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Notice published by order of the Federal Court of Australia

ANZ found to have engaged in unconscionable conduct and breaches of its financial services licence

The Federal Court of Australia has ordered that Australia and New Zealand Banking Group Limited (ANZ) pay a $10 million civil penalty for unconscionable conduct.

The Federal Court has also declared that ANZ has breached its obligation to comply with financial services laws and failed to do all things necessary to ensure that the financial services covered by ANZ's financial services licence were provided efficiently, honestly and fairly.

ANZ has admitted that:

- on 327,895 occasions between 26 July 2013 and 24 September 2015, ANZ charged non-payment fees and transaction fees to non-loan retail customers and commercial customers in relation to periodical payments between accounts in the same name when it was not contractually entitled to do so, despite knowing, from on or about 11 July 2011, that the charging of those fees was at risk of being without contractual entitlement (the "Charging Conduct"); and

- ANZ did not make remediation payments after 11 December 2013 to non-loan retail and commercial customers who had been charged these fees without contractual entitlement in the period between 11 July 2005 and 31 December 2007 (the "Remediation Conduct").

The Court found that by engaging in this conduct, ANZ:

- engaged in unconscionable conduct in contravention of s 12CB(1) of the Australian Securities and Investments Commission Act 2001;

- breached its general obligation to comply with the financial services laws in contravention of s 912A(1)(c) of the Corporations Act 2001; and

- breached its general obligation to do all things necessary to ensure that the financial services covered by ANZ's financial services licence were provided efficiently, honestly and fairly, in contravention of s 912A(1)(a) of the Corporations Act 2001.

ANZ's Charging Conduct affected 327,895 fees and approximately 69,000 customers. The total value of fees that ANZ charged these customers without contractual entitlement was $3,101,102.90. ANZ has made remediation payments to some of these affected customers, totalling $2,570,327.39.

The remediation amount includes repayment of the fees charged without contractual entitlement, as well as further amounts by way of compensation on account of the time that had passed.

ANZ admits that it did not or could not pay a further $637,901.60 in remediation payments to the remaining affected customers, and such amount has been or will be paid to ASIC as unclaimed moneys or to charity.

ANZ's Remediation Conduct related to approximately 175,000 fees. The total value of the fees that ANZ charged without contractual entitlement was approximately $3 million.

Save to the extent that affected customers received payments as part of a class action settlement relating to the charging of certain periodical payment fees, ANZ has not made remediation payments to those customers.

For further information, visit https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-232mr-anz-to-pay-10-million-penalty-for-unconscionable-conduct-over-periodic-payment-fees/Copy

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