

Settlement Agreement

Commerce Commission

ANZ Bank New Zealand Limited

Contents

Introduction	1
1 Interpretation	1
2 Breach of the CCCFA	2
3 Terms of settlement	4
4 Closure of the Commission's Investigation and Releases	6
5 Public statements	7
6 Miscellaneous	7
Schedule One: Draft Statement of Claim	11
Schedule Two: Draft Statement of Defence	15
Schedule Three: Calculation of the Further Remediation Amount	17
Schedule Four: Remediation process	19

Parties

Commerce Commission a statutory body established under s 8 of the Commerce Act 1986
(Commission)

ANZ Bank New Zealand Limited an incorporated company under the Companies Act 1993
(ANZ)

(collectively the Parties)

Introduction

- A Between 30 May 2015 and 28 May 2016 (the **relevant dates**), ANZ sent letters to some of its consumer loan customers regarding changes made to their loans. Some of those letters contained errors. From 6 June 2015 to 28 May 2016 those errors caused a breach of section 9C(2)(a)(iii) of the lender responsibility principles of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**).
- B This Agreement records the terms on which ANZ and the Commission have agreed to resolve ANZ's breach of section 9C(2)(a)(iii) of the CCCFA.
- C This Agreement will be made public by the Commission (including on the Commission's website).

1 Interpretation

1.1 For the purposes of this Agreement:

Affected Customers means the approximately 101,535 customers who had or have a consumer credit contract with ANZ, and between the relevant dates received from ANZ a Loan Variation Letter containing Incorrect Information.

ANZBL means Australia and New Zealand Banking Group Limited.

ANZ Information means all information provided by or on behalf of ANZ to the Commission, whether voluntarily or under compulsion, in respect of the Investigation.

Days means working days as defined in High Court rule 1.3.

First Remediation means the remediation ANZ provided to some Affected Customers, by paying the First Remediation Amount and, as appropriate, providing updated information.

First Remediation Amount means the \$5,591,000 ANZ has already paid the Affected Customers, as set out at clause 3.13.

Further Remediation Amount has the meaning given in paragraph 2 of Schedule Three.

Further Remediation Payments means the amounts to be paid to each Affected Customer in accordance with the calculation methodology at Schedule Three, as set out at clause 3.13(b).

Independent Review means the review to be conducted by Northington Partners, as set out at clause 3.16.

Incorrect Information means the inaccurate information that ANZ provided to customers in the Loan Variation Letters sent to Affected Customers as set out at clause 2.2.

Investigation means the Commission's investigation that commenced on or about 24 July 2017 into incorrect Loan Variation Letters sent to customers by ANZ.

Loan Variation Letters means the letters sent to certain customers who sought to vary their consumer credit contract with ANZ, as set out at clause 2.1.

Northington Payment and **Northington Payments** have the meanings set out at clause 3.20.

Northington Report means the document that Northington Partners will prepare following the Independent Review, as set out at clause 3.19.

Proportionate Reduction has the meaning set out in clause 3.15 and paragraph 2 of Schedule 3.

Pro Rata Basis has the meaning set out in clause 3.14.

Related Parties of ANZ include:

- (a) its past and present directors, officers, employees and agents; and
- (b) its related companies and each related company's past and present directors, officers, employees and agents, where "related company" has the same meaning as in the Companies Act 1993; and
- (c) ANZBL and its past and present directors, officers, employees and agents; and
- (d) ANZBL's past and present related companies and each related company's past and present directors, officers, employees and agents, where "related company" has the same meaning as in the Companies Act 1993.

Surplus has the meaning set out in clause 3.13(c).

Total Settlement Amount is \$35,032,000, as set out in clause 3.13.

2 Breach of the CCCFA

Loan Variation Letters

- 2.1 On 19 June 2017 ANZ reported to the Commission that it had made errors in the production of letters by an automated process that it sent to some consumers (**Affected Customers**) who varied their loans between the relevant dates (**Loan Variation Letters**).

- 2.2 Those errors resulted in ANZ providing incorrect information with respect to one or more of the following (**Incorrect Information**):
- (a) the total amount payable under the loan (sometimes noted to be “indicative”);
 - (b) the total amount of interest payable under the loan (sometimes noted to be “indicative”);
 - (c) the amount of the new regular payment;
 - (d) the amount of the new final payment;
 - (e) the total number of payments to be made; and
 - (f) the date of the final payment.
- 2.3 ANZ provided the Commission with information to support a conclusion that the Incorrect Information was generated by a calculator that formed part of an automated computer system, called Frontline Tools, used by ANZ to produce the Loan Variation Letters. That calculator erroneously did not take into account any interest that had accrued but had not yet been charged. ANZ had engaged an external supplier to assist on the development project.
- 2.4 In May 2016 ANZ identified the error following customer complaints and promptly amended the calculator.
- 2.5 By no later than April 2019, ANZ had advised certain Affected Customers of the Incorrect Information. ANZ provided some remediation to Affected Customers in the amount of \$5,591,000. ANZ also provided remediation in the amount of \$2,718,000 to non-consumer borrowers affected by the same Incorrect Information.

Breach is admitted

- 2.6 Following review and analysis of ANZ’s information, the Commission decided to bring High Court civil proceedings against ANZ for the failure to exercise care, diligence and skill in the preparation of the Loan Variation Letters, which resulted in the Incorrect Information recorded in clause 2.2 above.
- 2.7 The Commission claims that ANZ breached the lender responsibility principle in s 9C(2)(a)(iii) of the CCCFA, by failing to exercise the care, diligence and skill of a responsible lender in subsequent dealings with the Affected Customers, by failing to take sufficient steps to ensure the Loan Variation Letters were correct, in that:
- (a) a coding error was made in the calculator used as part of its computer system and ANZ failed to identify the coding error in testing of the computer system before it was put into operation;
 - (b) ANZ failed to identify the coding error in the calculator between the relevant dates;
 - (c) ANZ only identified, and remedied, the coding error in the calculator after receiving customer complaints; and, thereby
 - (d) between the relevant dates ANZ provided Affected Customers with Loan Variation Letters that contained Incorrect Information.

- 2.8 Following discussions between the Parties, the Commission has concluded, based on the Solicitor-General's Prosecution Guidelines and its Enforcement Criteria, that it would be in the public interest for it to resolve its anticipated High Court civil proceedings (as set out at clauses 2.6 and 2.7 above), and the issues otherwise arising in the Investigation, on the basis that:
- (a) ANZ agrees to admit the breach identified by the Commission.
 - (b) ANZ agrees to provide additional remediation to Affected Customers as per clause 3.13(b) and 3.13(c) below.
 - (c) ANZ agrees to pay costs to the Commission as set out in clause 3.12 below.
 - (d) Rights of Affected Customers (if any) are not compromised by this agreement, as set out in clause 4.4 below.

3 Terms of settlement

- 3.1 The Parties have agreed to resolve the issues arising out of the Investigation on the terms set out below.

Admissions

- 3.2 ANZ admits that, in failing to take sufficient steps to ensure the Loan Variation Letters were correct, ANZ breached s 9C(2)(a)(iii) of the CCCFA.
- 3.3 The Commission accepts that ANZ's breaches of s 9C(2)(a)(iii) were inadvertent and not reckless.
- 3.4 The admissions in this Agreement are limited to those admissions expressly made. Nothing in this Agreement constitutes any wider admission of liability by ANZ or its Related Parties.

Court procedure for declaratory order

- 3.5 Within 10 Days of the execution of this Agreement, the Commission will file in the High Court at Auckland a statement of claim in the form attached at **Schedule One**.
- 3.6 Within 5 Days of service of the statement of claim, ANZ will file a statement of defence in the form attached at **Schedule Two**.
- 3.7 The Commission will file an interlocutory application seeking a declaratory order on admission of facts, along with an affidavit in support. This application will seek an order declaring that the conduct as pleaded in paragraph 4.1 of the statement of claim, and admitted in paragraph 4.1 of the statement of defence, breached s 9C(2)(a)(iii) of the CCCFA. The parties will file a joint memorandum of counsel seeking that the declaratory order is made without a hearing.
- 3.8 ANZ will consent to the Court making the declaration sought by the Commission in accordance with clause 3.7 above.
- 3.9 The Parties have agreed to provide to each other, before filing, any Court documents that either intends to file, to provide a reasonable opportunity for the recipient to comment on the contents.

- 3.10 The Parties will cooperate to arrange for the Commission's application to be heard by the Court as soon as reasonably possible.
- 3.11 The other provisions of this Agreement remain in force irrespective of the outcome of the Commission's application under clause 3.7 above.

Payment of costs

- 3.12 Within 15 Days of the execution of this Agreement, ANZ will pay the Commission \$200,000 (including GST, if any) towards the Commission's costs in relation to the Investigation and litigation.

Payment to Affected Customers

- 3.13 The parties have agreed to a resolution of ANZ's breaches of the CCCFA on the basis of ANZ making payment of a total remediation of \$35,032,000 (**Total Settlement Amount**), comprised as follows:

- (a) the \$5,591,000 ANZ has already paid to Affected Customers (**First Remediation Amount**);
- (b) further payments to certain Affected Customers, the amounts of such payments to be calculated by ANZ in accordance with Schedule Three (**Further Remediation Payments**, those payments summing to a **Further Remediation Amount**); and
- (c) in the event that the Further Remediation Amount is less than \$29,441,000, a **Surplus**, to be calculated as:

$$[\$29,441,000 - \text{Further Remediation Amount} = \text{Surplus}]$$

is to be distributed to the Affected Customers receiving Further Remediation Payments on a Pro Rata Basis.

- 3.14 To distribute any Surplus on a Pro Rata Basis, ANZ will:
- (a) ascertain what proportion of the total Further Remediation Amount the Further Remediation Payment due to an Affected Customer (as calculated in accordance with Schedule Three) represents, as a percentage; and
 - (b) calculate the amount of the Surplus to be paid to that Affected Customer by multiplying the Surplus by the percentage calculated in clause 3.14(a).
- 3.15 As at the date of this Agreement, the parties anticipate that the Further Remediation Amount, being the sum total of the Further Remediation Payments, may be less than \$29,441,000. In the event that the Further Remediation Amount is more than \$29,441,000, the Further Remediation Payment paid to any Affected Customer will be proportionately reduced (the **Proportionate Reduction**, as described more fully in paragraph 2 of Schedule Three).

Independent Review

- 3.16 Subject to clause 3.17, within 5 Days of the execution of this Agreement, and before paying the Further Remediation Payments or the Surplus, ANZ will at its own cost engage Northington Partners to:

- (a) conduct an independent review of the accuracy of the Further Remediation Payments;
 - (b) determine any adjustments to the Further Remediation Payments in accordance with Schedule Three; and
 - (c) review the accuracy of the proposed distribution of the Surplus, if any, to Affected Customers on the Pro Rata Basis in accordance with clause 3.14 above, or the Proportionate Reduction in the Further Remediation Payments, if any, in accordance with clause 3.15 above,
- (together, the **Independent Review**).

- 3.17 The scope of the Independent Review will be agreed between ANZ, the Commission and Northington Partners.
- 3.18 Within 5 Days after instruction of Northington Partners, ANZ is to provide to Northington Partners the information required for the Independent Review.
- 3.19 The Independent Review will be completed within 60 Days of Northington Partners' instruction or such other period as the parties agree. Upon completion of the Independent Review, ANZ will arrange for Northington Partners to provide a report to ANZ and the Commission setting out its calculation of the Further Remediation Payments and the Surplus, to include an anonymised schedule of the payments due to each Affected Customer (**Northington Report**).
- 3.20 The calculations of the Further Remediation Payments and the Surplus, if any, or Proportionate Reduction, if any, to be paid to Affected Customers contained in the Northington Report (together, the **Northington Payments** with each such payment to be made to an individual Affected Customer being a **Northington Payment**) will be accepted by both parties.

Further payment to Affected Customers

- 3.21 Within 60 Days of receiving the Northington Report (or such longer period as is agreed between the Commission and ANZ), ANZ will commence paying Affected Customers the Northington Payments in accordance with Schedule Four. ANZ further agrees that the Northington Payments are to be made no later than 210 Days after the receipt of the Northington Report (or such longer period as is agreed between the Commission and ANZ). The parties acknowledge that payments to Affected Customers will be made in a series of tranches within the periods set out in this clause at ANZ's discretion.
- 3.22 For the avoidance of doubt, other than the Total Settlement Amount and the costs payment set out in clause 3.12 above, in no circumstances is ANZ required to pay any further amounts to the Commission or Affected Customers under this Agreement.

4 Closure of the Commission's Investigation and Releases

- 4.1 Upon execution of this Agreement, the Commission will suspend the Investigation.
- 4.2 Upon completion of the hearing of the Commission's application referred to at clause 3.7 above the Commission will close the Investigation.

- 4.3 The Commission undertakes not to issue, encourage or support any civil or criminal legal proceedings against ANZ and/or each of its Related Parties in respect of matters that are the subject of the Investigation.
- 4.4 This agreement is entered into without prejudice to the rights (if any) of Affected Customers in respect of the breach, which rights the Commission is not compromising on their behalf.
- 4.5 Nothing in this Agreement will limit or affect the ability of:
- (a) the Commission to issue proceedings against ANZ in respect of matters not related to the Investigation, or in respect of conduct ANZ engages in after the date of this Agreement or for breach of this Agreement; and
 - (b) any person who has not consented to be bound by the terms of this Agreement from pursuing rights (if any) that person considers would be available to them arising from matters contained in this Agreement.

5 Public statements

- 5.1 Subject to clauses 5.3 and 5.4 below, the Parties may make public statements in relation to the settlement after this Agreement has been executed. The Parties agree that any public statements relating to the Investigation will be made in good faith and be consistent with the spirit and intent of this Agreement.
- 5.2 ANZ understands that this Agreement does not prevent the Commission from making any public statement regarding its views of whether ANZ's conduct in providing customers with the Incorrect Information may, in the Commission's view, amount to a breach of any legal obligation.
- 5.3 Except as required by law, ANZ agrees that it will not make any public comment in relation to this Agreement or the Investigation until after the Commission has issued any media comment notifying the public of this settlement.
- 5.4 The Parties agree to provide written copies of their initial formal media release to the other party at least 24 hours in advance of their release to allow the other party the opportunity to comment. A party will not be obliged to accept the comments of the other party.

6 Miscellaneous

- 6.1 The Commission acknowledges that some of the ANZ Information may be confidential and/or commercially sensitive and/or subject to privilege. The Commission agrees that, if it receives a request pursuant to the Official Information Act 1982 that covers or might cover and/or record or reveal all or some of the ANZ Information (**Information Request**), it will notify ANZ of that request and will consult with ANZ as to whether there are grounds for the requested material to be withheld under Part 1 of the Official Information Act 1982. The Commission will notify ANZ at least 5 Days before complying with the request if, notwithstanding such consideration, it determines that no grounds exist on which it may refuse to comply with any Information Request.

- 6.2 Each party will meet its own expenses incurred in the course of performing its obligations under this Agreement, including (for the avoidance of doubt) as set out in clause 3.16 above.
- 6.3 The Parties agree to take such steps as are necessary or desirable to give full effect to the terms of this Agreement, and to demonstrate good faith in performing their obligations under this Agreement and in resolving any issues arising under this Agreement.
- 6.4 If necessary or desirable, the payment processes required to give full effect to the terms of this Agreement may be amended by agreement of the Parties.
- 6.5 The Parties by written agreement may vary any of the time periods stipulated in this Agreement, in which instance all other dependent time periods will be extended by the same amount of time.
- 6.6 Where ANZ or the Commission take any step in the payment process of this Agreement late, all dependent dates shall be extended by the same period.
- 6.7 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.
- 6.8 The Parties agree that the New Zealand Courts will have exclusive jurisdiction to determine any proceedings arising out of or in connection with this Agreement and the matters to which it relates, including any proceedings brought by the Commission.
- 6.9 This Agreement constitutes the entire agreement between the Parties in relation to resolving the Investigation. It supersedes all prior communications, understandings or representations whether oral or written between the Parties.
- 6.10 No amendment to this Agreement will be effective unless it is in writing and signed by both of the Parties.
- 6.11 Any failure by any 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.
- 6.12 Any person signing this Agreement on behalf of one of the Parties warrants that by signing that they have all the necessary authority from that party to sign this Agreement on their behalf.
- 6.13 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 document. A party may execute this Agreement by one signatory executing one counterpart and another signatory executing a different counterpart. A party's delivery of a signed pdf counterpart of this Agreement by email will have the same legal effect as that party's delivery of a signed original counterpart.
- 6.14 Any notice or communication that is given or served under or in connection with this Agreement must be given in writing in the following manner:

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

Commerce Commission
Level 9
44 The Terrace
Wellington 6011

Attention: Mary-Anne Borrowdale, General Counsel, Competition and
Consumer
Commerce Commission

Email: mary-anne.borrowdale@comcom.govt.nz

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

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

Attention:



Email:



Execution

**Signed by and on behalf of New Zealand
Commerce Commission**

Chair

New Zealand Commerce Commission

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

Director/authorised signatory

ANZ Bank New Zealand Limited

Schedule One: Draft Statement of Claim

The plaintiff by its solicitor says:

1 THE PARTIES

1.1 The plaintiff, the Commerce Commission, is a body corporate established under s 8 of the Commerce Act 1986. Its functions include enforcement of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**).

1.2 The defendant, ANZ Bank New Zealand Limited:

- (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; and
- (c) is a registered bank under the Reserve Bank of New Zealand Act 1989.

2 PERIOD OF CONDUCT

2.1 ANZ's conduct at issue for this claim occurred between 6 June 2015 and 28 May 2016 inclusive (**Relevant Period**). All references to ANZ's obligations and conduct in this claim are to ANZ's obligations and conduct in the Relevant Period, unless specified otherwise.

3 ANZ'S CONDUCT

3.1 During the Relevant Period, ANZ provided, in trade, home loans and personal loans to individual debtors in New Zealand (herein referred to as **borrowers**).

3.2 Some of those loans were "consumer credit contracts" (the **Loans**) to which the CCCFA applies because:

- (a) the borrowers were natural persons;
- (b) the credit was used, or intended to be used, wholly or predominantly for personal, domestic, or household purposes;
- (c) either:
 - (i) interest charges were or could be payable under the contracts;
 - (ii) credit fees were or could be payable under the contracts; and/or
 - (iii) a security interest was or could be taken under the contracts;
- (d) ANZ was the creditor under the contract entered into; and
- (e) ANZ carried on a business of providing credit.

3.3 The terms of the Loans agreed by ANZ with borrowers were recorded in consumer credit contracts that included: the applicable interest rates; the terms of the contract; and the amount, number, and frequency of payments.

- 3.4 On various dates during the Relevant Period, ANZ agreed with the borrowers of some of those Loans to change one or more of the terms of their loan.
- 3.5 For some borrowers, ANZ agreed to change the terms of their Loans more than once during the Relevant Period.

ANZ's obligations under the lender responsibility principles

- 3.6 Under s 9C(1) of the CCCFA, ANZ is required to comply with the lender responsibility principles.
- 3.7 The lender responsibility principles include an obligation on ANZ under s 9C(2)(a)(iii) to exercise the care, diligence and skill of a responsible lender in all dealings with a borrower subsequent to entry into a consumer credit contract with that borrower.

ANZ did not comply with its obligations under the lender responsibility principles

- 3.8 During the Relevant Period, ANZ purported to provide to certain borrowers who changed the terms of their Loans information about those changed terms (**Amended Terms**) by way of a Loan Variation Letter that was generated by one of ANZ's computer systems known as Frontline Tools (**Loan Variation Letter**).
- 3.9 The Loan Variation Letters that ANZ provided to certain borrowers contained incorrect information with respect to one or more of:
- (a) the total amount payable under the loan (sometimes noted to be "indicative");
 - (b) the total amount of interest payable under the loan (sometimes noted to be "indicative");
 - (c) the amount of the new regular payment;
 - (d) the amount of the new final payment;
 - (e) the total number of payments to be made; and
 - (f) the date of the final payment.

Particulars

- (g) Loan Variation Letters containing incorrect information were provided to those borrowers whose Loans were varied using Frontline Tools during the Relevant Period, except for those borrowers whose loan variation took effect on the same day that accrued interest was charged to their loan balance (those borrowers who received Amended Terms containing incorrect information are **Affected Borrowers** under **Affected Loans**).
- 3.10 The incorrect information that ANZ provided to Affected Borrowers in its Loan Variation Letters arose from a coding error in the automated computer system that ANZ used to generate the Loan Variation Letters.

Particulars

- (a) The Loan Variation Letters were produced by an automated computer system designed and implemented at ANZ's request.
 - (b) The automated computer system contained a "calculator" that determined the figures that were included in the Loan Variation Letters.
 - (c) Due to a coding error, the calculator did not take into account any interest that had accrued but had not yet been charged to the Affected Borrower.
- 3.11 ANZ failed to exercise the care, diligence and skill of a responsible lender in subsequent dealings with the Affected Borrowers in relation to the variation of their agreements with ANZ by failing to take sufficient steps to ensure the Loan Variation Letters were correct, in that:
- (a) a coding error was made in the calculator used as part of its computer system and ANZ failed to identify the coding error in testing of the computer system before it was put into operation;
 - (b) ANZ failed to identify the coding error in the calculator during the Relevant Period;
 - (c) ANZ only identified, and remedied, the coding error in the calculator after receiving customer complaints; and, thereby
 - (d) throughout the Relevant Period ANZ provided Affected Customers with Loan Variation Letters that contained incorrect information regarding the Amended Terms.

Consequences of the incorrect Loan Variation Letters

- 3.12 The result of ANZ's failure to ensure the Loan Variation Letters were correct was that Affected Borrowers lost the opportunity to confirm the variation based on accurate information.
- 3.13 If an Affected Borrower made all of the payments on the basis of the incorrect information contained in the Loan Variation Letters:
- (a) the Affected Borrower would not have paid off their loan at the end of the disclosed loan term; or
 - (b) the loan would have accrued interest on the outstanding balance.

Amended Loan Variation Letters

- 3.14 By no later than April 2019, ANZ had provided to certain Affected Borrowers (to the extent necessary) information about the Amended Terms of their loans that was correct as at the date of that correspondence.

4 FIRST CAUSE OF ACTION: BREACH OF S 9C(2)(A)(III)

- 4.1 As a result of its conduct pleaded in section 3 above, in the Relevant Period, ANZ breached s 9C(2)(a)(iii) of the CCCFA by failing to exercise the care, diligence and skill

of a responsible lender in subsequent dealings with a borrower in relation to an agreement.

Accordingly, the Commission claims against ANZ:

- (A) A declaration that ANZ breached its obligations under s 9C(2)(a)(iii) of the CCCFA, when Affected Borrowers varied their loans between 6 June 2015 and 28 May 2016.

Schedule Two: Draft Statement of Defence

The defendant, ANZ Bank New Zealand Limited (**ANZ**), refers to the plaintiff's statement of claim dated [**date**] and by its solicitor says:

1 THE PARTIES

- 1.1 It admits paragraph 1.1.
- 1.2 It admits paragraph 1.2.

2 PERIOD OF CONDUCT

- 2.1 It admits paragraph 2.1.

3 ANZ'S CONDUCT

- 3.1 It admits paragraph 3.1.
- 3.2 It admits paragraph 3.2.
- 3.3 It admits paragraph 3.3.
- 3.4 It admits paragraph 3.4.
- 3.5 It admits paragraph 3.5.

ANZ's obligations under the lender responsibility principles

- 3.6 It admits paragraph 3.6.
- 3.7 It admits paragraph 3.7.

ANZ did not comply with its obligations under the lender responsibility principles

- 3.8 It admits paragraph 3.8 and says further that it did in fact provide borrowers who changed the terms of their loans information about that change and information about changed terms by way of a Loan Variation Letter, as set out at paragraph 3.9 of the Statement of Claim.
- 3.9 It admits paragraph 3.9.
- 3.10 It admits paragraph 3.10.
- 3.11 It admits paragraph 3.11, and says further that:
 - (a) the number of customer complaints received was very small, and all were received within a short period;
 - (b) it took immediate steps to remedy the coding error on becoming aware of it, and remedied the error by May 2016; and
 - (c) ANZ had engaged an external supplier to assist on the development project.

Consequences of the incorrect Loan Variation Letters

- 3.12 It denies paragraph 3.12 and says further that the information given to Affected Borrowers as to the particular change they had requested was correct.
- 3.13 It admits paragraph 3.13 and repeats paragraphs 3.11(a) – 3.11(c) above.

Amended Loan Variation Letters

- 3.14 It admits paragraph 3.14.

4 FIRST CAUSE OF ACTION: BREACH OF S 9C(2)(A)(III)

- 4.1 It admits paragraph 4.1 and further says that:
- (a) the breach was inadvertent and not reckless; and
 - (b) it repeats paragraph 3.12 above.

Schedule Three: Calculation of the Further Remediation Amount

- 1 The Further Remediation Payment to be paid to a customer will be calculated as 'Additional Payment' – 'First Remediation Payment', where:
- (a) **'Additional Payment'** is calculated as being the sum of:
 - (i) the missing accrued interest for the impacted event, or if more than one impacted event, the last impacted event only;
 - (ii) a straight line portion of the missing accrued interest for any earlier impacted events if more than one, if any; and
 - (iii) compounding interest charged on the missing accrued interest:
 - (A) where there is one impacted event only, from the date of that impacted event until the First Remediation Date, or the Future Remediation Date if a First Remediation Payment was not paid for that impacted loan; or
 - (B) where there is more than one impacted event, from the date of each impacted event until:
 - (a) for each impacted event other than the last impacted event, the next re-amortisation date following that impacted event; and
 - (b) for the last impacted event, the First Remediation Date, or the Future Remediation Date if a First Remediation Payment was not paid for that impacted loan.
 - (b) **'First Remediation Date'** is the date on which ANZ paid the First Remediation Payment to that Affected Customer, if any, in the First Remediation.
 - (c) **'First Remediation Payment'** is the proportion of the First Remediation Amount paid to that Affected Customer in the First Remediation, if any.
 - (d) **'Future Remediation Date'** means 1 May 2020.
 - (e) In determining the straight line portion of the missing accrued interest under paragraph (a)(ii) above, ANZ will use the following formula:
$$\left[\left(\frac{\$ \text{accrued interest}}{\text{number of payments remaining on loan}} \right) \times \text{number of payments in the impacted period} \right]$$
 - (f) Under paragraph (e), 'impacted period' is from the date of the impacted event to the earlier of:
 - (i) the next re-amortisation date after the impacted event,
 - (ii) the loan close date, or
 - (iii) the First Remediation Date.

- (g) In determining the compounding interest under paragraph (a)(iii) above, ANZ will use the following formula:

$$[\$accrued\ interest \times (1 + interest\ rate\% \div 12) ^ (number\ of\ years\ impacted \times 12) - \$accrued\ interest]$$

- (h) Under paragraph (g), 'interest rate%' is the interest rate applying at the impacted event, or if more than one, at each impacted event.
- (i) If the Further Remediation Payment for any loan is greater than \$0 but less than \$10, ANZ will round the Further Remediation Payment to \$10.
- (j) If ANZ rounded the amount for any loan paid to any Affected Customer in the First Remediation to \$10, ANZ will use that rounded amount as the First Remediation Payment for that loan.
- (k) For the avoidance of doubt, if the amount paid to any Affected Customer as the First Remediation Payment is greater than or equal to the Additional Payment, then ANZ is not required to make a Further Remediation Payment to that Affected Customer.

- 2 The **Further Remediation Amount** payable by ANZ is the sum of the total number of Further Remediation Payments calculated in accordance with paragraph 1 of this Schedule Three, unless that amount exceeds \$29,441,000. If the sum of the total number of Further Remediation Payments exceeds \$29,441,000, then those Further Remediation Payments will each be reduced proportionately (the **Proportionate Reduction**) so that the Further Remediation Amount is no greater than \$29,441,000.

Schedule Four: Remediation process

- 1 ANZ will undertake the following steps to locate and pay Affected Customers in accordance with this Agreement:
 - (a) for Affected Customers with an ANZ transaction account that ANZ deems appropriate to use for this purpose, or who nominated a transaction account in the First Remediation (**Nominated Transaction Account**), ANZ will:
 - (i) within the timeframes set out at clause 3.21 of the Settlement Agreement, commence the process of paying those Affected Customers the Northington Payments calculated for those Affected Customers, if any, directly into Affected Customers' ANZ transaction account or Nominated Transaction Account; and
 - (ii) to each Affected Customer to whom a payment has been made, send a letter within 10 Days of making the payment, in a form or forms agreed between the Commission and ANZ, to those Affected Customers informing them of ANZ's payment of their Northington Payment;
 - (b) for Affected Customers without an ANZ transaction account or Nominated Transaction Account, or where funds paid under paragraph (a) above are returned to ANZ because any Nominated Transaction Account with another financial institution has been closed since the First Remediation, ANZ will:
 - (i) take reasonable steps using the information that it holds on such Affected Customers to identify a current postal address for each customer (for example, this may include contacting Affected Customers by SMS message, email, post or telephone);
 - (ii) within the timeframes set out at clause 3.21 of the Settlement Agreement (or as soon as reasonably possible after receiving a funds return notification), commence sending letters to Affected Customers' last known addresses, in a form or forms agreed between the Commission and ANZ, inviting the customer to nominate a transaction account for ANZ to pay the Northington Payment to, by contacting ANZ within 90 Days of the date of the letter on a claims portal established by ANZ for this purpose; and
 - (iii) pay those Affected Customers the Northington Payment calculated for that Affected Customer, if any, to the account nominated by that Affected Customer using the claims portal.
- 2 Shortly before or on the date on which ANZ commences paying Affected Customers the Northington Payments due to them pursuant to clause 3.21 of the Settlement Agreement, ANZ shall publish on its website a notification that: (i) explains that payments are being made under this Agreement to Affected Customers and the reasons for those payments, namely the breach of section 9C(2)(a)(iii) of the CCCFA; and (ii) provides an ANZ contact email address for any ANZ customers who have queries. This notification shall appear on ANZ's website, including a link to the notification from ANZ's media page, until completion of all Affected Customer payments. A further link to the notification shall appear on ANZ's home page for a period of one month from initial publication.

- 3 Notwithstanding paragraph 1 of this Schedule Four, ANZ is not required to pay or write, as the case may be, to any Affected Customer if:
- (a) the First Remediation Payment as defined at paragraph 1(c) of Schedule Three is equal to or more than the Additional Payment as defined at paragraph 1(a) of Schedule Three; or
 - (b) having taken reasonable steps, ANZ was unable to contact the Affected Customer during the First Remediation and ANZ continues to have no current address for the Affected Customer; or
 - (c) having taken reasonable steps, ANZ is unable to locate an Affected Customer and has ceased to hold a current address for the Affected Customer since the First Remediation or where any letter sent is returned; or
 - (d) ANZ intends to apply the Northington Payment to reduce the Affected Customer's outstanding debts in connection with the consumer credit contract, including applying the Northington Payment to reduce current arrears, debt written off by ANZ, or debt referred to a debt collection agency; or
 - (e) the Affected Customer is bankrupt or subject to other statutory procedures, and ANZ is advised by the Official Assignee, or similar, that the Northington Payment is to be paid on other instructions, in which case ANZ will pay the amount as required by those statutory procedures; or
 - (f) the Affected Customer fails to nominate a transaction account using ANZ's claims portal within 90 Days of the letter from ANZ.
- 4 Twelve months after the date of this Agreement, ANZ undertakes to provide a final report to the Commission confirming the progress it has made in distributing the Northington Payments, including a summary of the payments made to the Affected Customers pursuant to this Agreement, and an update on its progress locating Affected Customers without a Nominated Transaction Account (the **Payment Update**).

Credit Reporting Searches

- 5 Within 30 Days of receipt of the Payment Update, the Commission will inform ANZ whether it requires ANZ to use external credit reporting searches to locate Affected Customers who are to be paid a Northington Payment of over \$100.
- 6 In the event that the Commission requires ANZ to use external credit reporting searches in accordance with paragraph 5 of this Schedule Four, within 10 Days of the Commission's advice ANZ will instruct a credit reporting agency to undertake those external credit reporting searches.
- 7 If the credit reporting agency identifies an address other than an address previously identified by ANZ, ANZ will:
- (a) immediately upon receipt of the credit reporting agency's advice, instruct the credit reporting agency to write to the Affected Customer at that address in the terms of paragraph 1(b)(ii) of this Schedule Four;

- (b) make payment to the Affected Customer within 30 Days of receipt of the Affected Customer's account information in the claims portal, in accordance with paragraph 1(b)(iii) of this Schedule Four.

Unclaimed money

- 8 The parties will deal with any unclaimed money as follows:
- (a) In the event that the Commission does **not** require ANZ to instruct a credit reporting agency, within 30 Days of receiving the Payment Update, the parties will consider the amount of money which remains unpaid to Affected Customers, and will agree whether that remaining unpaid amount will be either:
 - (i) treated as unclaimed money under the Unclaimed Money Act 1971; or
 - (ii) paid to a charity to be approved by the Commission.
 - (b) In the event that the Commission **does** require ANZ to instruct a credit reporting agency, within 90 Days of ANZ's instruction of a credit reporting agency the parties will consider the amount of money which remains unpaid to Affected Customers, and will agree whether that remaining unpaid amount will be either:
 - (i) treated as unclaimed money under the Unclaimed Money Act 1971; or
 - (ii) paid to a charity to be approved by the Commission.
- 9 Other than the Total Settlement Amount or the costs payment set out at clause 3.12 of the Settlement Agreement, in no circumstances is ANZ required to pay any additional amounts to the Commission or Affected Customers under this Agreement.

