

Article Information

Authors: Andrea Beatty, Chelsea Payne

Service: Banking & Finance, Banking & Finance Litigation

Sector: Financial Services

ASIC sues ANZ for misrepresentations and unconscionable conduct over account fees

APRA has commenced proceedings in the Federal Court against ANZ for charging certain periodic payment fees.

On 25 July 2019, ASIC confirmed they have commenced proceedings in the Federal Court against ANZ for charging certain periodic payment fees under the bank's contracts with its customers when they were not entitled to do so.^[1] ASIC alleges that at the time, ANZ's contract terms and conditions defined a periodic payment as being a debit from an ANZ account which the customer instructed ANZ to make to the account of another person or business.^[2] This definition excluded payments between two accounts in the name of the same person or business.

ASIC alleges that between August 2003 and 23 February 2016, ANZ wrongly charged transaction fees and non-payment fees for periodical payments between accounts in the same name.^[3] Transaction fees were charged when a periodical payment was successful, and non-payment fees were charged when a periodical payment could not be made due to insufficient funds in the customer's account.

Furthermore, ASIC alleges that ANZ was aware of the risk that the bank was not entitled to charge these fees in July 2011.^[4] Yet despite this, ANZ:

- did not provide written notification regarding the existence of a possible issue;
- did not notify affected customers about the issue until at least 23 September 2015;
- changed their terms and conditions to permit the charging of fees until 23 February 2016; and
- made remediation payments in relation to the unlawfully charged fees until August 2016.^[5]

The crux of ASIC's action against ANZ is that they continued to charge the fees during the 2003 - 2016 period despite knowing about the issue. Hence, in October 2018 ASIC commenced an investigation into ANZ and alleges they breached s 912(1)(a) and (c) of the *Corporations Act* which requires a licensee to ensure that the financial services covered by its licence are provided efficiently, honestly and fairly and comply with financial services laws.^[6]

ASIC further alleges that ANZ amongst other things, provided incomplete or misleading information when it first reported the issue to ASIC in February 2014, thereby breaching the *ASIC Act* by:

- engaging in misleading or deceptive conduct, making false or misleading representations;
- engaging in unconscionable conduct for continuing to charge fees; and
- failing to inform affected customers and not making remediation payments.^[7]

ASIC estimates that the total gross loss to customers during 1 January 2008 to 23 February 2016 is in excess of \$50 million. Although ANZ has paid approximately \$28 million in remediation to customers to date they have not remediate those who were charged the fees prior to 31 December 2007.^[8]

[1] ASIC, '[19-191MR ASIC sues ANZ for misrepresentations and unconscionable conduct over account fees](#)' (Media release, 25 Jul 2019) .

[2] Ibid.

[3] [Concise Statement](#), [1].

[4] [Originating Process](#), [3.2]-[3.3].

[5] Above n 3, Concise statement [2].

[\[6\]](#) Above n 4 Originating Process [1.3], [2.5], [3].

[\[7\]](#) Above n 3, Concise statement [33.1], [34.4].

[\[8\]](#) Above n 1, ASIC.