) terminate the Agreement.
- 6.5 The Parties agree that it shall not constitute a breach of this Agreement for either of them to make submissions in any Court in any other proceedings with



respect to the relevance, weight or precedent value to be attributed to the Penalty Judgment.

#### **Effect of Default Notice on Penalty recommendation**

- 6.6 If a Default Notice has been given by the FMA, in any subsequent penalty hearing in the Proceeding the FMA may submit that:
- (a) the Agreed Recommended Penalty for that party included discounts for cooperation, remorse and cost savings to the public;
  - (b) the breach of the Agreement demonstrates:
    - (i) a lower level of cooperation by that party;
    - (ii) a lack of remorse on behalf of that party;
    - (iii) reduced cost savings to the public;
  - (c) the Court should impose a higher pecuniary penalty than the Agreed Recommended Penalty to reflect an appropriate, lower level of discount.

## **7 General**

### **Entire Agreement**

- 7.1 This Agreement constitutes the entire understanding and agreement between the Parties in relation to the Proceeding, and fully supersedes any and all prior agreements, arrangements, representations or understandings (whether orally or in writing) between the Parties pertaining to the Proceeding.
- 7.2 The Parties represent and agree that:
- (a) no oral contracts, arrangements, understandings, agreements or promises contrary to the terms of this Agreement exist;
  - (b) they have carefully read and fully understand all of the provisions of this Agreement, including the Schedules; and
  - (c) they are each voluntarily entering into this Agreement after having received independent legal advice.

### **No misrepresentation arising from Information provided**

- 7.3 The Parties acknowledge that neither party has been induced to enter the Agreement by any representation made in, or in connection with, any Information provided by the other Party. Accordingly, neither Party may cancel the Agreement or be entitled to damages on account of any misrepresentation alleged to arise from or in connection with the provision of such information (whether under the Contract and Commercial Law Act 2017 or otherwise).

### **Use and disclosure of information**

- 7.4 The FMA acknowledges that the ANZ information may be confidential and/or commercially sensitive and/or subject to privilege.

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7.5 The FMA may use Information provided by ANZ for the purpose of carrying out the FMA's functions or obligations under the Financial Markets Authority Act 2011, but may not disclose such Information to any third party other than:

- (a) with ANZ's prior written consent;
- (b) as required by law (including, for the avoidance of doubt, to comply with a request made under the Official Information Act 1982 or the Privacy Act 1993); or
- (c) pursuant to section 30 of the Financial Markets Authority Act 2011.

**Amendments in writing**

7.6 No amendment to this Agreement will be effective unless it is in writing and signed by all Parties.

**Authorities**

7.7 Each person executing this Agreement warrants that he or she has the full authority to enter into this Agreement and bind the party for which he or she purports to enter into this Agreement.

**Severance**

7.8 Any provision in this Agreement that is unlawful will be severed and the remaining provisions remain enforceable, but only if the severed provision is not material to the purpose of this Agreement.

**Parties to bear their own costs**

7.9 Each party will meet its own expenses incurred in the course of performing its obligations under this Agreement.

**Governing law**

7.10 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.

**Further Assurances**

7.11 The Parties agree to make all applications, execute all documents and do all acts and things as may be necessary to give effect to its obligations under this Agreement.

**No waiver**

7.12 Failure by a Party to enforce any provision of this Agreement at any time will not operate as a waiver of that provision in respect of that act or omission or any other act or omission.

A handwritten signature and initials in the bottom right corner of the page. The signature appears to be 'D. M. S.' and the initials below it are 'DMS'.



## Counterparts

- 7.13 The Parties may enter into this Agreement by signing any number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single, binding and enforceable Agreement.

## 8 Communications

- 8.1 Any notice or communication pursuant to this Agreement will be delivered as follows:

- (a) if addressed to the FMA, by hand delivery or email to the following address:

Financial Markets Authority  
Level 5, Ernst & Young Building, 2 Takutai Square, Britomart  
Auckland

Attention: Nick Kynoch, General Counsel  
Email: [nick.kynoch@fma.govt.nz](mailto:nick.kynoch@fma.govt.nz)

Copy to:

Meredith Connell  
Level 5, 4 Graham Street  
Auckland

Attention: Nick Flanagan | Andy Luck  
Email: [nick.flanagan@mc.co.nz](mailto:nick.flanagan@mc.co.nz) | [andy.luck@mc.co.nz](mailto:andy.luck@mc.co.nz)

- (b) If addressed to ANZ, by hand delivery or email to the following address:

Minter Ellison Rudd Watts  
Level 22, 15 Customs Street West  
Auckland

Attention: Andrew Horne | April Payne  
Email: [andrew.horne@minterellison.co.nz](mailto:andrew.horne@minterellison.co.nz) | [april.payne@minterellison.co.nz](mailto:april.payne@minterellison.co.nz)

Copy to:

ANZ Bank New Zealand Limited



Level 31, ANZ Centre, 23 Albert Street

Auckland

Attention: David Bricklebank, General Counsel and Company  
Secretary

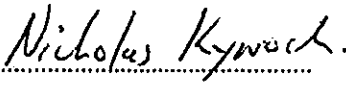
Email: [David.Bricklebank@anz.com](mailto:David.Bricklebank@anz.com)

*DB*  
*AK*

**9 Execution**

**Signed by and on behalf of  
Financial Markets Authority**

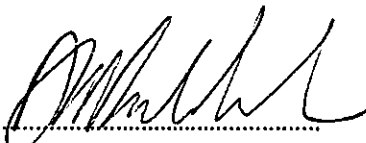
  
.....  
Authorised signatory


  
.....  
Name

*In the presence of:*

Witness Name: *Rachael Martin*  
Witness Address: *120 Heko St, Ngairu, Wellington*  
Witness Occupation: *Solutor*

**Signed by and on behalf of  
ANZ Bank New Zealand Limited**

  
.....  
Authorised signatory

  
.....  
Name

*In the presence of:*

Witness Name: *Shannon Holmes*  
Witness Address: *2149A Lancaster Road, Beach Haven*  
Witness Occupation: *Executive Assistant Auckland 0626*

## Schedule 1

In the High Court of New Zealand  
Auckland Registry

I Te Kōti Matua O Aotearoa  
Tāmaki Makaurau Rohe

CIV-2020-404-000819

**Under** The Financial Markets Conduct Act 2013

**Between** **Financial Markets Authority** a Crown entity established under s 6 of the Financial Markets Authority Act 2011 having its offices Level 2, 1 Grey Street, Wellington; and Level 5, Ernst & Young Building, 2 Takutai Square, Britomart, Auckland

**Plaintiff**

**And** **ANZ Bank New Zealand Limited** Ground Floor, ANZ Centre, 23-29 Albert Street, Auckland, 1010

**Defendant**

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## Amended statement of claim

26 August 2020

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**MEREDITH  
CONNELL**

N F Flanagan | A D Luck  
PO Box 90750, Victoria Street West, Auckland 1142  
DX CP24063  
T: +64 9 336 7500  
Nick.Flanagan@mc.co.nz | andy.luck@mc.co.nz



# Amended statement of claim

The plaintiff by its solicitor says:

## The Parties

- 1 The plaintiff, the Financial Markets Authority, is a Crown Entity established under s 6 of the Financial Markets Authority Act 2011. Its functions include enforcement of the Financial Markets Conduct Act 2013 (FMCA).
- 2 The defendant, ANZ Bank New Zealand Limited (ANZ):
  - (a) is an incorporated company having its registered office at Ground Floor, ANZ Centre, 23-29 Albert Street, Auckland, 1010;
  - (b) was incorporated on 23 October 1979;
  - (c) is a registered bank under the Reserve Bank of New Zealand Act 1989; and
  - (d) is in trade in New Zealand.

## ANZ's CCRI policies

- 3 ANZ issues and manages consumer credit cards in the ordinary course of its business.
- 4 From approximately 1991 onwards, ANZ has offered credit card repayment insurance (CCRI Policies) to its credit card-holding customers (each a Customer). ANZ ceased offering new CCRI Policies on 25 July 2019 and ceased permitting transfers from a legacy CCRI product to CCRI Policies on 1 September 2019.
- 5 Credit card repayment insurance is a form of insurance which covers some or all of a Customer's outstanding credit card repayments in certain circumstances, including in the event of the Customer's bankruptcy, redundancy, injury, illness or death.
- 6 ANZ's CCRI policies have been underwritten by various insurers at various times (each an Insurer). Since at least 2001, the Insurer for the majority of ANZ's CCRI Policies was Cigna Life Insurance New Zealand Limited (Cigna).
- 7 At all relevant times, the premium payable on a CCRI Policy was determined as a percentage of the amount owing (if any) on the last date of the statement period set out in the insured Customer's monthly credit card statement (the Premium).

## ANZ arranged CCRI policies

- 8 ANZ arranged for Insurers to provide CCRI Policies:
  - (a) prior to May 2016, by:
    - (i) offering the CCRI Policies to Customers who applied for credit cards at ANZ's branches, on telephone calls with ANZ staff, or by making an online application through ANZ's website; and

- (ii) providing information on prospective Customers to Insurers (who sold CCRI Policies directly to Customers in reliance on that information).
  - (b) from May 2016 to 1 September 2019, by providing information on prospective Customers to Cigna (which sold CCRI Policies directly to Customers in reliance on that information).
- 9 ANZ was entitled to a commission from the applicable Insurer for some CCRI Policies sold to ANZ's Customers. The commission consisted of:
- (a) a percentage of the total Premium paid on the particular CCRI Policy (**Renewal Commissions**); and
  - (b) for some CCRI Policies, the profit made by the relevant Insurer on the portfolio that contained that CCRI Policy (**Profit Share Commissions**).

#### Particulars for paragraph 9

For CCRI Policies where ANZ was not entitled to a commission, OnePath, a wholly-owned subsidiary of ANZ until 30 November 2018, earned premium income. OnePath sold the majority of its CCRI insurance book to Cigna on or about 1 May 2018 and continued to earn premium income until the remaining policies were cancelled in June 2018.

#### ANZ's invoicing

- 10 At all relevant times ANZ issued monthly credit card statements to Customers (**Statements**). Those Statements included representations as to:
- (a) the Customer's outstanding credit card balance; and
  - (b) any Premium paid in respect of that balance in the period covered by that Statement.
- 11 Customers paid Premiums when ANZ charged those amounts to the Customer's credit card. ANZ subsequently paid the amount of the Premium to the Insurer and received or retained a percentage of the Premium as a Renewal Commission.

#### ANZ arranged duplicate CCRI Policies

- 12 From approximately December 1998 onwards, ANZ arranged for some Customers who held an existing CCRI Policy (**Existing Policy**) to be issued with one or more additional CCRI Policies (**Duplicate Policies**). ANZ did so due to:
- (a) deficiencies in its sales and fulfilment systems; and
  - (b) errors in its computer systems.
- 13 The Duplicate Policies did not provide Customers with any additional benefits beyond those conferred by the Customers' Existing Policies.

### **ANZ charged Customers for the Duplicate Policies**

- 14 At all relevant times, ANZ issued Statements to affected Customers in the circumstances pleaded in paragraphs 12 and 13 (the **Duplicate Policy Statements**). In those Statements it recorded Premiums charged for:
- (a) the Customers' Existing Policy; and
  - (b) any Duplicate Policies issued to the Customers.
- 15 By issuing Customers with the Duplicate Policy Statements, ANZ represented that:
- (a) it was entitled to charge the premiums that appeared on the Duplicate Policy Statements; and
  - (b) each further CCRI Policy charged for was capable of providing additional benefits to the Customer.
- 16 Since 1 April 2014:
- (a) 186 Customers held, or had been issued with, Duplicate Policies;
  - (b) ANZ charged Customers a total of \$176,769.57 (including Premiums, fees and interest) for those Duplicate Policies;
  - (c) ANZ received \$13,294.01 in Renewal Commissions from Insurers from having sold Duplicate Policies; and
  - (d) ANZ received \$7,164.42 in Profit Share Commissions from Insurers in connection with the Duplicate Policies.
- 17 By 23 August 2019, ANZ had cancelled all of the Duplicate Policies which were then in force.
- 18 Where ANZ has been able to contact Customers, it has reimbursed all charges paid for Duplicate Policies, including Premiums, fees, and interest. Where Customers were not charged interest on Premiums, ANZ paid them use-of-money interest. For any Customers ANZ is unable to contact, ANZ intends to pay the relevant amounts to the Inland Revenue as unclaimed money.

### **ANZ collected Premiums on ineligible CCRI Policies**

- 19 Prior to 1 May 2018, Customers who were aged 65 years and over for product codes 01 and 08 and 75 years and over for product codes 09, 10, and 21 were not eligible to hold some CCRI Policies (**Ineligible Customers**).

#### **Particulars for paragraph 19**

ANZ sold various types of CCRI Policies, with each policy type denoted by an internal product code. The eligible age for those CCRI Policies was increased to 99 at different times for different product codes, as follows:

- (a) for product code 21, on 1 September 2017;
- (b) for product codes 09 and 10, on 1 February 2018; and

- (c) in every other case, on 1 May 2018.
- 20 From approximately 1997 to 1 May 2018:
- (a) ANZ arranged for CCRI Policies to be issued to some Ineligible Customers; and
  - (b) when some Customers holding CCRI Policies reached 65 years of age for product codes 01 and 08 or 75 years of age for product codes 09, 10, and 21, ANZ:
    - (i) failed to arrange for those Customers' CCRI Policies to be cancelled; and
    - (ii) continued to collect Premiums on those CCRI Policies.
- 21 CCRI Policies conferred no rights or benefits on Ineligible Customers.

#### **ANZ charged Ineligible Customers**

- 22 At all relevant times, ANZ issued Statements to Ineligible Customers in the circumstances pleaded in paragraphs 20 and 21 (the **Ineligible Policy Statements**), recording Premiums it had charged that would have been payable on a valid CCRI Policy.
- 23 By issuing the Ineligible Policy Statements, ANZ represented that:
- (a) the Ineligible Customers had a valid CCRI Policy in effect; and
  - (b) it was entitled to charge the premiums that appeared on the Ineligible Policy Statements.
- 24 Since 1 April 2014:
- (a) 121 Ineligible Customers held, or had been issued with, CCRI Policies, to whom ANZ issued Ineligible Policy Statements; and
  - (b) ANZ:
    - (i) invoiced Ineligible Customers a total of \$22,351.19 (including Premiums, fees and interest) for those CCRI Policies;
    - (ii) received \$208.59 in Renewal Commissions from Cigna for having charged Premiums to Ineligible Customers; and
    - (iii) received \$128.83 in Profit Share Commissions from Cigna in connection with the Ineligible Customers.
- 25 From 1 May 2018, all of ANZ's CCRI Policies were available to Customers up to 99 years of age.
- 26 Where ANZ has been able to contact Customers, it has reimbursed all charges paid for Ineligible Policies for the period the Customers were ineligible, including Premiums, fees, and interest. Where Customers were not charged interest on Premiums, ANZ paid them use-of-money interest. For any Customers ANZ is unable to contact, ANZ intends to pay the relevant amount





to the Inland Revenue as unclaimed money.

### **ANZ's knowledge of the issues**

- 27 ANZ first identified that some Customers may have been or were affected by:
- (a) the Duplicate Policy issue in or around September 2017; and
  - (b) the Ineligible Customers issue in or around May 2018.

### **The Conduct and Culture Review**

- 28 In April 2018, the FMA and the Reserve Bank of New Zealand (RBNZ) commenced a joint review into the conduct and culture of 11 New Zealand retail banks, one of which was ANZ (the **Banking Review**).
- 29 Between 3 May 2018 and 21 June 2018, ANZ engaged in correspondence with the FMA and the RBNZ in relation to the Banking Review. In that correspondence, ANZ did not disclose that it had identified the Duplicate Policy issue or the Ineligible Customers issue.

### **Particulars of paragraph 29**

The relevant correspondence included the following:

- (a) 3 May 2018 joint letter from the FMA/RBNZ to ANZ (which requested information on "any work underway to remediate any identified issues where bank conduct has resulted in detrimental outcomes for customers");
- (b) 18 May 2018 letter from ANZ to the FMA/RBNZ (which did not refer to either issue);
- (c) 23 May 2018 joint letter from the FMA/RBNZ to ANZ (which requested information on "any work underway to remediate any identified issues where conduct by your firm has resulted in detrimental outcomes for customers"); and
- (d) 21 June 2018 letter from ANZ to the FMA/RBNZ (which did not refer to either issue).

### **ANZ's reporting**

- 30 ANZ:
- (a) advised Cigna of:
    - (i) the Duplicate Policy issue on or around 10 May 2018; and
    - (ii) the Ineligible Customers issue on or around 24 May 2018.
  - (b) reported the Duplicate Policy issue and the Ineligible Customers issue to the FMA on 27 and 28 June 2019.

### Particulars of paragraph 30(b)

ANZ notified the FMA of both issues:

- (i) by a voicemail message left on 27 June 2019; and
- (ii) in an email sent on 28 June 2019.

### First cause of action: Duplicate Policies

- 31 The plaintiff repeats paragraphs [1] to [18] and [27]-[30] above.
- 32 ANZ issued the Duplicate Policy Statements in connection with the supply of financial services, namely the supply of credit cards managed by it.
- 33 By issuing the Duplicate Policy Statements, ANZ made false and/or misleading representations that:
  - (a) the Duplicate Policies were capable of conferring benefits additional to those conferred by the Customer's Existing Policy, in breach of s 22(d) of the FMCA; and
  - (b) it was entitled to charge the premiums that appeared on the Duplicate Policy Statements, in breach of s 22(h) of the FMCA.

#### Accordingly, the plaintiff seeks:

- A. a declaration that ANZ contravened ss 22 (d) and/or (h) of the FMCA by issuing the Duplicate Policy Statements;
- B. an order under s 489 of the FMCA that ANZ pay a pecuniary penalty to the Crown; and
- C. costs.

### Second cause of action: Ineligible Customers

- 34 The plaintiff repeats paragraphs [1] to [11] and [19] to [30] above.
- 35 ANZ issued the Ineligible Customer Statements in connection with the supply of financial services, namely the supply of credit cards managed by it.
- 36 By issuing the Ineligible Customer Statements, ANZ made false and/or misleading representations that:
  - (a) each CCRI Policy charged for was a valid CCRI Policy in effect for the Ineligible Customer, in breach of s 22(a) of the FMCA; and/or
  - (b) ANZ was entitled to charge the premiums that appeared on the Ineligible Policy Statements, in breach of s 22(h) of the FMCA.

#### Accordingly, the plaintiff seeks:

- A. a declaration that ANZ contravened ss 22(a) and/or (h) of the FMCA by issuing the Ineligible Customer Statements;

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- B. an order under s 489 of the FMCA that ANZ pay a pecuniary penalty to the Crown; and
- C. costs.

This amended statement of claim is filed by **Nicholas Fraser Flanagan**, solicitor for the Financial Markets Authority, of the firm Meredith Connell. The address for service of the plaintiff is at the offices of Meredith Connell, Level 5, 4 Graham Street, Auckland 1010.

Documents for service on the Financial Markets Authority may be left at that address for service or may be:

- (a) emailed to [nick.flanagan@mc.co.nz](mailto:nick.flanagan@mc.co.nz) and [andy.luck@mc.co.nz](mailto:andy.luck@mc.co.nz); or
- (b) if email is not practical:
  - (a) posted to Meredith Connell (attn. Nick Flanagan/Andy Luck) at PO Box 90750, Victoria Street West, Auckland 1142; or
  - (b) left for the party at a document exchange for direction to DX CP24063.

## Schedule 2

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

I TE KOTI MATUA O AOTEAROA  
TĀMAKI MAKAURAU ROHE

2020-404-000819

UNDER

the Financial Markets Conduct Act 2013

BETWEEN

**FINANCIAL MARKETS AUTHORITY** Level 2, 1 Grey  
Street, Wellington; and Level 5, Ernst & Young Building, 2  
Takutai Square, Britomart, Auckland

**PLAINTIFF**

AND

**ANZ BANK NEW ZEALAND LIMITED** Ground Floor,  
ANZ Centre, 23-29 Albert Street, Auckland, 1010

**DEFENDANT**

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### ADMISSION OF CAUSES OF ACTION AND FACTS

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Dated: 2 September 2020

MinterEllisonRuddWatts

PO Box 105 249, Auckland 1143  
TELEPHONE +64 9 353 9700  
FACSIMILE +64 9 353 9701  
SOLICITOR ACTING: OLIVIA DE PONT  
olivia.depont@minterellison.co.nz  
PARTNER RESPONSIBLE: ANDREW HORNE

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**TO:** the Registrar of the High Court at Auckland

**AND TO:** the plaintiff

**This document notifies you that –**

1. The defendant admits the first and second causes of action pleaded in the plaintiff's amended statement of claim dated 26 August 2020 (**ASOC**), as set out below. The defendant adopts the definitions in the ASOC.
2. The defendant admits the facts pleaded in the ASOC in their entirety.
3. This admission is filed pursuant to rr 15.15 and 15.16 of the High Court Rules 2016.

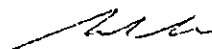
**First cause of action: Duplicate Policies**

4. As to the first cause of action, the defendant admits:
  - (a) the cause of action pleaded in paragraphs 31 to 33 of the ASOC; and
  - (b) that the plaintiff is entitled to a declaration that the defendant contravened ss 22 (d) and/or (h) of the FMCA by issuing the Duplicate Policy Statements.

**Second cause of action: Ineligible Customers**

5. As to the second cause of action, the defendant admits:
  - (a) the cause of action pleaded in paragraphs 34 to 36 of the ASOC; and
  - (b) that the plaintiff is entitled to a declaration that the defendant contravened ss 22(a) and/or (h) of the FMCA by issuing the Ineligible Customer Statements.

**DATED** this 2<sup>nd</sup> day of September 2020



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**A J Horne**  
Solicitor for the defendant



This document is filed by **ANDREW JOHN HORNE**, solicitor for the abovenamed defendant of the firm MinterEllisonRuddWatts. The address for service of the abovenamed defendant is at the offices of MinterEllisonRuddWatts, Level 22, Commercial Bay, 15 Customs Street West, Auckland 1010.

Documents for service on the abovementioned defendant may be left at that address for service or emailed to [andrew.horne@minterellison.co.nz](mailto:andrew.horne@minterellison.co.nz) and [olivia.depont@minterellison.co.nz](mailto:olivia.depont@minterellison.co.nz).

Handwritten signature of Andrew John Horne, consisting of stylized initials 'AJH' and the name 'Horne' written below.

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### **Schedule 3 – Joint memorandum of counsel requesting penalty hearing**

**May it please the Court:**

- 1 The parties have reached a resolution of these proceedings and entered into a settlement agreement dated [to insert].

**Fixture sought**

- 2 As part of the settlement, the parties have agreed recommended penalties to be submitted for the Court's approval.
- 3 Accordingly, the parties respectfully request a one hour penalty fixture, noting that if their joint recommendations are approved by the Court that would resolve the proceeding in its entirety. The fixture is requested at the first available opportunity.
- 4 The parties also respectfully seek directions that:
  - (a) the FMA's submissions shall be filed 15 working days prior to the penalty hearing;
  - (b) ANZ's submissions shall be filed 5 working days prior to the penalty hearing.

Date: [to insert]

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N F Flanagan | A D Luck  
Counsel for the Financial Markets Authority

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A J Horne | A C Payne  
Counsel for ANZ Bank New Zealand Limited

*DMB  
JWC*