

SETTLEMENT APPROVAL NOTICE

FEDERAL COURT OF AUSTRALIA

ANZ BANK FEES CLASS ACTION (VID 811 OF 2010 AND VID 196 OF 2013)

THIS NOTICE IS INTENDED FOR ALL PERSONS WHO HAVE PREVIOUSLY REGISTERED AND SIGNED A FUNDING AGREEMENT WITH FINANCIAL REDRESS PTY LTD / IMF BENTHAM LTD TO PARTICIPATE IN THE ANZ BANK FEES CLASS ACTION (BEING THOSE PERSONS WHO HAVE RECEIVED THIS NOTICE VIA EMAIL OR MAIL)

PLEASE READ THIS NOTICE CAREFULLY

Why is this notice important?

1. In 2010 a class action was commenced in the Federal Court of Australia against Australia and New Zealand Banking Group Ltd (**ANZ**) by John Andrews (and others) on their own behalf and on behalf of certain other customers of ANZ (**Andrews Proceeding**), alleging that certain fees charged by ANZ to its customers were unlawful. In 2013 a second class action was commenced in the Federal Court of Australia against ANZ by Lucio Robert Paciocco (and another) on their own behalf and on behalf of certain other customers of ANZ (**Paciocco Proceeding**), in which substantially the same allegations were made. Those two class actions have since been consolidated to form, in effect, one single class action, which is referred to in this notice as the 'ANZ Bank Fees Class Action'.
2. Following a trial of the Paciocco Proceeding in late 2013 (and subsequent appeals), the Court ultimately found that most of the fees that were charged by ANZ to its customers, and which were the subject of the ANZ Bank Fees Class Action, were not unlawful (and the Court therefore dismissed most of the claims that were made in the ANZ Bank Fees Class Action).
3. However, in the course of the trial, the lead applicant in the Paciocco Proceeding, Mr Paciocco, raised an additional claim that two 'Periodical Payment Non-Payment Fees' that were charged by ANZ to him in September 2008 and January 2009 were charged in breach of contract.
4. Periodical Payment Non-Payment Fees were charged by ANZ to its customers whenever a scheduled 'periodical payment' which the customer had authorised to be

made from their ANZ account could not be made (usually because of insufficient available funds in the customer's account to make the payment).

5. Mr Paciocco alleged that ANZ was only contractually entitled to charge such a fee when the periodical payment was to be made to the account of another person or business (i.e. to someone other than the particular customer who had authorised the payment), and was not contractually entitled to charge such a fee when the periodical payment was to be made to the customer's own account (e.g. from the customer's transaction or savings account to another account in the name of the same customer, such as a loan account). The fees charged to Mr Paciocco fell into the second category, that is, the payments were to be made to another account in his name.
6. In the Paciocco Proceeding, ANZ admitted Mr Paciocco's individual claim in respect of the Periodical Payment Non-Payment Fees that were charged to him, and the Court ordered ANZ to repay to Mr Paciocco those fees, together with interest.
7. In this notice, '**PPN Fees**' refers to Periodical Payment Non-Payment Fees that were charged by ANZ to its customers where the periodical payment was to be made to the customer's own account (e.g. from the customer's transaction or savings account to another account in the name of the same customer, such as a loan account).
8. In 2016, following the Court's order, ANZ undertook a remediation program (**Remediation Program**), by which it sought to refund to customers all PPN Fees it had charged during the period 1 January 2008 to 23 February 2016 (inclusive), together with an additional amount by way of interest compensation. The Remediation Program did not apply to PPN Fees that were charged to customers before 1 January 2008.
9. In March 2017 the applicants in the Andrews Proceeding made claims against ANZ in relation to the charging of PPN Fees during the period 1 August 2003 to 23 February 2016 (inclusive). Those claims are now brought on behalf of all persons who were charged PPN Fees, and comprise, in substance, allegations that:
 - a. for those PPN Fees that were refunded to customers as part of the Remediation Program, the additional amount that was paid to customers by way of interest compensation was inadequate; and
 - b. for those PPN Fees that were not refunded to customers as part of the Remediation Program, those fees should be refunded to customers (together with an additional amount of interest compensation).

10. The Federal Court has ordered that this notice be published for the benefit of all persons who:
 - a. are group members in the ANZ Bank Fees Class Action (as to which see the section below headed 'Are you a Group Member in the ANZ Bank Fees Class Action?'); and
 - b. have previously registered and signed a funding agreement with Financial Redress Pty Ltd / IMF Bentham Ltd (**IMF**) to participate in the ANZ Bank Fees Class Action.

You have received this notice because you have previously registered and signed a funding agreement with IMF to participate in the ANZ Bank Fees Class Action. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in this notice that you do not understand, you should contact IMF, whose contact details are set out in paragraph [25] of this notice, or alternatively seek your own legal advice.

11. This notice provides important information about:
 - a. your status as a group member in the ANZ Bank Fees Class Action; and
 - b. what you need to do if you wish to object to the proposed settlement of the ANZ Bank Fees Class Action described below.

What is a class action?

12. A class action is a legal action that is brought by one or more persons (**Applicant(s)**) on their own behalf and on behalf of a group of people (**Group Members**) against another person or persons (**Respondent(s)**, being in this case ANZ), where the Applicant(s) and the Group Members all have similar claims against the Respondent(s).

What is the ANZ Bank Fees Class Action?

13. The Andrews Proceeding was filed on 22 September 2010 in the Victorian Registry of the Federal Court of Australia. The Paciocco Proceeding was filed on 13 March 2013, also in the Victorian Registry of the Federal Court of Australia. Both proceedings were subsequently consolidated to form, in effect, a single proceeding. As noted above, although many of the claims that were originally pursued in the ANZ Bank Fees Class Action were ultimately unsuccessful, the Applicants allege that:
 - a. in respect of PPN Fees that were charged by ANZ to customers during the period 1 January 2008 to 23 February 2016 (inclusive), and were refunded to customers as part of the Remediation Program, the additional amount that was paid to customers by way of interest compensation was inadequate; and

- b. in respect of all other PPN Fees that were charged by ANZ to customers during the period 1 August 2003 to 23 February 2016 (inclusive), and were not refunded to customers as part of the Remediation Program, those fees should be refunded to customers (together with an additional amount of interest compensation).
14. The detailed allegations are set out in the Applicants' Second Further Amended Statement of Claim filed in the Andrews Proceeding on 28 March 2018, a copy of which:
- a. is available on the website of the Applicants' solicitors (www.mauriceblackburn.com.au);
 - b. is available on the website of IMF (www.imf.com.au/anz); or
 - c. can be obtained by contacting IMF, whose contact details are set out in paragraph [25] of this notice.
15. ANZ has denied the claims made against it, and is continuing to defend the ANZ Bank Fees Class Action.

Are you a Group Member in the ANZ Bank Fees Class Action?

16. You are receiving this notice because you have previously registered and signed a funding agreement with IMF to participate in the ANZ Bank Fees Class Action, and therefore are a Group Member in that action. As such, you will be entitled to receive a distribution from the proposed settlement of the ANZ Bank Fees Class Action (described in further detail below) if:
- a. at some time between 1 August 2003 and 23 February 2016 (inclusive) you were a customer of ANZ, and held and operated banking facilities with ANZ; and
 - b. during that same period you were charged one or more PPN Fees by ANZ.
17. If you do not meet the above criteria, you may disregard this notice. If you do meet the above criteria, it may be necessary for you to:
- a. provide further information to assist ANZ to confirm your identity and/or to determine whether you were charged one or more PPN Fees by ANZ during the relevant period; and/or
 - b. provide a current bank account number to enable your distribution entitlement from the proposed settlement to be paid to you directly via EFT.

If that is the case, you will be sent a separate notice asking you to provide the required information.

Proposed Settlement of the ANZ Bank Fees Class Action

18. Following a mediation between the parties which was held on 20 August 2018, the parties to the ANZ Bank Fees Class Action signed a Deed of Settlement and Release

(Deed). The purpose of the Deed is to settle all of the remaining issues in the ANZ Bank Fees Class Action, including:

- a. the ongoing claims in respect of PPN Fees outlined above; and
 - b. the amount of costs to be paid by IMF to ANZ in respect of the other claims that were previously pursued in the ANZ Bank Fees Class Action, but which were ultimately unsuccessful.
19. The terms of the Deed are confidential, but in so far as it deals with the ongoing claims in respect of PPN Fees, it provides for ANZ to pay, in full and final settlement of those claims:
- a. an amount of \$750,000 (in respect of the claims of those Group Members who have already registered and signed a funding agreement with IMF to participate in the ANZ Bank Fees Class Action, and who were charged one or more PPN Fees during the relevant period); and
 - b. an additional amount, of up to \$750,000 (in respect of the claims of those Group Members who were charged one or more PPN Fees during the relevant period and have not previously registered and signed a funding agreement with IMF to participate in the ANZ Bank Fees Class Action, but who do register before the registration deadline of 30 August 2019). The precise amount of the payment will depend, in part, on the number of additional Group Members who do register to participate.
20. Not all of those two amounts will be distributed, in full, to Group Members. Instead, it is contemplated that a large part of those amounts will be paid to IMF to reimburse it for the substantial costs which it has incurred in funding the ANZ Bank Fees Class Action to date (but even then, IMF will only recover a very small portion of the many millions of dollars of costs which it has incurred). It is then proposed that the balance of those two amounts will be distributed equally to the applicable Group Members (regardless of the amount of PPN Fees which each Group Member paid). It is not yet known how much each Group Member will receive by way of a distribution, but the amount is likely to be less than (and may be substantially less than) \$100 each (which, in part, reflects the fact that most Group Members would only have incurred a small number of PPN Fees during the relevant period). The precise amount of the distribution will depend on several factors.
21. The Deed also provides for all Group Members to release ANZ from any claim in relation to, concerning, arising out of, connected with or related to:
- a. the claims relating to PPN Fees made in the ANZ Bank Fees Class Action;

- b. the matters relating to PPN Fees which are or were at any time the subject of the ANZ Bank Fees Class Action or any part of them, or which are raised in that action, whether arising at common law, in equity, under statute or otherwise; and
- c. PPN Fees charged to Group Members, whether arising at common law, in equity, under statute or otherwise.

In effect, this means that, if the proposed settlement is approved by the Court, Group Members will be bound by that settlement, and will not be permitted to make any subsequent claim against ANZ in relation to any PPN Fees charged by ANZ during the period 1 August 2003 to 23 February 2016 (inclusive).

22. The proposed settlement is subject to the approval of the Federal Court. The Court will hear the application for approval of the settlement at 10.15 am on 6 December 2019 at the Federal Court in Melbourne. If you are a Group Member in the ANZ Bank Fees Class Action, you have the right, if you wish, to make submissions as to why the Court should, or should not, approve the proposed settlement. If you wish to exercise that right, you must file with the Court any affidavit evidence on which you propose to rely and/or a written outline of your grounds for supporting or opposing the application, and serve a copy on the Applicants' solicitors (Maurice Blackburn), by no later than 4.00 pm on 22 November 2019. Any such Group Member may also (but is not obliged to) appear before the Court at the hearing of the application to approve the proposed settlement on 6 December 2019.

What do you need to do?

23. At the present time, there is nothing which you need to do (unless you wish to object to the proposed settlement, in which case you need to follow the steps outlined above). As you have previously registered and signed a funding agreement with IMF to participate in the ANZ Bank Fees Class Action, you do not need to (and should not) register again. If the information which you have previously provided to IMF:
- a. is sufficient to enable ANZ to verify that you were charged one or more PPN Fees by ANZ during the relevant period, you will be entitled to receive a distribution from the proposed settlement of the ANZ Bank Fees Class Action (in the event that the proposed settlement is approved by the Court, and subject to providing any further information which may be requested from you); or
 - b. is not sufficient to enable ANZ to determine whether or not you were charged one or more PPN Fees by ANZ during the relevant period, you will be notified separately and asked to provide further information to enable a determination to be made as to whether you are entitled to receive a distribution from the proposed

settlement of the ANZ Bank Fees Class Action (in the event that the proposed settlement is approved by the Court).

Where can you obtain copies of relevant documents?

24. Copies of relevant documents, including relevant orders of the Court:
- a. are available on the website of the Applicant's solicitors (www.mauriceblackburn.com.au);
 - b. are also available on the website of IMF (www.imf.com.au/anz); or
 - c. may be obtained by contacting IMF.

What if you have further questions?

25. If you have any questions or queries, you may contact IMF as follows:

Email: 801097@imf.com.au
Tel: 1300 32 48 96
Post: IMF Bentham Ltd
PO Box 5106
Perth WA 6831