

PROCESSED

Form 17
Rule 8.05(1)(a)

Amended Statement of claim

(REDACTED VERSION)

(Amended pursuant to leave granted by the Honourable Justice Gordon on 23 May 2013)

VID 196 of 2013

Federal Court of Australia

District Registry: Victoria

Division: General

LUCIO ROBERT PACIOCCO and another
Applicants

**AUSTRALIA AND NEW ZEALAND BANKING
GROUP LIMITED (ACN 005 357 522)**
Respondent



*For the purposes of this Statement of Claim, the applicants adopt (where the context permits) the abbreviations and defined terms used in their application under Part IVA of the Federal Court of Australia Act 1976 (Cth) filed in these proceedings (**Application**).*

To assist in the comprehension of this Statement of Claim, a Glossary of key defined terms is provided as Schedule 11 (located at page 99 and following).

Unless otherwise indicated, references to paragraphs include their sub-paragraphs, and references to sub-paragraphs include their chapeau and sub-paragraphs.

Filed on behalf of (name & role of party)	Lucio Robert Paciocco & Anor – Applicants		
Prepared by (name of person/lawyer)	Paul Gillett		
Law firm (if applicable)	Maurice Blackburn		
Tel	(03) 9605 2765	Fax	(03) 9258 9610
Email	PGillett@mauriceblackburn.com.au		
Address for service	Maurice Blackburn		
(include state and postcode)	Level 10, 456 Lonsdale Street, Melbourne Vic 3000		

5687629_1 [Form approved 01/08/2011]

Table of Contents

A. NATURE OF THE DISPUTE	3
B. ISSUES LIKELY TO ARISE.....	4
C. APPLICANTS' CONTENTIONS.....	6
C.1 THE PARTIES AND OTHER RELEVANT ENTITIES	6
C.2 THE CONTRACTUAL FRAMEWORK	9
I Saving Accounts	9
II Card Accounts.....	18
III Business Accounts.....	25
C.3 THE EXCEPTION FEES CHARGED.....	33
I Saving Accounts	33
II Card Accounts.....	34
III Business Accounts	34
C.4 THE PENALTY ARGUMENT.....	35
I Penalty Imposed Upon Breach of Contract.....	35
II Penalty in Equity	40
III Relief from the Penalty Provisions and/or Exception Fee Charges	51
(i) Arising from Void and/or Unenforceable Provisions of Contracts	51
(ii) Arising from Mistake of Law	51
(iii) Unjust Enrichment	52
(v) Money Had and Received by ANZ.....	52
(vi) Interest	53
C.5 BREACH OF IMPLIED TERM	54
C.6 UNCONSCIONABLE CONDUCT	55
C.7 UNJUST TRANSACTIONS UNDER THE CODE AND THE NEW CODE.....	58
C.8 UNFAIR TERMS	59
C.9 RELIEF CLAIMED	61
SCHEDULE 1: SAVING CONTRACTS	63
SCHEDULE 2: AMENDED TERMS IN SAVING CONTRACTS	65
SCHEDULE 3: FEES CHARGED BY OTHER MAJOR BANKS.....	67
SCHEDULE 4: CARD CONTRACTS.....	70
SCHEDULE 5: AMENDED TERMS IN CARD CONTRACTS	72
SCHEDULE 6: BUSINESS CONTRACTS	78
SCHEDULE 7: AMENDED TERMS IN BUSINESS CONTRACTS	80
SCHEDULE 8: EXCEPTION FEES INCURRED BY THE FIRST APPLICANT	93
SCHEDULE 9: EXCEPTION FEES INCURRED BY THE SECOND APPLICANT	96
SCHEDULE 10: EXCEPTION FEES	97
SCHEDULE 11: GLOSSARY	99

A. NATURE OF THE DISPUTE

- 1 This proceeding is a representative action brought by the applicants against ANZ on their own behalf and on behalf of Group Members.
- 2 The dispute concerns:
 - (a) whether ANZ was entitled to charge the applicants and Group Members fees in situations of unauthorised overdrafts, overdrawn accounts, dishonour fees and overlimit credit card accounts where pre-determined limits were exceeded or payments were made late (being fees defined collectively at paragraph 37 as Exception Fees);
 - (b) a primary contention that the Exception Fees were penalties or were in the nature of penalties (as the law of penalties is properly understood) which includes a determination as to whether the Exception Fees (or any of them) could be characterised properly as a genuine covenanted or pactional pre-estimate of damage;
 - (c) in the event ANZ was not entitled to charge the Exception Fees:
 - i. whether the Exception Fees were paid by the applicants and Group Members as a result of a mistake;
 - ii. ANZ has been unjustly enriched by the charging and retention of Exception Fees;
 - iii. the appropriate remedial response, including whether ANZ is liable at law or in equity, to repay the Exception Fees in whole or in part and/or has an obligation, or is liable, at law or in equity to render a proper accounting to the applicants and Group Members;
 - (d) additional contentions as to whether:
 - i. the conduct of ANZ in charging the applicants and Group Members the Exception Fees constituted the unconscientious exercise of a legal right;
 - ii. the entry or amendment from time to time of contracts between ANZ and the applicants and ANZ and Group Members providing for the charging of

Exception Fees and/or the charging of those Exception Fees amounted to unconscionable conduct within the meaning of the ASIC Act and/or the FTA, entitling the applicants and Group Members to relief pursuant to those statutes;

- iii. the entry or amendment from time to time of contracts between ANZ and the first applicant and ANZ and Card Group Members providing for the charging of Exception Fees, being Card Contracts, were unjust transactions within the meaning of either the Code or the New Code, entitling the first applicant and Card Group Members to relief under those statutes;
- iv. the provisions in the contracts between ANZ and the first applicant and ANZ and Saving Group Members and Card Group Members which purported to entitle ANZ to charge Exception Fees were unfair terms within the meaning of the FTA or the ASIC Act, entitling the first applicant, Saving Group Members and Card Group Members to relief under those statutes.

3 For the purposes of section 33H(1) of the FC Act:

- (a) the group members to whom and to which the proceeding relates are Group Members as defined in the Application;
- (b) the nature of the claims made on behalf of Group Members and the relief claimed is found in the Application and in the balance of this Statement of Claim;
- (c) the questions of law or fact common to the claims of Group Members are found in paragraphs 2, and paragraphs 4 and 5.

B. ISSUES LIKELY TO ARISE

4 The following questions of fact and law will arise at the trial of the applicants' claims which will involve the resolution of issues common to the determination of the claims of Group Members:

- (a) Whether at the time of entry into the contracts between the applicants and ANZ and/or at the time the level of the Exception Fees were changed purportedly in compliance with those contracts by ANZ, there existed a genuine covenanted or pactional pre-estimate of damage in relation to the Exception Fees?
- (b) Whether the Exception Fees are immune from legal scrutiny on the ground that they represent a fee for service irrespective of their relationship to the actual costs faced or likely to be faced by ANZ in the circumstances giving rise to Exception Fees?
- (c) Whether if the Exception Fees are properly subject to legal scrutiny, their quantum is so extravagant or exorbitant as to attract the intervention of common law or equitable remedies?
- (d) Whether the wording of the contractual provisions achieves the result of removing the Exception Fees from scrutiny under the law of penalties?
- (e) Whether the requirement to pay Exception Fees was enjoyed by ANZ as security for performance by Group Members of obligations to ANZ, or whether the Exception Fees were charged by ANZ for further accommodation provided to Group Members (including whether any actual or meaningful accommodation was provided in fact)?
- (f) Whether the circumstances relating to the entry and amendment of the contracts providing for the charging of the Exception Fees, and concerning actual charging of the Exception Fees, warrant the conclusion of unconscientious or unconscionable conduct in equity or attract the application of statutory notions of unconscionable conduct?
- (g) Whether all the circumstances of the case justify relief being granted to the applicants and Group Members under the Code or the New Code, or the unfair terms provisions of the FTA or the ASIC Act?

5 The following common questions of law (or mixed questions of fact and law) will arise at the initial trial which will involve the resolution of issues common to the determination of the claims of Group Members:

- (a) Whether the applicants (or any of them) are entitled to succeed under the doctrine of penalties either in equity, as considered by the High Court of Australia in *Andrews v ANZ* [2012] HCA 30 (2012) 290 ALR 595, or at law?
- (b) Whether any provision relating to amendment of the quantum of each of the Exception Fees following entry into the Contracts by the applicants and Group Members, was subject to a term implied into the Contracts that while determination of the quantum of each of the Exception Fees was a matter to be left to ANZ, being the party alleged to be entitled to receive the Exception Fees, the right to vary the Exception Fees was subject to an implied criterion that the amendment would be fair and reasonable so that ANZ's determination of the quantum of the Exception Fees could be tested objectively?
- (c) Whether it is necessary for the applicants and Group Members, to succeed in establishing statutory unconscionability, to demonstrate that the impugned conduct of ANZ showed no regard for conscience and was irreconcilable with what is right or reasonable?
- (d) If so, have the applicants demonstrated that the impugned conduct of ANZ showed no regard for conscience and was irreconcilable with what is right or reasonable?
- (e) Whether conduct such as that of ANZ charging the Exception Fees can be the subject of remedies against unconscientious exercise of legal rights and the nature of those remedies?

C. APPLICANTS' CONTENTIONS

C.1 THE PARTIES AND OTHER RELEVANT ENTITIES

6 The first applicant at all material times:

- (a) was and is a resident of the state of Victoria;
- (b) was and is a customer of ANZ;
- (c) held and operated banking facilities with ANZ;

Particulars

- a. Access account (also known as Access Advantage Cheque account and Access Select Cheque account) number [REDACTED] in the name of 'Paciocco Lucio Robert' (with, from around 10 June 2009 an overdraft limit of \$[REDACTED]) which was opened at some time prior to 10 November 1997 and held to date.
 - b. ANZ Low Rate Mastercard credit card account number [REDACTED] in the name of 'Mr Lucio Robert Paciocco' which was opened at some time prior to 5 June 2006 and held to date.
 - c. ANZ Low Rate Mastercard credit card account number [REDACTED] in the name of 'Mr Lucio Robert Paciocco' which was opened at some time prior to 13 July 2009 and held to date.
 - d. ANZ Equity Manager account number [REDACTED] in the name of 'Paciocco Lucio Robert' which was opened on 17 March 2010 and held to date.
 - e. V2 Plus account number [REDACTED] in the name of 'Lucio Robert Paciocco' which was opened on 27 May 2008 and held to date.
 - f. Progress Saver account number [REDACTED] in the name of 'Paciocco Lucio Robert, Paciocco Paul Anthony' which was opened on 22 August 2008 and held to date.
 - g. ANZ Simplicity Plus Home Loan account number [REDACTED] in the name of 'Paciocco Lucio Robert' which was opened on 20 August 2008 and held to date.
- (d) conducted the joint account with ANZ (particularised in paragraph f. of the particulars subjoined to sub-paragraph 6(c)) as a proprietor of the joint account, had and has joint and several liability in respect of any amount owing on the joint account and had and has a joint and several ownership of any amount standing to the credit of the joint account;

- (e) was and is a debtor within the meaning of the New Code;
- (f) was and is a consumer within the meaning of section 5 of the FTA;
- (g) has commenced this proceeding in a representative capacity on behalf of Group Members including those Group Members being:
 - i. those persons who hold or held a Saving Account; and
 - ii. those persons who hold or held a Card Account.

7 The second applicant at all material times:

- (a) was and is a company registered pursuant to the *Corporations Act 2001* (Cth) (CA);
- (b) traded or trades under the name 'Speedy Commercial Interiors';
- (c) had and has its registered office in the state of Victoria;
- (d) was and is a customer of ANZ;
- (e) held and operated banking facilities with ANZ;

Particulars

- a. ANZ Business Classic account number [REDACTED] in the name of 'Speedy Development Group Pty Ltd' (with, from around 15 April 2011 an overdraft limit of \$[REDACTED]) which was opened on 15 December 2008 and held to date.
- b. ANZ Business Online Saver account number [REDACTED] in the name of 'Speedy Development Group Pty Ltd' which was opened on 15 December 2008 and closed on or around 8 February 2010.
- (f) has commenced this proceeding in a representative capacity on behalf of Group Members including those Group Members being those persons who hold or held a Business Account.

8 Group Members identified in Parts 1 and 2 of Schedule B to the Application being the Saving Group Members and Card Group Members:

- (a) were and are consumers within the meaning of section 5 of the FTA;
- (b) were and are residents of Victoria or other Australian states or territories.

9 ANZ is and was at all material times a corporation which:

- (a) is registered pursuant to the CA and capable of being sued;
- (b) has and had its registered office in the state of Victoria;
- (c) carries on and carried on, as its sole or principal business, the business of banking, throughout Australia;
- (d) was and is a financial corporation within the meaning of the ASIC Act;
- (e) was and is a supplier of financial services within the meaning of the ASIC Act;
- (f) was and is a trading corporation engaged in trade and commerce within the meaning of the FTA.

C.2 THE CONTRACTUAL FRAMEWORK

I Saving Accounts

10 Prior to around 14 December 2009 ANZ gave or otherwise communicated to:

- (a) the first applicant; and
- (b) those Group Members who held, at some time during that period, at least one Saving Account (as defined at paragraph 14(a) of this Statement of Claim) (being an account which did not have a fixed expiry date) (**Saving Group Members**),

one or more of:

- (c) at least ten versions of a product disclosure statement (also known as terms and conditions) set out in Column 1 of Schedule 1 (**PDSSs**); and

(d) fourteen versions of a fees document set out in Column 2 of Schedule 1 (**Fees Documents**),

which collectively had effect, depending upon notification, at all times during that period.

Particulars

- a. ANZ gave or otherwise communicated to the first applicant all the versions of the PDSs and of the Fees Documents which appear in rows 2 to 16 of Columns 1 and 2 of Schedule 1.
- b. The precise dates upon which each of the versions of the PDSs and the Fees Documents were given or otherwise communicated to the first applicant are currently unknown and will be provided after discovery.
- c. The precise date or dates of the version or versions of the PDSs which had effect during the period prior to November 2004 are currently unknown and will be provided after discoverythe trial of the first applicant's claims.
- d. Particulars of which of the Saving Group Members received which versions of the PDSs and the Fees Documents, and when they were given or otherwise communicated to those members, will be provided following the initial trial of the first applicant's claim.

11 The PDSs, together with the Fees Documents, contained the express written terms of the contracts (**Saving Contracts**) set out at Column 3 of Schedule 1 to this Statement of Claim, being contracts:

- (a) each constituted by the versions of the PDSs and Fees Documents set out, in Schedule 1, in the respective rows in which each of those contracts appear;
- (b) between ANZ and the first applicant;
- (c) between ANZ and the Saving Group Members;

- (d) pursuant to which ANZ agreed to open and maintain the Saving Accounts and provide financial services associated with Saving Accounts, on behalf of the first applicant and the Saving Group Members.

12 Subject to paragraph 13, the Saving Contracts contained, *inter alia*, the following express written terms:

- (a) ANZ may allow the Saving Group Member to draw on a cheque before it is cleared, but in which case he will be charged a Saving Honour Fee (Clause 2.3);
- (b) ANZ may charge a Saving Dishonour Fee if a cheque is dishonoured by ANZ (Clause 2.3);
- (c) ANZ may charge a Saving Dishonour Fee when a payment on the Saving Group Member's account is dishonoured or refused (Clause 2.3);
- (d) a cheque may be dishonoured or payment refused, in ANZ's discretion where:
 - i. there are insufficient funds in the account of the drawer;
 - ii. the cheque is unsigned;
 - iii. the cheque is more than 15 months old;
 - iv. the cheque is future dated;
 - v. the cheque has been materially altered and the alteration has not been signed;
 - vi. there is a legal impediment to payment;
 - vii. the cheque has been stopped; or
 - viii. the paying bank has been notified of the mental incapacity, bankruptcy or death of the drawer (Clause 2.3);
- (e) unless otherwise noted the Saving Group Member may withdraw funds from the account provided the account contains sufficient funds (Clause 2.5);

- (f) ANZ will charge a Saving Dishonour Fee if the Saving Group Member authorises a third party to direct debit the Saving Group Member's account and payment is not made because there are insufficient cleared funds in the account (Clause 2.7);
- (g) ANZ will charge a Saving Non-payment Fee (which could also be described as a periodical payment non-payment fee) if the Saving Group Member authorises a periodical payment that is not made because there are insufficient cleared funds in the Saving Group Member's account (Clause 2.7);
- (h) ANZ reserves the right to process or pay transactions presented for payment in any order that it chooses (Clause 2.8);
- (i) ANZ may make the following changes to the November 2004 PDS via the method specified, being writing and/or press advertisement:
 - i. introduce a new fee;
 - ii. increase an existing fee or charge;
 - iii. change any other term or condition of the November 2004 PDS (Clause 2.9);
- (j) the prior written agreement of ANZ is required before ANZ will provide credit in respect of a Saving Group Member's account (Clause 2.12);
- (k) it is a condition of all ANZ accounts that the Saving Group Member must not overdraw their account without prior arrangements being made and agreed with ANZ (Clause 2.12);
- (l) if a request is made by the Saving Group Member for a withdrawal or payment from their account which would overdraw their account, ANZ may, in its discretion, allow the withdrawal or payment to be made on the following terms:
 - i. interest will be charged on the overdrawn amount at ANZ Retail Index Rate plus a margin;
 - ii. a Saving Honour Fee may be charged for ANZ agreeing to honour the transaction which resulted in the overdrawn amount;

- iii. the overdrawn amount, any interest on that amount and the Saving Honour Fee will be debited to the Saving Group Member's account; and
 - iv. the Saving Group Member must repay the overdrawn amount and pay any accrued interest on that amount and the Saving Honour Fee within seven days of the overdrawn amount being debited to the Saving Group Member's account (Clause 2.12);
- (m) the Saving Group Member can use his or her ANZ card to withdraw a total of AUD\$1,000 per day from the account or accounts to which it is linked, provided those accounts contain sufficient funds (Clause 3.7);
- (n) ANZ can combine the balances of two or more of the Saving Group Member's accounts when one of the Saving Group Member's accounts is overdrawn or is in debit and another is in credit (Clause 4.2);
- (o) ANZ may exercise its discretion to close an account due to unsatisfactory conduct or for any other reason it considers appropriate (Clause 4.3);
- (p) ANZ may waive fees under certain conditions, but if it fails to collect a fee to which it is entitled, ANZ has not waived its right to collect the fee for future transactions of the same nature (Section 5);
- (q) overdrafts and cheque facilities are not available on ANZ Progress Saver Accounts (Clause 6.5);
- (r) ANZ may cancel any card, customer registration number or electronic access without prior notice if the account has been overdrawn or the customer has exceeded his or her agreed credit limit (Section 8);
- (s) ANZ may withdraw the Saving Group Member's electronic access to accounts without prior notice if any one of the accounts is overdrawn or will become overdrawn, or is otherwise considered out of order by ANZ (Section 8);
- (t) the amount of the Saving Dishonour Fee is \$45 (Fees Document);
- (u) a Saving Honour Fee is payable by the Saving Group Member on each occasion that ANZ honours a drawing where sufficient cleared funds are not available in the Saving Group Member's account or when the credit limit on the

Saving Group Member's account is exceeded, and the Saving Honour Fee is payable on the date of the excess (Fees Document);

(v) the amount of the Saving Honour Fee is \$29.50 (Fees Document);

(w) the amount of the Saving Non-Payment Fee is \$45 (Fees Document),

(the charges set out at sub-paragraphs (t), (v) and (w) being, collectively, the **Saving Exception Fee Charges**).

- 13 The terms of the Saving Contracts were at all relevant times as pleaded in paragraph 12 save as indicated in Schedule 2 to this Statement of Claim.

Particulars

Any relevant variation between the terms pleaded at paragraph 12 and the terms of the Saving Contract(s) which had effect prior to around November 2004 will be identified following discoverythe trial of the first applicant's claims.

- 14 In this Statement of Claim:

(a) a **Saving Account** is any facility or arrangement through which ANZ accepts deposits or allows withdrawals (other than a safety deposit box) and which is provided by ANZ wholly or predominantly for personal, domestic or household purposes, including but not limited to the following accounts:

- i. ANZ Access Advantage
- ii. ANZ Access Select
- iii. ANZ Passbook Savings
- iv. ANZ Progress Saver
- v. ANZ Premium Cash Management Account
- vi. ANZ Term Deposit
- vii. ANZ Home Loan Interest Saver
- viii. ANZ One

- ix. ANZ Equity Manager
- x. ANZ Prime Cash Management Account
- xi. ANZ V2 PLUS
- xii. ANZ Online Saver

(b) a **Saving Dishonour Event** is:

- i. an event stipulated in the terms set out at sub-paragraphs 12(c), 12(d) and 12(f); and
- ii. any and all events stipulated by any amendments to those terms stipulated in Schedule 2, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 1;

(c) a **Saving Dishonour Fee** is:

- i. a fee charged pursuant to the terms set out at sub-paragraphs 12(b) and 12(f); and
- ii. any and all fees charged pursuant to any amendments to those terms stipulated in Schedule 2, or to any equivalent terms in antecedent contracts referred to in row 1 of Schedule 1;

(d) a **Saving Honour Event** is:

- i. an event stipulated in the terms set out at sub-paragraphs 12(a), 12(l)ii and 12(u); and
- ii. any and all events stipulated by any amendments to those terms stipulated in Schedule 2, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 1;

(e) a **Saving Honour Fee** is:

- i. a fee charged pursuant to the terms set out at sub-paragraphs 12(a) and 12(u); and

- ii. any and all fees charged pursuant to any amendments to those terms stipulated in Schedule 2, or to any equivalent terms in antecedent contracts referred to in row 1 of Schedule 1;

(f) a **Saving Non-Payment Fee** is:

- i. a fee charged pursuant to the term set out at sub-paragraph 12(g); and
- ii. any and all fees charged pursuant to any amendments to that term stipulated in Schedule 2, or to any equivalent terms in antecedent contracts referred to in row 1 of Schedule 1;

(g) a **Saving Overdraw Condition** is:

- i. a condition stipulated in the term set out at sub-paragraph 12(k); and
- ii. any and all conditions stipulated by any amendments to that term stipulated in Schedule 2, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 1;

(h) a **Saving Periodical Payment Dishonour Event** is:

- i. an event stipulated in the term set out at sub-paragraph 12(g); and
- ii. any and all events stipulated by any amendments to that term stipulated in Schedule 2, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 1.

15 The Saving Accounts were and are financial products within the meaning of section 12BA and section 12BAA of the ASIC Act.

16 The first applicant and the Saving Group Members entered into the Saving Contracts in circumstances where:

- (a) ANZ had all or most of the bargaining power;
- (b) the documents setting out the express written terms of the Saving Contracts were prepared by ANZ before any discussion occurred between the parties;

- (c) the first applicant and the Saving Group Members were, in effect, required either to accept or reject the terms of the Saving Contracts in the form in which they were presented;
- (d) the first applicant and the Saving Group Members were not given an effective opportunity to negotiate the terms of the Saving Contracts;
- (e) the terms of the Saving Contracts did not take into account the specific characteristics of the first applicant and the individual Saving Group Members;
- (f) ANZ had a contractual right to vary unilaterally terms or conditions of a Saving Contract;
- (g) the Saving Contracts provided for the same Saving Exception Fees to be charged regardless of whether ANZ held security and/or was in a position to combine accounts held by the first applicant and the Saving Group Members;
- (h) ANZ would on occasions, when faced with a complaint by a customer that a Saving Exception Fee was unfair or exorbitant, respond to that complaint by waiving the fee for that customer but continue to exact the Saving Exception Fees from customers who do not complain;
- (i) the Saving Contracts provided that the Saving Exception Fees would be charged no matter how small the default giving rise to the entitlement to charge;
- (j) the quantum of the Saving Exception Fees was out of proportion to the loss, if any, which ANZ was likely to suffer by reason of the events giving rise to the Saving Exception Fees;
- (k) ANZ imposed and maintained, from time to time, the Saving Exception Fees in circumstances where the Saving Group Members did not have a real choice to take their business elsewhere, because each of the major banks at least up until October 2009 imposed and maintained similar fees as particularised in Schedule 3 to this Statement of Claim;

- (l) ANZ imposed and maintained, from time to time, the Saving Exception Fees in circumstances where ANZ did not propose, on any individual basis, to those customers who faced repeated imposition, an alternative means of regularising the banking relationship (such as an approved overdraft), which alternative means would ensure that the price paid for the provision of banking services fairly reflected the costs incurred by ANZ and the benefits received by the customer.

17 As a consequence of the matters pleaded at paragraph 16:

- (a) the quantum of each Saving Exception Fee was extravagant and unconscionable in amount;
- (b) the Saving Exception Fee Charges and/or the Saving Penalty Provisions (as defined in paragraph 34) were:
 - i. imposed upon the first applicant and Saving Group Members by ANZ unilaterally and in the absence of any true bargain, covenant, compact or agreement between the first applicant and Saving Group Members and ANZ;
 - ii. unconscionable; and/or
 - iii. unfair.

II Card Accounts

18 Prior to date, ANZ:

- (a) gave or otherwise communicated to the first applicant and those Group Members who held at least one Card Account (**Card Group Members**) one or more of:
 - i. at least fifteen versions of a conditions of use document identified in Column 1 of Schedule 4 to this Statement of Claim (**Conditions of Use**); and
 - ii. at least twelve versions of the Fees Documents identified in Column 2 of Schedule 4;

- (b) had given or gave a letter of offer to each of the first applicant and Card Group Members offering a Card Account (**Card Letters of Offer**).

Particulars

- a. ANZ gave or otherwise communicated to the first applicant at least 12 versions of the Conditions of Use, and at least 8 versions of the Fees Documents, being the documents which appear in rows 7 to 22 of Columns 1 and 2 of Schedule 4 and further, sent to the first applicant relevantly one Card Letter of Offer at some time prior to 5 June 2006 offering the credit card account set out at paragraph b. of the particulars to 6(c), and another Card Letter of Offer at some time prior to 13 July 2009 offering the credit card account set out at paragraph c. of the particulars to 6(c), particulars of which will be provided following discovery.
- b. The precise dates upon which each of the versions of the Conditions of Use and of the Fees Documents were given or otherwise communicated to the first applicant are currently unknown and will be provided after discovery.
- c. The precise date or dates of the version or versions of the Conditions of Use which had effect prior to around March 2004, of the Fees Documents which had effect prior to around May 2004 are currently unknown and will be provided following the trial of the first applicant's claim. The precise date or dates of the version or versions and of the Conditions of Use and Fees Documents which had effect during the period around September 2010 to around September 2012 are currently unknown and will be provided after discovery.
- d. Particulars of the dates of the Card Letters of Offer sent to each of the Card Group Members, which of those members received which versions of the Conditions of Use and the Fees Documents, and when they were given or otherwise communicated to those members, will be provided following the initial trial of the first applicant's claim.

- 19 The Conditions of Use, together with the Card Letters of Offer contained the express written terms of the contracts (**Card Contracts**) set out in Column 3 of Schedule 4 to this Statement of Claim, being contracts:

(a) each constituted by:

- i. the versions of the Conditions of Use which appear, in Column 1 of Schedule 4, in the respective rows in which each of those contracts appear; together with
- ii. the Card Letters of Offer sent to each of the first applicant and Card Group Members;
- iii. as varied by the versions of the Fees Documents (which each constituted a notice of variation of the terms of the Card Contracts) which appear, in Column 2 of Schedule 4, in the respective rows in which each of those contracts appear;

(b) between ANZ and the first applicant;

(c) between ANZ and Card Group Members;

(d) pursuant to which ANZ agreed to open and maintain the Card Accounts, on behalf of the first applicant and Card Group Members.

- 20 Subject to paragraph 21, the Card Contracts contained, *inter alia*, the following express written terms:

- (a) the Card Group Member must not exceed the credit limit unless ANZ has consented in writing or ANZ otherwise authorises the transaction which results in the outstanding balance exceeding the credit limit (clause 2(b));
- (b) by authorising a transaction which results in the Card Group Member's outstanding balance exceeding the credit limit, ANZ is not increasing the credit limit (clause 2(b));
- (c) if the Card Group Member exceeds his credit limit, the Customer must pay the amount by which the outstanding balance exceeds the credit limit immediately (clause 2(b));

- (d) the Card Group Member's credit card account must be used wholly and exclusively for private and domestic use (clause 3(a));
- (e) the statement of account shows how much the Card Group Member must pay to ANZ and when payment is due (clause 14);
- (f) the greater of the following amounts will be payable immediately:
 - i. the amount by which, at any time, the outstanding balance of the credit card account exceeds the approved credit limit; and
 - ii. any monthly payments that remain unpaid from previous statements of account;(clause 14.1)
- (g) the Card Group Member must make the monthly payment (which could also be described as the minimum monthly payment) shown on each statement of account by the due date shown on that statement of account (clause 14.2);
- (h) the Card Group Member is in default under the credit card contract if he has not met any of his obligations under the contract (clause 29(a));
- (i) if the Card Group Member is in default:
 - i. the outstanding balance will at the option of ANZ become immediately due and payable to ANZ and the credit card or cards relating to the contract will be cancelled (clause 29(a));
 - ii. the Card Group Member will also be in default under any other credit contracts that the Card Group Member has with ANZ (clause 29(a));
- (j) ANZ reserves the right to close any credit card account at any time without prior notice if the credit limit has been exceeded (clause (30)(b)(i)(C));
- (k) ANZ may elect not to close a credit card account if the credit limit has been exceeded but the fact that ANZ has elected not to do so on one or more previous occasions does not stop ANZ from closing a credit card account whenever the credit limit has been exceeded (clause (30)(b)(i)(C));

- (l) subject to any requirements under the Electronic Banking Conditions of Use, ANZ may at any time change any term of the contract (clause 33);
- (m) ANZ can combine the balances of two or more of the Card Group Member's accounts when one of those accounts is overdrawn, overlimit or is in debit and another is in credit (clause 40);
- (n) ANZ may cancel any card, customer registration number or electronic access without prior notice if the account has been overdrawn or the Card Group Member has exceeded his agreed credit limit (Electronic Banking Conditions of Use);
- (o) ANZ may withdraw the Card Group Member's electronic access to accounts without prior notice if any one of the accounts is overdrawn or will become overdrawn, or is otherwise considered out of order by ANZ (Electronic Banking Conditions of Use);
- (p) a Late Payment Fee will be charged to the Card Group Member's credit card account if the monthly payment plus any amount due immediately shown on the statement of account is not paid within 28 days of the statement date, save for where that account is an ANZ Visa PAYCARD or a Telstra Visa PAYCARD account, in which case a Late Payment Fee will be charged if any debit closing balance shown on the statement of account is not paid in full within 28 days of the statement date (Letter of Offer);
- (q) the amount of the Late Payment Fee is \$35 (Letter of Offer);
- (r) an Overlimit Fee will be charged to the Card Group Member's credit card account, save for where that account is an ANZ Visa PAYCARD or a Telstra Visa PAYCARD account, at the statement date if the balance of the account exceeds the limit at any time during that statement period, and is charged at a maximum of once per statement period (Letter of Offer);
- (s) the amount of the Overlimit Fee is \$35 (Letter of Offer);
- (t) a payment dishonour fee will be charged to the Card Group Member's credit card account if a payment to the Card Group Member's card account must be reversed or is dishonoured (Letter of Offer);

(u) the amount of the payment dishonour fee is \$12 (Letter of Offer),

(the charges set out at sub-paragraphs (q) and (s) being, collectively, the **Card Exception Fee Charges**).

- 21 The terms of the Card Contracts were at all relevant times as pleaded in paragraph 20 save as indicated in Schedule 5 to this Statement of Claim.

Particulars

Any relevant variation between the terms pleaded at paragraph 20 and the terms of the Card Contract(s) which had effect prior to around May 2004 ~~and are currently unknown and will be provided following the trial of the first applicant's claim. Any relevant variation between the terms pleaded at paragraph 20 and the terms of the Card Contract(s) which had effect~~ during the period around September 2010 to around September 2012 will be identified following discovery.

- 22 In this Statement of Claim:

(a) a **Card Account** is any continuing credit facility provided by ANZ wholly or predominantly for personal, domestic or household purposes pursuant to which credit is ordinarily obtained by use of a card commonly known as a credit card;

(b) a **Card On-time Payment Condition** is:

- i. any condition or conditions stipulated in the terms set out at sub-paragraphs 20(c) and 20(g); and
- ii. any and all conditions stipulated by any amendments to those terms stipulated in Schedule 5, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 4;

(c) a **Card Overdraw Condition** is:

- i. a condition stipulated in the term set out at sub-paragraph 20(a); and

- ii. any and all conditions stipulated by any amendments to that term stipulated in Schedule 5, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 4;

(d) a **Late Payment Fee** is:

- i. a fee charged pursuant to the term set out at sub-paragraph 20(p); and
- ii. any and all fees charged pursuant to any amendments to that term stipulated in Schedule 5, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 4;

(e) a **Late Payment Event** is:

- i. an event stipulated in the term set out at sub-paragraph 20(p); and
- ii. any and all events stipulated by any amendments to that term stipulated in Schedule 5, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 4;

(f) an **Overlimit Fee** is:

- i. a fee charged pursuant to the term set out at sub-paragraph 20(r); and
- ii. any and all fees charged pursuant to any amendments to that term stipulated in Schedule 5, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 4;

(g) an **Overlimit Event** is:

- i. an event stipulated in the term set out at sub-paragraph 20(r); and
- ii. any and all events stipulated by any amendments to that term stipulated in Schedule 5, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 4.

23 The Card Accounts were and are financial products within the meaning of section 12BA and section 12BAA of the ASIC Act.

24 The first applicant and Card Group Members entered into the Card Contracts in the circumstances identified in sub-paragraphs 16(a) to (l), save that for the purposes of this paragraph references to 'Saving' in those sub-paragraphs are to be read as references to 'Card'.

25 As a consequence of the matters pleaded at paragraph ~~24~~²³:

(a) the quantum of each Card Exception Fee was extravagant and unconscionable in amount;

(b) the Card Exception Fee Charges and/or the Card Penalty Provisions (as defined in paragraph 35) were:

i. imposed upon the first applicant and Card Group Members by ANZ unilaterally and in the absence of any true bargain, covenant, compact or agreement between the first applicant and Card Group Members and ANZ;

ii. unconscionable; and/or

iii. unfair;

and/or

(c) the Card Contracts were unjust at the time they were entered into or relevantly changed.

III Business Accounts

26 Prior to date, ANZ gave or otherwise communicated to:

(a) the second applicant; and

(b) those Group Members who held at least one Business Account (**Business Group Members**),

one or more of:

(c) at least ten versions of a product disclosure statement (also known as terms and conditions) set out in Column 1 of Schedule 6 to this Statement of Claim (**Business PDSs**);

(d) at least ten versions of a fees document set out in Column 2 of Schedule 6 (**Business Fees Documents**),

which collectively had effect at all times from around August 2004.

Particulars

- a. ANZ gave or otherwise communicated to the second applicant the versions of the Business PDSs and the Business Fees Documents which appear in rows 10 to 15 of Schedule 6.
- b. The precise dates upon which each of the Business PDSs and the Business Fees Documents were given or otherwise communicated to the second applicant is currently unknown and will be provided after discovery.
- c. The precise dates of the version or versions of the Business PDSs which had effect prior to around November 2004, of the Business Fees Documents which had effect prior to August 2004 are currently unknown and will be provided following the trial of the second applicant's claim. and The precise dates of the version or versions of the Business PDS or PDSs and Business Fees Document or Documents which had effect during the period around January 2010 to around April 2012 are currently unknown and will be provided after discovery.
- d. Particulars of which of the Business Group Members received which versions of the Business PDSs and the Business Fees Documents, and when they were given or otherwise communicated to those members, will be provided following the initial trial of the second applicant's claims.

27 The Business PDSs, together with the Business Fees Documents, contained the express written terms of the contracts (**Business Contracts**) set out at Column 3 of Schedule 6, being contracts:

- (a) each constituted by the versions of the Business PDSs and Business Fees Documents set out, in Schedule 6, in the respective rows in which each of those contracts appear;
- (b) between ANZ and the second applicant;
- (c) between ANZ and the Business Group Members;
- (d) pursuant to which ANZ agreed to open and maintain the Business Accounts and provide financial services associated with Business Accounts, on behalf of the second applicant and the Business Group Members.

28 Subject to paragraph 29, the Business Contracts contained, *inter alia*, the following express written terms:

- (a) the Business Group Member can use his or her ANZ Access Card to withdraw AUD\$1,000 per day via an ATM or EFTPOS from any account to which it is linked provided the account contains sufficient cleared funds (Withdrawals at page 2);
- (b) ANZ may waive fees under certain conditions, but if ANZ fails to collect a fee to which it is entitled, ANZ has not waived its right to collect the fee for future transactions of the same nature (Fees at page 3);
- (c) ANZ can combine the balances of two or more of the Business Group Member's accounts when one of the Business Group Member's accounts is overdrawn or is in debit and another is in credit (ANZ's Right to Combine Accounts at page 5);
- (d) ANZ may exercise its discretion to close an account due to unsatisfactory conduct or for any other reason it considers appropriate (Closing your ANZ Account at page 6);
- (e) ANZ may make the following changes to the Business Contract:
 - i. introduce a new fee or charge,
 - ii. increase an existing fee or charge,

- iii. change any other term or condition of the Business Contract (Changes to Fees and Charges, Interest Rates and Terms and Conditions at page 6);
- (f) ANZ may charge the Business Group Member an inward dishonour fee if a cheque is dishonoured after the Business Group Member has drawn on the funds of that cheque (Cheques at page 7);
- (g) a cheque may be dishonoured or payment refused, in ANZ's discretion where:
 - i. there are insufficient funds in the account of the drawer;
 - ii. the cheque is unsigned;
 - iii. the cheque is more than 15 months old;
 - iv. the cheque is future dated;
 - v. the cheque has been materially altered and the alteration has not been signed;
 - vi. there is a legal impediment to payment;
 - vii. the cheque has been stopped; or
 - viii. the paying bank has been notified of the mental incapacity, bankruptcy or death of the drawer (Cheques at page 8);
- (h) ANZ may charge a dishonour fee when a cheque is dishonoured or payment refused (Cheques at page 8);
- (i) unless the Business Group Member has made prior arrangements with ANZ the Business Group Member's account should have a credit balance at all times (Overdrawing at page 9);
- (j) ANZ will charge a Business Dishonour Fee to the Business Group Member's account if the Business Group Member overdraws the account or the approved limit and ANZ dishonours the Business Group Member's withdrawal (Overdrawing at page 9);

- (k) if the Business Group Member overdraws and ANZ in its discretion honours the Business Group Member's withdrawal ANZ will charge the Business Group Member a Business Honour Fee (Overdrawing at page 9);
- (l) the Business Group Member can use his or her ANZ Card to withdraw a total of AUD\$1,000 per day from any account to which it is linked provided the account contains sufficient funds (EFTPOS, MAESTRO, CIRRUS and PLUS – Daily Withdrawal Limit at page 9);
- (m) ANZ does not agree to provide any credit in respect of any Business Mortgage Loan Offset Account held by the Business Group Member (Specific Terms and Conditions for Business Mortgage Loan Offset Accounts at page 12);
- (n) the Business Group Member must not overdraw any Business Mortgage Loan Offset Account held by the Business Group Member (Specific Terms and Conditions for Business Mortgage Loan Offset Accounts at page 12);
- (o) if a Business Mortgage Loan Offset Account held by the Business Group Member becomes overdrawn then, although ANZ may in its discretion honour the Business Group Member's withdrawal, immediate repayment will be required and the Business Group Member may be charged a Business Honour Fee (Specific Terms and Conditions for Business Mortgage Loan Offset Accounts at page 12);
- (p) ANZ may cancel any card, customer registration number or electronic access without prior notice if the account has been overdrawn or the Business Group Member has exceeded his or her agreed credit limit (Electronic Banking Conditions of Use – Cancellation of Cards or Electronic Access at page 16);
- (q) ANZ may withdraw the Business Group Member's electronic access to accounts without prior notice if any one of the accounts is overdrawn or will become overdrawn, or is otherwise considered out of order by ANZ (Electronic Banking Conditions of Use – Withdrawal of Electronic Access at page 16);
- (r) ANZ charges a Business Honour Fee on each occasion that the Business Group Member's account is overdrawn or exceeds its maximum credit limit

without prior arrangement with the Business Group Member's ANZ Manager (Business Fees Document);

- (s) the amount of the Business Honour Fee is, for Business Cash Management Accounts, \$21.70, and for all other accounts, \$37.70 (Business Fees Document);
 - (t) ANZ charges an inward dishonour fee when a deposit to the Business Group Member's account is dishonoured (Business Fees Document);
 - (u) the amount of the inward dishonour fee is \$9 (Business Fees Document);
 - (v) ANZ charges a Business Dishonour Fee when a cheque written, direct debit, or periodic payment from the Business Group Member's account is dishonoured due to the lack of cleared funds in the Business Group Member's account (Business Fees Document);
 - (w) the amount of the Business Dishonour Fee is \$37.70 (Business Fees Document);
 - (x) ANZ charges a Business Non-payment Fee if the Business Group Member has authorised a periodical payment that cannot be made because of insufficient cleared funds (Business Fees Document);
 - (y) the amount of the Business Non-payment Fee is \$45 (Business Fees Document);
- (the charges set out at sub-paragraphs (s), (w) and (y) being, collectively, the **Business Exception Fee Charges**).

- 29 The terms of the Business Contracts were at all relevant times as pleaded at paragraph 28 save as indicated in Schedule 7 to this Statement of Claim.

Particulars

Any relevant variation between the terms pleaded at paragraph 28 and the terms of the Business Contract(s) which had effect prior to around November 2004, and are currently unknown and will be provided following the trial of the first applicant's claim. Any relevant variation between the

terms pleaded at paragraph 28 and the terms of the Business Contract(s) which had effect during the period around January 2010 to around April 2012 will be identified following discovery.

30 In this Statement of Claim:

(a) a **Business Account** is any facility or arrangement through which ANZ accepts deposits or allows withdrawals (other than a safety deposit box) and which is provided by ANZ for business purposes, including but not limited to the following accounts:

- i. Business Classic Account,
- ii. Business Extra Account,
- iii. Business Cash Management Account,
- iv. Business Mortgage Loan Offset Account,
- v. GST Payment Account,
- vi. Term Deposits,
- vii. Negotiator Account,
- viii. ANZ Premium Business Cash Account,
- ix. ANZ Equity Manager in a Company Name Account;

(b) a **Business Dishonour Event** is:

- i. an event stipulated in the terms set out at sub-paragraphs 28(g), 28(h), 28(j) and 28(v); and
- ii. any and all events stipulated by any amendments to those terms stipulated in Schedule 7, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 6;

(c) a **Business Dishonour Fee** is:

- i. a fee charged pursuant to the term set out at sub-paragraph 28(v); and

- ii. any and all fees charged pursuant to any amendments to that term stipulated in Schedule 7, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 6;

(d) a **Business Honour Event** is:

- i. an event stipulated in the terms set out at sub-paragraphs 28(k) and 28(r); and
- ii. any and all events stipulated by any amendments to those terms stipulated in Schedule 7, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 6;

(e) a **Business Honour Fee** is:

- i. a fee charged pursuant to the terms set out at sub-paragraphs 28(k) and 28(r); and
- ii. any and all fees charged pursuant to any amendments to those terms stipulated in Schedule 7, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 6;

(f) a **Business Non-payment Event** is:

- i. an event stipulated in the term set out at sub-paragraph 28(x); and
- ii. any and all events stipulated by any amendments to that term stipulated in Schedule 7, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 6;

(g) a **Business Non-payment Fee** is:

- i. a fee charged pursuant to the term set out at sub-paragraph 28(x); and
- ii. any and all fees charged pursuant to any amendments to that term stipulated in Schedule 7, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 6;

(h) a **Business Overdraw Condition** is:

- i. a condition stipulated in the terms set out at sub-paragraphs 28(i) and 28(n); and
- ii. any and all conditions stipulated by any amendments to those terms stipulated in Schedule 7, or by any equivalent terms in antecedent contracts referred to in row 1 of Schedule 6.

31 The Business Accounts were and are financial products within the meaning of section 12BA and section 12BAA of the ASIC Act.

32 The second applicant and the Business Group Members entered into the Business Contracts in the circumstances identified in sub-paragraphs 16(a) to (l), save that for the purposes of this paragraph references to 'Saving' in those sub-paragraphs are to be read as references to 'Business', and references to the first applicant are to be read as references to the second applicant.

33 As a consequence of the matters pleaded at paragraph 32:

(a) the quantum of each Business Exception Fee was extravagant and unconscionable in amount;

(b) the Business Exception Fee Charges and/or the Business Penalty Provisions (as defined in paragraph 36) were:

- i. imposed upon the second applicant and Business Group Members by ANZ unilaterally and in the absence of any true bargain, covenant, compact or agreement between the second applicant and Business Group Members and ANZ; and/or

- ii. unconscionable.

C.3 THE EXCEPTION FEES CHARGED

I Saving Accounts

34 ANZ has charged the first applicant and the Saving Group Members:

- (a) Saving Honour Fees;

(b) Saving Dishonour Fees;

(c) Saving Non-Payment Fees;

(collectively referred to as **Saving Exception Fees**).

Particulars

- a. The first applicant was charged Saving Exception Fees as indicated in Part One of Schedule 8 to this Statement of Claim.
- d. Particulars of the date, amount and nature of the Saving Exception Fees charged to Saving Group Members will be provided after the determination of the initial trial and discovery.

II Card Accounts

35 ANZ has charged and is continuing to charge the first applicant and Card Group Members:

(a) Late Payment Fees;

(b) Overlimit Fees;

(collectively referred to as **Card Exception Fees**).

Particulars

- a. The first applicant was charged Card Exception Fees as particularised in Part Two of Schedule 8.
- b. Particulars of the date, amount and nature of the Card Exception Fees charged to Card Group Members will be provided after the determination of the initial trial and discovery.

III Business Accounts

36 ANZ has charged and is continuing to charge the second applicant and the Business Group Members:

(a) Business Honour Fees;

(b) Business Dishonour Fees;

(c) Business Non-payment Fees.

(collectively referred to as **Business Exception Fees**).

Particulars

- a. The second applicant was charged Business Exception Fees as particularised in Schedule 9.
- b. Particulars of the date, amount and nature of the Business Exception Fees charged to Business Group Members will be provided after the determination of the initial trial and discovery.

IV The Exception Fees

37 In this Statement of Claim **Exception Fees** are (collectively, unless the context otherwise requires):

- (a) Saving Exception Fees as defined at paragraph 34;
- (b) Card Exception Fees as defined at paragraph 35;
- (c) Business Exception Fees as defined at paragraph 36.

C.4 THE PENALTY ARGUMENT

I Penalty Imposed Upon Breach of Contract

38 Pursuant to the terms of the Saving Contracts, Saving Exception Fees were payable, by the first applicant and the Saving Group Members upon breach of:

- (a) the Saving Overdraw Condition;
- (b) the obligations giving rise to a Saving Dishonour Event; and/or
- (c) the obligations giving rise to a Saving Periodical Payment Dishonour Event

(collectively the **Saving Penalty Provisions**).

Particulars

- a. a Saving Honour Fee was payable on the occurrence of a Saving Honour Event, or as a result of a breach of a Saving Overdraw Condition;
- b. a Saving Dishonour Fee was payable if a cheque was dishonoured by ANZ due to the occurrence of a Saving Dishonour Event;
- c. a Saving Non-Payment Fee was payable as a result of a Periodical Payment Dishonour Event.

39 Pursuant to the terms of the Card Contracts, Card Exception Fees were payable, by the first applicant and Card Group Members upon breach of:

- (a) the ~~Credit~~ Card Overdraw Condition;
- (b) the obligations giving rise to an Overlimit Event;
- (c) the Card On-time Payment Condition; and/or
- (d) the obligations giving rise to a Late Payment Event.

(collectively the **Card Penalty Provisions**)

Particulars

- a. an Overlimit Fee was payable as a result of a breach of the ~~Credit~~ Card Overdraw Condition, or as a result of an Overlimit Event;
- b. a Late Payment Fee was payable as a result of a breach of the Card On-time Payment Condition, or as a result of a Late Payment Event.

40 Pursuant to the terms of the Business Contracts, Business Exception Fees were payable, by the second applicant and the Business Group Members upon breach of:

- (a) the Business Overdraw Condition;
- (b) the obligations giving rise to a Business Honour Event;
- (c) the obligations giving rise to a Business Dishonour Event; and/or

(d) the obligations giving rise to a Business Non-payment Event.

(collectively the **Business Penalty Provisions**).

Particulars

- a. a Business Honour Fee was payable as a result of a breach of the Business Overdraw Condition, or as a result of a Business Honour Event;
- b. a Business Dishonour Fee was payable as a result of a Business Dishonour Event;
- c. a Business Non-Payment Fee was payable as a result of a Business Non-Payment Event.

41 ANZ charged the Exception Fees:

- (a) being the Saving Exception Fees, to the first applicant and the Saving Group Members as a result of them breaching the Saving Penalty Provisions;
- (b) being the Card Exception Fees, to the first applicant and Card Group Members as a result of them breaching the Card Penalty Provisions;
- (c) being the Business Exception Fees, to the second applicant and the Business Group Members as a result of them breaching the Business Penalty Provisions

(collectively the **Penalty Provisions**).

42 ANZ charged the Exception Fees:

- (a) being the Saving Exception Fees, to the first applicant and the Saving Group Members pursuant to:
 - i. the Saving Exception Fee Charges; and
 - ii. equivalent terms contained in Saving Contracts as specified in Schedules 1 and 2;

(b) being the Card Exception Fees, to the first applicant and Card Group Members pursuant to:

- i. the Card Exception Fee Charges; and
- ii. equivalent terms contained in Card Contracts as specified in Schedules 4 and 5;

(c) being the Business Exception Fees, to the second applicant and the Business Group Members pursuant to:

- i. the Business Exception Fee Charges; and
- ii. equivalent terms contained in Business Contracts as specified in Schedules 6 and 7.

(collectively the **Exception Fee Charges**).

43 The Exception Fees charged by ANZ to the applicants and Group Members upon breach of the Penalty Provisions were a penalty as:

(a) the quantum of each Exception Fee was not a covenanted or agreed sum which could be regarded as a genuine pre-estimate of the damage likely to be caused by the breach as:

- i. prior to entering into the Saving Contracts, Card Contracts and the Business Contracts (**Contracts**), the parties did not reach a consensus or genuinely strike an agreement as to the pre-estimate of the likely damage or the comparative relationship between the likely damage and the proposed Exception Fee;
- ii. any amendment or change to the quantum of each Exception Fee during the course of the Contracts arose by reason of dictat of ANZ rather than by way of a consensus or a genuine agreement as to the pre-estimate of the likely damage or the comparative relationship between the likely damage and the proposed Exception Fee;
- iii. the quantum of each Exception Fee was determined by only one party to the Contract, being ANZ, without reference to a comparison of the

Exception Fees with the sum that would have been recoverable as unliquidated damages payable upon breach; and/or

- (b) upon any comparison, the quantum of each Exception Fee substantially exceeded what would be recoverable as unliquidated damages by ANZ upon breach; and/or
- (c) the quantum of each Exception Fee was extravagant and unconscionable in amount in comparison with the greatest loss that could conceivably be proved to have followed from the breach.

Particulars

- a. Publicly available material indicates that the cost to ANZ (or other banks in the position of ANZ) of responding to the circumstances giving rise to each Exception Fee (or similar fees in the case of other banks) was substantially less than the amount of the Exception Fees (or similar fees in the case of other banks) throughout the entirety of the period covered by this Statement of Claim. Such material includes:
 - i. Haberfield, R and Harrington, J, "Bounced Checks Boost Profits; NSF Fees and other revenue sources offer untapped potential, contends this checking account expert", *Savings Institutions*, March 1991, at pp33;
 - ii. Prices Surveillance Authority, *Inquiry into Fees and Charges Imposed on Retail Accounts by Banks and Other Institutions and by Retailers on EFTPOS Transactions*, 30 June 1995, at pp 205 and 206;
 - iii. *Financial System Inquiry Final Report (Wallis Report)* (March 1997), Chapter Six, pp 224-235;
 - iv. "ATM Surcharges Rising" (Volume 16, Number 27 (Part 2)), *Bank Rate Monitor* (July 1997);
 - v. Janice C Shields, *Bounced Checks: Billion Dollar Profits II* (June 1998, Consumer Federation of America);
 - vi. Boston Consulting Group, *The Untapped Power of Pricing: Opportunities for Action in Financial Services*, 2002;

vii. Rich, Nicole, *Unfair Fees: A report into penalty fees charged by Australian banks*, Consumer Law Centre, December 2004

viii. Office of Fair Trading (UK), *Calculating Fair Default Charges in Credit Card Contracts – A Statement of the OFT's Position* (April 2006).

- b. The Exception Fees were in the order of four times the fee charged by ANZ in circumstances of an equivalent event, namely inward or inbound dishonour. See further Schedule 10 to this Statement of Claim. This particular is provided without admission that the inward or inbound dishonour fees were fair and reasonable, only that they represent a bound above which an Exception Fee cannot be readily justified.
- c. The matters in paragraphs 16, 17, 23, 25, 32 and 33 are relied upon as evidencing the true character of the Exception Fees as a penalty.
- d. Further particulars will be provided prior to the initial trial of the applicants' claim, but following ANZ giving discovery and providing answers to any interrogatories allowed by leave.

44 In the premises, the Penalty Provisions and/or the Exception Fee Charges are wholly unenforceable and/or void as a penalty.

45 *In the alternative*, the Penalty Provisions and/or the Exception Fee Charges are unenforceable and/or void as a penalty to the extent that the Exception Fees charged pursuant to them exceeded the loss or damage (if any) which ANZ can prove to have been caused by the breach in question.

II **Penalty in Equity**

46 *Further or in the alternative*, irrespective of whether the Exception Fees or any of them arose from a breach of contract, the Exception Fees constituted penalties in equity.

(i) **Late Payment Fees also penalties in equity**

47 The Late Payment Fees are penalties in equity:

(a) because:

- i. ANZ stipulated that a customer must pay sums on or before a specified date (**Timely Payment Stipulation**);

- ii. ANZ also stipulated that, in the event such sums were not paid in accordance with the Timely Payment Stipulation, they would be charged with a Late Payment Fee;
- iii. the fee was collateral or accessory to the Timely Payment Stipulation; and
- iv. the fee imposed an additional detriment on the customer to the benefit of ANZ;

(b) *in the alternative*, because:

- i. it was stipulated that:
 - A. if a sum due to ANZ in respect of a customer's account is not paid on or before a specified date;
 - B. then the customer would be charged with a Late Payment Fee;

Particulars

- a. The stipulation set out at (b)(i)(A) is the primary stipulation.
- b. The stipulation at (b)(i)(B):
 - i. is collateral or accessory to the primary stipulation, and
 - ii. is in the nature of a security for and in terrorem of the satisfaction of the primary stipulation;
 - iii. imposed an additional detriment on the customer to the benefit of ANZ.

(ii) Honour and Dishonour Fees

48 In respect of Exception Fees other than Late Payment Fees (**Overdraw Fees**):

- (a) at all material times ANZ provided facilities to customers to initiate individual transactions including by cheque, card, or electronic transfers of funds (**Facilities**);

Particulars

The facilities included EFTPOS, standing orders, periodical payments, and ATM services.

- (b) by reason of the Facilities, ANZ enabled transactions which would, if effected, overdraw an account or exceed a credit limit previously set by ANZ;
- (c) in the event that a transaction was initiated which would, if effected, overdraw an account or exceed the credit limit (**Overdrawing Transaction**), ANZ charged the Overdraw Fees;
- (d) ANZ charged the Overdraw Fees whether it effected the transaction (**Honour Fees**) or did not effect the transaction (**Dishonour Fees**).

Particulars

For the avoidance of doubt, Honour Fees include 'Overlimit Fees', and Dishonour Fees include 'Non Payment Fees'.

(iii) The further circumstances in which ANZ imposed the Overdraw Fees

49 The Overdraw Fees were charged by ANZ:

- (a) regardless of whether the amount (by which the account was or would be overdrawn or the credit limit was or would be exceeded) was *de minimus* or not very much;
- (b) regardless of whether the customer was aware or intended that the transaction would constitute an Overdrawing Transaction, or whether the Overdrawing Transaction was otherwise the result of accident or mistake;
- (c) regardless of whether the customer had substantial funds in other accounts with ANZ sufficient to cover an overdrawing, that is, if ANZ was a net debtor to the customer;
- (d) in circumstances where the customer had no, alternatively, no meaningful, opportunity to withdraw from a transaction before the Overdraw Fees were charged;
- (e) in circumstances where ANZ did not set the Overdraw Fees by reference to any actual estimate of loss or damage that it might suffer or any cost it might incur from an Overdrawing Transaction;

- (f) in circumstances where the amount of the Overdraw Fees was exorbitant and out of all proportion to the maximum amount of loss, damage or costs that were or could be incurred by ANZ in the event of an Overdrawing Transaction; and
- (g) in contradistinction to circumstances where a customer expressly sought the consent or authority of ANZ in advance of a transaction.

Particulars

The document governing the Facilities did not contain any provision for a fee to be charged in the event a customer sought the approval or authority of ANZ prior to entering into an Overdrawing Transaction.

(iv) ANZ redrafting

50 Further, in respect of the documents governing the Facilities from time to time:

- (a) the documents were drafted by ANZ;
- (b) until around December 2009, all of the documents contained an express stipulation that a customer must not overdraw an account, alternatively, must not overdraw an account without prior consent or authority from ANZ;

Particulars

- a. For example, the documents contained the following stipulations:

Clause 2.12, ANZ Saving & Transaction Products – Product Disclosure Statement (March 2005) (“It is a condition of all ANZ accounts that you must not overdraw your account without prior arrangements being made and agreed with ANZ.”)

Clause 2(b) ANZ Credit Card Conditions of Use (March 2004) (“You must not exceed the credit limit unless ANZ has consented in writing or ANZ otherwise authorises the transaction which results in the account

holder's outstanding balance exceeding the credit limit.")

Clause 2, Credit Card Conditions of Use (September 2006) ("You must not exceed the credit limit unless ANZ has consented in writing or ANZ otherwise authorises the transaction which results in the account holder's outstanding balance exceeding the credit limit.")

- b. The applicants further refer to the stipulations set out at subparagraphs 12(j), 28(i), and 28(n).
- (c) prior to about December 2009, the documents did not set out any other reasons why ANZ charged the Overdraw Fees other than the failure of the customer to comply with the express stipulation;
- (d) in or around December 2009, ANZ revised the drafting of the documents governing the Facilities constituted by the Card Accounts and the Business Accounts:
 - i. to remove any express stipulation that a customer must not overdraw an account;
 - ii. to include a purported purpose or reason for imposing the Overdraw Fees, namely, for giving "consideration" to a "request" for an "Informal Overdraft Facility" (**December 2009 Redrafting**);

Particulars

For example:

Clause 2, ANZ Credit Cards Conditions of Use (December 2009); ANZ Personal Banking Account Fees and Charges (December 2009),

ANZ Business Banking – Business Transaction Accounts Terms and Conditions (December 2009);

ANZ Business Banking – Transaction Accounts Fees
and Charges (December 2009).

- (e) notwithstanding the amendments, the Overdraw Fees charged to the accounts subject to the December 2009 Redrafting (**Redrafted Overdraw Fees**) continued to be charged in the event that a customer initiated an Overdrawing Transaction;
- (f) notwithstanding the amendments, ANZ did not set the Redrafted Overdraw Fees by reference to any actual estimate of loss or damage that it might suffer or of any cost it might incur, including for giving “consideration” to a “request” for an “Informal Overdraft”;
- (g) notwithstanding the amendments, ANZ did not intend that it would give consideration to, alternatively, did not intend that it would give any actual or meaningful consideration to all purported requests at the time they were made;

Particulars

- a. ANZ did not intend that it would give consideration to, alternatively, did not intend that it would give any actual or meaningful consideration to a request under a “shadow” limit on the Facilities, and did not make any arrangements for any person to “consider” such “requests” at the time they were made.
 - b. Further particulars will be provided following the provision of discovery or other production of documents by ANZ.
- (h) the December 2009 Redrafting was carried out with the intent and purpose of minimising the risk that the Redrafted Overdraw Fees would be found to be penalties in law, improperly charged or otherwise void;

Particulars

- a. The intent is to be inferred from all of the circumstances set out in paragraph 49 and sub-paragraphs (a) to (g).

- b. Further particulars will be provided following the provision of discovery or other production of documents by ANZ.

- (i) in making the amendments, ANZ intended that it would still be able to and did in substance continue to charge the Overdraw Fees including under the guise of the Redrafted Overdraw Fees.

Particulars

- a. The intent is to be inferred from all of the circumstances set out in paragraph 49 and sub-paragraphs (a) to (h).
- b. Further particulars will be provided following the provision of discovery or other production of documents by ANZ.

(v) *The Overdraw Fees were not fees for any further accommodation*

- 51 In respect of all Dishonour Fees chargeable and charged by ANZ, whether prior to or pursuant to the December 2009 Redrafting:

- (a) there was no additional accommodation provided by ANZ at all;
- (b) alternatively, there was no actual or meaningful additional accommodation provided by ANZ when it declined to effect an Overdrawing Transaction.

- 52 In respect of Honour Fees charged prior to the December 2009 Redrafting:

- (a) ANZ charged interest on the overdrawn sum ~~(which included a margin of profit for ANZ);~~

- (b) ~~by reason of (a), ANZ was fully compensated~~not entitled to any further compensation for such ~~further~~ accommodation as it provided;

- (ba) in the alternative to (b), if ANZ was entitled to any further compensation, it was limited to the proper measure of compensation or damages at law;

- (c) the Honour Fees were not set by ANZ at any rate that reflected any other costs and expenses incurred by it;
- (d) the Honour Fees did not vary in respect of whether the accommodation being given was *de minimus*, not very much, or substantial;
- (e) in the premises, the Honour Fees were not fees charged for any accommodation being provided by ANZ.

53 In respect of Honour Fees charged pursuant to the December 2009 Redrafting:

- (a) the applicants repeat sub-paragraphs 52(a) to (d);
- (b) ANZ did not in fact give any actual or meaningful consideration to the purported requests at the time they were made;
- (c) alternatively, ANZ charged the fee regardless of whether it gave actual or meaningful consideration to the purported requests at the time they were made;

Particulars

The applicants repeat the particulars subjoined to sub-paragraph 50(g).

- (d) in the premises, the Honour Fees were not fees charged for any consideration by ANZ of a request.

(vi) The Overdraw Fees were Penalties in Equity

54 By reason of the matters set out at paragraphs 48 to 53, it was in substance stipulated by ANZ that in respect of the Facilities:

- (a) a customer must not overdraw an account or exceed a credit limit, alternatively, that a customer must not do so without prior consent or authority from ANZ;

Particulars

- a. In respect of certain Facilities, the stipulation was express. The applicants and Group Members repeat the particulars to paragraph 50(b) above.

- b. In respect of other Facilities, the stipulation was in substance to the said effect, and the applicants rely on the matters alleged in paragraphs 48 to 53, and further rely upon the stipulations set out at sub-paragraphs 12(e), 12(m), 12(r), 12(s), 20(c), 20(f)i, 20(j), 20(n), 20(o), 28(a), 28(m), 28(o), 28(p) and 28(q).

(b) *further or in the alternative*, a transaction must not be initiated which would, if effected, overdraw an account or exceed the credit limit, alternatively, must not do so without prior consent or authority from ANZ;

Particulars

The applicants and Group Members rely on the facts and matters pleaded at paragraph 48 to 53.

(c) *further or in the alternative*:

- i. if a customer's account was overdrawn or credit limit exceeded or, alternatively, if such an event occurred without prior consent or authority from ANZ;
- ii. then the customer must pay an Overdraw Fee;

Particulars

The applicants and Group Members rely on the facts and matters pleaded at paragraph 48 to 53, and say further:

- a. The stipulation set out at (c)(i) is the primary stipulation.
- b. The stipulation at (c)(ii) is:
 - i. collateral or accessory to the primary stipulation;
 - ii. in the nature of a security for and in terrorem of the satisfaction of the primary stipulation;
 - iii. imposed an additional detriment on the customer to the benefit of ANZ.

(the stipulations at 54(a), (b) and (c)(i) are each **Overdraw Stipulations**)

- 55 The Overdraw Fees charged by ANZ were as a matter of substance collateral or accessory to the Overdraw Stipulations (or any of them).

- 56 The Overdraw Fees imposed upon the customer an additional detriment to the benefit of ANZ.
- 57 Further, the Overdraw Fees were imposed by ANZ:
- (a) in the nature of a security for and in terrorem of the satisfaction of, or otherwise to secure compliance with the Overdraw Stipulations (or any of them);
 - (b) to take advantage of a customer's non-compliance with the Overdraw Stipulations (or any of them).
- 58 By reason of the matters alleged at paragraphs 54 to 57, the Overdraw Fees were penalties in equity.

(vii) The Overdraw Fees were not fees for implied or deemed 'requests'

- 59 Further or in the alternative, in so far as ANZ claims or now claims the Overdraw Fees were charged in response to a deemed or implied 'request' from a customer (which is denied):
- (a) the request is in any event irrelevant to the inquiry into whether the Overdraw Fees were in substance collateral or accessory fees charged for a failure of a primary stipulation, and in the nature of a security for and in terrorem of the satisfaction of that primary stipulation, and whether in substance they imposed an additional detriment on the customer and an additional benefit to ANZ;

First alternative case in respect of purported requests

- (b) in the alternative, the applicants and Group Members repeat paragraphs 48 to 53;
- (c) ANZ knew of the matters set out in paragraphs 48 to 53;

Particulars

- a. The knowledge is to be presumed or inferred by reason that the matters were the natural and probable consequence of the arrangements governing the Facilities.

b. Further particulars will be provided following the provision of discovery or other production of documents by ANZ.

(d) in the premises, the Overdraw Fees were not in fact charged by ANZ because a request for further accommodation was made by a customer, but were charged because an Overdrawing Transaction was initiated or because a customer's account was overdrawn or credit limit exceeded;

(e) by reason of the matters in sub-paragraphs (b) and (c), ANZ is estopped for the purposes of the inquiry into penalties from denying or controverting the matters alleged in sub-paragraph (d);

Second alternative case in respect of purported requests

(f) *in the further alternative*, by reason of the matters set out at paragraphs 48 to 53, in substance ANZ stipulated that a customer must not make a request to ANZ to effect a transaction which would overdraw an account or exceed the credit limit by way of Overdrawing Transaction;

(g) ANZ charged the Overdraw Fees if a customer requested ANZ to give effect to, alternatively, to consider giving effect to a transaction which would overdraw an account;

(h) the Overdraw Fees were as a matter of substance collateral or accessory to the stipulation not to make requests by way of Overdrawing Transaction;

(i) the Overdraw Fees imposed upon the customer an additional detriment to the benefit of ANZ;

(j) the Overdraw Fees were in the nature of a security for and in terrorem of the satisfaction of the Overdraw Stipulations;

(k) by reason of the matters alleged at sub-paragraphs (f) to (j), the Overdraw Fees were penalties in equity.

(viii) Conclusion on Exception Fees as penalties in Equity

- 60 The Exception Fees were out of all proportion or unrelated to the loss or damage which ANZ might have sustained by reason of a failure of a Timely Payment Stipulation or an Overdraw Stipulation.

Particulars

The applicants and Group Members repeat the particulars sub-joined to paragraph 43.

- 61 In the premises, the Penalty Provisions and/or the Exception Fee Charges are wholly unenforceable and/or void as a penalty.
- 62 *In the alternative*, the Penalty Provisions and/or the Exception Fee Charges are unenforceable and/or void as a penalty to the extent that the Exception Fees charged pursuant to them exceeded the loss or damage (if any) which ANZ can prove to have been caused to it upon a failure of a Timely Payment Stipulation or an Overdraw Stipulation.

III Relief from the Penalty Provisions and/or Exception Fee Charges

(i) Arising from Void and/or Unenforceable Provisions of Contracts

- 63 In the premises pleaded in paragraphs 34 – 45 or, further or in alternative, in paragraphs 46 – 62, the applicants and Group Members are entitled to repayment of the Exception Fees alleged at paragraphs 34, 35 and 36.
- 64 *In the alternative*, the applicants and Group Members are entitled to be repaid the amount by which the Exception Fees alleged at paragraphs 34, 35 and 36 exceed the loss or damage (if any) which ANZ can prove to have been caused to it upon breach of the Penalty Provisions and/or the failure of a Timely Payment Stipulation or an Overdraw Stipulation.

(ii) Arising from Mistake of Law

- 65 *Further, or in the alternative*, the Exception Fees paid by the applicants and Group Members were paid or suffered to be charged in the mistaken belief that they were under a legal obligation to pay them or that ANZ was legally entitled to payment.

Particulars

The applicants and Group Members did not in truth have a legal obligation to pay or suffer to be charged the Exception Fees.

(iii) Unjust Enrichment

- 66 *Further, or in the alternative*, ANZ has been unjustly enriched by the receipt of the whole of the Exception Fees, or by that part of the Exception Fees that exceeded the loss or damage (if any) which ANZ can prove to have been caused to it as a result of a breach of the Penalty Provisions or the failure of a Timely Payment Stipulation or an Overdraw Stipulation, at the expense of the applicants and Group Members and it would be unconscionable for ANZ not to repay the total of the Exception Fees or *alternatively* that part of the Exception Fees that exceeded the loss or damage (if any) which ANZ can prove to have been caused to it as a result of a breach of the Penalty Provisions or the failure of a Timely Payment Stipulation or an Overdraw Stipulation.

Particulars

- a. ANZ was unjustly enriched because the fees were penalties.
- b. Further or in the alternative, in respect of any additional accommodation, or implied or deemed requests, or purported consideration of a request, there was a total failure of consideration because there was no sufficient additional accommodation, actual or meaningful request, or sufficient consideration of the request by ANZ.

(iv) Unconscientious exercise of a legal right

- 67 *Further or in the alternative*, in the event that the provisions giving rise to the Exception Fee Charges are held to represent rights held by ANZ at law then, by reason of the matters in paragraphs 16, 17, 23, 25, 32, 33 and 46 to 62, ANZ engaged in unconscientious exercise of those legal rights by proceeding to debit the accounts of the applicants and Group Members with the Exception Fee Charges.

(v) Money Had and Received by ANZ

- 68 In the premises pleaded at:

- (a) paragraphs 34 - 62; and/or
- (b) paragraph 65;
- (c) paragraph 66; and/or
- (d) paragraph 67

the Exception Fees or that part of the Exception Fees that exceeded the loss or damage (if any) which ANZ can prove has been caused to it as a result of a breach of the Penalty Provisions or a failure of a Timely Payment Stipulation or an Overdraw Stipulation is money had and received by ANZ to the use of the applicants and Group Members and ANZ is obliged to repay the Exception Fees or that part of the Exception Fees that exceeded the loss or damage (if any) which ANZ can prove has been caused to it as a result of a breach of the Penalty Provisions or the failure of a Timely Payment Stipulation or an Overdraw Stipulation to the applicants and Group Members.

(vi) Interest

- 69 *Further to paragraphs 38 to 68, ANZ is liable to repay any interest charged to the applicants and Group Members on the Exception Fees or that part of the Exception Fees that exceeded the loss or damage (if any) that ANZ can prove has been caused to it as a result of a breach of the Penalty Provisions or the failure of a Timely Payment Stipulation or an Overdraw Stipulation.*

Particulars

Particulars to be provided following discovery and the taking of accounts.

- 70 *Further or in the alternative to paragraphs 38 to 69, the relationship between ANZ and each of the applicants and Group Members is one of banker and customer entitling each of the applicants and Group Members to a proper taking of accounts.*
- 71 By reason of the various matters pleaded above, a proper taking of accounts needs to reflect the fact that from time to time ANZ:
- (a) wrongly charged to the account of each of the applicants and Group Members the Exception Fees either in whole or alternatively in part as alleged above;

- (b) wrongly debited interest to each of the applicants and Group Members on the Exception Fees and on any debit balance owing by the customer, which balance was wrongly inflated by the charging of the Exception Fees;
- (c) wrongly charged such interest on a compound basis;
- (d) wrongly imposed other fees such as fees for an account being over its permitted limit or an account not being brought back into credit or the dishonour of an approved direct debit on the due date when in truth that state of irregularity was due to the wrongful charging under (a), (b) or (c) above.

72 The applicants and Group Members claim as a debt due, or otherwise as a sum certain payable the amount found to be payable to them upon a proper taking of accounts.

C.5 BREACH OF IMPLIED TERM

73 *In the alternative*, any alteration to the quantum of each of the Exception Fees was a matter which was left solely to the determination of one of the parties to the Contracts, being ANZ.

Particulars

The applicants refer to the terms of the Contracts set out at sub-paragraphs 12(i), 20(l) and 28(e).

- 74 Each provision relating to amendment of the quantum of each of the Exception Fees following entry into the Contracts by the applicants and Group Members, was subject to a term implied into the Contracts that while determination of the quantum of each of the Exception Fees was a matter to be left to ANZ, being the party alleged to be entitled to receive the Exception Fees, the right to vary the Exception Fees was subject to an implied criterion that the amendment would be fair and reasonable so that ANZ's determination of the quantum of the Exception Fees could be tested objectively.
- 75 The quantum of each of the Exception Fees determined by ANZ following entry into the Contracts was not fair and reasonable and ANZ determined the quantum of each of the Exception Fees in breach of the term implied into the Contracts that the amendment would be fair and reasonable.

- 76 As a consequence of the breach of the implied term pleaded in paragraph 75, the applicants and Group Members have suffered loss and damage, being the amount of the Exception Fees paid in excess of a sum which was objectively fair and reasonable.

Particulars

The difference between any Exception Fees charged and paid, where the quantum of those Exception Fees was determined by ANZ following entry into the Contracts, and the sums that would have been recoverable as unliquidated damages payable upon breach. A calculation of damages for the applicants will be provided following discovery and prior to the trial of the applicants' claims; particulars of the damages of Group Members will be provided following any initial trial of the applicants' claims.

C.6 UNCONSCIONABLE CONDUCT

- 77 *Further, or in the alternative*, ANZ entered and gave effect to the provisions of the Saving Contracts and the Card Contracts with the applicants and Group Members in trade or commerce and in connection with the supply or possible supply of a financial service, namely the provision of a financial product being deposit taking facilities and credit card facilities.
- 78 The financial services provided by ANZ to the first applicant and Saving Group Members pursuant to the Saving Contracts and Card Group Members pursuant to Card Contracts were of a kind ordinarily acquired for personal, domestic or household use.
- 79 The first applicant and Saving and Card Group Members repeat the matters pleaded at paragraphs 16, 17, 23, 25, 43, and 46-60.
- 80 In the premises ANZ has engaged in unconscionable conduct:
- (a) where such conduct occurred prior to 1 January 2011, in contravention of section 12CB of the ASIC Act, and/or section 8 of the FTA;
 - (b) where such conduct occurred on or after 1 January 2011, in contravention of section 12CB of the ASIC Act,

in that:

- (c) the bargaining position of ANZ was stronger than the position of the first applicant and Saving and Card Group Members;
- (d) the first applicant and Saving and Card Group Members could not have been supplied with services from any other bank which were identical or equivalent to those offered pursuant to the Saving Contracts and the Card Contracts, other than for a similar amount, or in similar circumstances.

81 The first applicant and Saving and Card Group Members suffered loss or damage by the conduct of ANZ that was done:

- (a) where such conduct occurred prior to 1 January 2011, in contravention of section 12CB of the ASIC Act and/or section 8 of the FTA;
- (b) where such conduct occurred on or after 1 January 2011, in contravention of section 12CB of the ASIC Act.

Particulars

- a. The Exception Fees particularised at paragraphs 34 and 35; or
- b. In the alternative, that part of the Exception Fees that exceeded the loss or damage (if any) which ANZ can prove has been caused to it as a result of a breach of the Penalty Provisions or the failure of a Timely Payment Stipulation or an Overdraw Stipulation, the particulars of which will be provided in due course.
- c. Interest charged to the first applicant and Saving and Card Group Members on the Exception Fees or that part of the Exception Fees that exceeded the loss or damage (if any) which ANZ can prove has been caused to it as a result of a breach of the Penalty Provisions or the failure of a Timely Payment Stipulation or an Overdraw Stipulation, the particulars of which will be provided following the taking of accounts.
- d. Any and all amounts wrongly or unlawfully charged or debited to any and all accounts held by the first applicant and the Saving and Card

Group Members, the particulars of which will be provided following the taking of accounts.

- 82 ANZ entered and gave effect to the provisions of the Business Contracts with the second applicant and Business Group Members in trade or commerce and in connection with the supply or possible supply of financial services, namely the dealing in and provision of financial products being deposit taking facilities.
- 83 The financial services provided by ANZ to the second applicant and Business Group Members pursuant to the Business Contracts were acquired by the second applicant and Business Group Members for the purpose of trade or commerce.
- 84 The second applicant and Business Group Members repeat the matters pleaded at paragraphs 32, 33, 43, and 46-60.
- 85 In the premises ANZ engaged in unconscionable conduct:
- (a) where such conduct occurred prior to 1 January 2011, in contravention of section 12CC of the ASIC Act and/or section 8A of the FTA;
 - (b) where such conduct occurred on or after 1 January 2011 and prior to 1 January 2012, in contravention of section 12CC of the ASIC Act;
 - (c) where such conduct occurred on or after 1 January 2012, in contravention of section 12CB of the ASIC Act;
- in that:
- (d) the bargaining position of ANZ was stronger than the position of the second applicant and Business Group Members;
 - (e) the second applicant and Business Group Members could not have been supplied with services from any other bank which were identical or equivalent to those offered pursuant to the Business Contracts, other than for a similar amount, or in similar circumstances.
- 86 The second applicant and Business Group Members suffered loss or damage by the conduct of ANZ that was done:

- (a) where such conduct occurred prior to 1 January 2011, in contravention of section 12CC of the ASIC Act and/or section 8A of the FTA;
- (b) where such conduct occurred on or after 1 January 2011 and prior to 1 January 2012, in contravention of section 12CC of the ASIC Act;
- (c) where such conduct occurred on or after 1 January 2012, in contravention of section 12CB of the ASIC Act.

Particulars

- a. The Exception Fees particularised at paragraph 36; or
- b. In the alternative, that part of the Exception Fees that exceeded the loss or damage (if any) which ANZ can prove has been caused to it as a result of a breach of the Penalty Provisions or the failure of a Timely Payment Stipulation or an Overdraw Stipulation, the particulars of which will be provided in due course.
- c. Interest charged to the second applicant and Business Group Members on the Exception Fees or that part of the Exception Fees that exceeded the loss or damage (if any) which ANZ can prove has been caused to it as a result of a breach of the Penalty Provisions or the failure of a Timely Payment Stipulation or an Overdraw Stipulation, the particulars of which will be provided following the taking of accounts.
- d. Any and all amounts wrongly or unlawfully charged or debited to any and all accounts held by the second applicant and the Business Group Members, the particulars of which will be provided following the taking of accounts.

C.7 UNJUST TRANSACTIONS UNDER THE CODE AND THE NEW CODE

- 87 *Further, or in the alternative, the Card Contracts which were entered into prior to 1 July 2010, and were not carried over instruments within the meaning of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cth) (**Code Contracts**), are contracts to which the Code applies.*

Particulars

Card Group Members rely upon subsection 11(1) of the Code.

- 88 In the circumstances relating to the Code Contracts at the time they were entered into, being the matters set out at paragraph 23 and 25, the Code Contracts were unjust pursuant to section 70(1) of the Code.
- 89 In the premises, those Card Group Members who held a Card Account in the two years prior to the commencement of these proceedings which was governed by a Code Contract are entitled to relief under the Code as claimed in the Application.
- 90 The Card Contracts which were either entered into on or after 1 July 2010, or were carried over instruments within the meaning of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cth) (**New Code Contracts**), are contracts to which the New Code applies.

Particulars

The first applicant and Card Group Members rely upon subsection 13(1) of the New Code.

- 91 In the circumstances relating to the New Code Contracts at the time they were entered into, being the matters set out at paragraph 23 and 25, the Code Contracts were unjust pursuant to section 76(1) of the New Code.
- 92 In the premises, the first applicant and those Card Group Members who held a Card Account in the two years prior to the commencement of these proceedings which was governed by a New Code Contract are entitled to relief under the New Code as claimed in the Application.

C.8 UNFAIR TERMS

- 93 *Further, or in the alternative*, the Saving Contracts entered into on or after 9 October 2003, and the Card Contracts entered into during the period 11 June 2009 to 30 June 2010 (collectively, **FTA Contracts**), were and are consumer contracts within the meaning of the FTA.

- 94 The first applicant, Saving Group Members and Card Group Members repeat the matters pleaded at paragraphs 16, 17, 23, 25, 43, and 46-60.
- 95 The Penalty Provisions and/or the Exception Fee Charges contained in the FTA Contracts are terms which:
- (a) are either contrary to the requirements of good faith and in all the circumstances, or otherwise, cause a significant imbalance in each of the first applicant's, Saving Group Members', Card Group Members' and ANZ's rights and obligations arising under the contract to the detriment of the first applicant, Saving Group Members and Card Group Members, each being consumers within the meaning of section 32W of the FTA;
 - (b) were not individually negotiated;
 - (c) had the object or effect of penalising the first applicant and Saving Group Members and Card Group Members but not ANZ for a breach of the FTA Contracts;
 - (d) are contained within contracts which were entered into in the circumstances set out at paragraphs 16, 17, 23 and 25.
- 96 In the premises, pursuant to section 32Y of the FTA the Penalty Provisions and/or the Exception Fees Charges contained in the FTA Contracts are void as unfair terms within the meaning of section 32W.
- 97 The Card Contracts entered into, renewed or relevantly varied on or after 1 July 2010 (**ASIC Act Contracts**), were and are:
- (a) consumer contracts, and
 - (b) standard form contracts,
- within the meaning of section 12BF(3) of the ASIC Act.
- 98 The first applicant and Card Group Members repeat the matters pleaded at paragraphs 23, 25, 43, and 46-60.

99 The Penalty Provisions and/or the Exception Fee Charges contained in the ASIC Act Contracts are terms which:

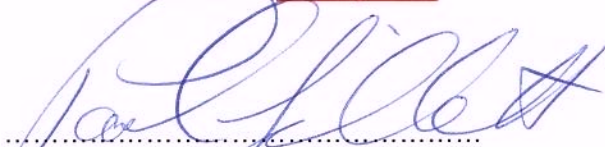
- (a) would cause a significant imbalance in each of the applicants' and Card Group Members' and ANZ's rights and obligations arising under the contract;
- (b) are not reasonably necessary in order to protect the legitimate interests of ANZ, being the party who would be advantaged by those terms, in that:
 - i. ANZ charged interest on the loan, or
 - ii. in the alternative to i., anything more than the measure of compensation or damages at law is not reasonably necessary to protect ANZ's legitimate interests;
- (c) would cause detriment (whether financial or otherwise) to the applicants and Card Group Members if they were to be applied or relied on;
- (d) penalise, or have the effect of penalising, the applicants and Card Group Members, but not ANZ, for a breach or breaches of the ASIC Act Contracts;
- (e) are contained within contracts which were entered into in the circumstances set out at paragraphs 16, 17, 23 and 25.

100 In the premises, pursuant to section 12BF(1) of the ASIC Act the Penalty Provisions and/or the Exception Fee Charges contained in the ASIC Act Contracts are void as unfair within the meaning of section 12BG of the ASIC Act.

C.9 RELIEF CLAIMED

101 The applicants and Group Members claim the relief set out in the Application.

Date: ~~14 March 2013~~ 23 May 2013



PAUL GILLETT

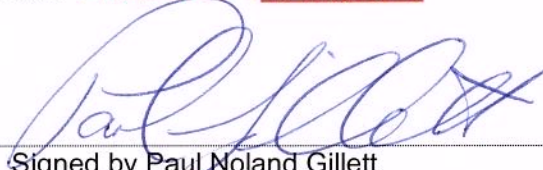
Lawyer for the Applicants

This pleading was prepared by Paul Gillett, lawyer

Certificate of lawyer

I Paul Noland Gillett certify to the Court that, in relation to the Statement of Claim filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~14 March 2013~~ 23 May 2013



Signed by Paul Noland Gillett
Lawyer for the Applicants

SCHEDULE 1: SAVING CONTRACTS

	Column 1 PDS	Column 2 Fees Document	Column 3 Saving Contract
1	Any contract in effect prior to around May 2004 pursuant to which ANZ agreed to open and maintain, and provide financial services associated with, a Saving Account (further particulars to be provided after <u>discoverythe trial of the first applicant's claims</u>)	Any contract in effect prior to around May 2004 pursuant to which ANZ agreed to open and maintain, and provide financial services associated with, a Saving Account (further particulars to be provided after <u>discoverythe trial of the first applicant's claims</u>)	Pre-May 2004 Saving Contract(s)
2	the PDS or PDSs in effect between around May 2004 and around November 2004 (further particulars to be provided after discovery)	"ANZ Personal Banking Account Fees and Charges – May 2004"	May 2004 Saving Contract
3	"ANZ Saving & Transaction Products – Product Disclosure Statement – November 2004"	"ANZ Personal Banking Account Fees and Charges – November 2004"	November 2004 Saving Contract
4	"ANZ Saving & Transaction Products – Product Disclosure Statement – March 2005"	"ANZ Personal Banking Account Fees and Charges – March 2005"	March 2005 Saving Contract
5	the document referred to immediately above	"ANZ Personal Banking Account Fees and Charges – January 2006"	January 2006 Saving Contract
6	"ANZ Saving & Transaction Products – Product Disclosure Statement – March 2005"	"ANZ Personal Banking Account Fees and Charges – August 2006"	August 2006 Saving Contract
7	"ANZ Saving & Transaction Products – Product Disclosure Statement – September 2006"	the document referred to immediately above	September 2006 Saving Contract

	Column 1 PDS	Column 2 Fees Document	Column 3 Saving Contract
8	"ANZ Saving & Transaction Products – Product Disclosure Statement – March 2007"	"ANZ Personal Banking Account Fees and Charges – March 2007"	March 2007 Saving Contract
9	"ANZ Saving & Transaction Products – Terms and Conditions – August 2007"	"ANZ Personal Banking Account Fees and Charges – August 2007"	August 2007 Saving Contract
10	"ANZ Saving & Transaction Products – Terms and Conditions – February 2008"	"ANZ Personal Banking Account Fees and Charges – February 2008"	February 2008 Saving Contract
11	the document referred to immediately above	"ANZ Personal Banking Account Fees and Charges – May 2008"	May 2008 Saving Contract
12	"ANZ Saving & Transaction Products – Terms and Conditions – August 2008"	"ANZ Personal Banking Account Fees and Charges – August 2008"	August 2008 Saving Contract
13	the document referred to immediately above	"ANZ Personal Banking Account Fees and Charges – March 2009"	March 2009 Saving Contract
14	"ANZ Saving & Transaction Products – Terms and Conditions – June 2009"	"ANZ Personal Banking Account Fees and Charges – June 2009"	June 2009 Saving Contract
15	the document referred to immediately above	"ANZ Personal Banking Account Fees and Charges – July 2009"	July 2009 Saving Contract
16	the document referred to immediately above	"ANZ Personal Banking Account Fees and Charges – August 2009"	August 2009 Saving Contract

SCHEDULE 2: AMENDED TERMS IN SAVING CONTRACTS

Term pleaded at paragraph 12	Amended Terms (save for any terms in the PDS or PDSs in effect between around May 2004 and around November 2004, further particulars of which to be provided after discovery)
<p>[list of accounts to which terms and conditions apply]</p> <p>(front page)</p>	<p><i>The following additions to the list of accounts were made by ANZ Saving Products – Terms and Conditions as dated below:</i></p> <p>ANZ Prime Cash Management Account (August 2007) ANZ V2 PLUS (February 2008) ANZ Access Limited (August 2008) ANZ Online Saver (June 2009)</p>
<p>the PDS will apply immediately to new accounts, to existing accounts 30 days after the customer received notification of it or upon the expiry of any agreed term fixed for the application of agreed terms and conditions (Introduction);</p>	<p><i>Amended by ANZ Saving Products – Product Disclosure Statement - September 2006:</i></p> <p>The PDS will apply immediately to new accounts. (Introduction at page 3)</p>
<p>if a request is made by the customer for a withdrawal or payment from their account which would overdraw their account, ANZ may, in its discretion, allow the withdrawal or payment to be made on the following terms:</p> <ol style="list-style-type: none"> i. interest will be charged on the overdrawn amount at ANZ Retail Index Rate plus a margin; ii. a Saving Honour Fee may be charged for ANZ agreeing to honour the transaction which resulted in the overdrawn amount; iii. the overdrawn amount, any interest on that amount and the Saving Honour Fee will be debited to the customer's account; and iv. the customer must repay the overdrawn amount and pay any accrued interest on that amount and the Saving Honour Fee within seven days of the overdrawn amount being debited to the customer's account (Clause 2.12); 	<p><i>Amended by ANZ Saving Products – Terms and Conditions – August 2007:</i></p> <p>If a debit would overdraw the customer's account, ANZ may, in its discretion, allow the debit on the following terms:</p> <ol style="list-style-type: none"> i. interest will be charged on the overdrawn amount at ANZ Retail Index Rate plus a margin; ii. an Saving Honour Fee may be charged for ANZ agreeing to honour the transaction which resulted in the overdrawn amount; iii. the overdrawn amount, any interest on that amount and the Saving Honour Fee will be debited to the customer's account; and iv. the customer must repay the overdrawn amount and pay any accrued interest on that amount and the Saving Honour Fee within seven days of the overdrawn amount being debited to the customer's account (Clause 2.12);

Term pleaded at paragraph 12	Amended Terms (save for any terms in the PDS or PDSs in effect between around May 2004 and around November 2004, further particulars of which to be provided after discovery)
the amount of the Saving Dishonour Fee is \$45 (Account Fees)	Amended by ANZ Personal Banking Account Fees – August 2006: the amount of the Saving Dishonour Fee is \$35
the amount of the Saving Honour Fee is \$29.50 (Account Fees)	Amended by ANZ Personal Banking Account Fees – August 2006: the amount of the Saving Honour Fee is \$35
the amount of the Saving Non-Payment Fee is \$45 (Account Fees)	Amended by ANZ Personal Banking Account Fees – August 2006: the amount of the Saving Non-Payment Fee is \$35

SCHEDULE 3: FEES CHARGED BY OTHER MAJOR BANKS

CBA FEES

	FEE TYPE	FEE AMOUNTS	
Personal Accounts	Overdrawing Approval Fee	1 January 2003 - 29 June 2003: \$20.00	30 June 2003 - 30 September 2009: \$30.00 1 October 2009 - present: \$10.00
	Loan Service Fee	1 January 2003 - 3 January 2006: scale, from \$9.00	Abolished prior to 30 Nov 09
	Items drawn on your account and dishonoured	20 January 2004 - 30 September 2009: \$35.00	1 October 2009 - present: \$5.00
Business Accounts	Overdrawing Approval Fee	1 April 2003 - 29 June 2003: \$20.00	30 June 2003 - 8 October 2009: \$30.00 9 October 2009 - present: \$10.00
	Loan Service Fee	1 April 2003 - present: scale, from \$5 or \$9 (varies between products)	
	Items drawn on your account and dishonoured	6 February 2004 - 8 October 2009: \$35.00	9 October 2009 - present: \$5.00
Credit Card	Over Limit Fee	20 February 2003 - present: \$25.00	
	Late Payment Fee	20 February 2003 - 11 December 2003: \$20.00	12 December 2003 - present: \$25.00

WESTPAC FEES

	FEE TYPE	FEE AMOUNTS			
Personal Accounts	Overdrawn Account Fee	1 May 2003 - 31 May 2006: \$30	1 June 2006 - 30 September 2009: \$40	1 October 2009 - present: \$9	
	Outward Dishonour Fee	1 May 2003 - 31 May 2006: \$40	1 June 2006 - 1 June 2008: \$50	2 June 2008 - 30 September 2009: \$35	1 October 2009 - present: \$9.00
	Periodical Payment Not Made Fee	1 May 2003 - 31 May 2006: \$40	1 June 2006 - 1 June 2008: \$50	2 June 2008 - 30 September 2009: \$35	1 October 2009 - present: \$9.00
Business Accounts	Overdrawn Account Fee	1 May 2003 - 31 December 2005: \$35	1 January 2006 - 30 September 2009: \$40	1 October 2009 - present: \$9.00	
	Periodical Payment Not Made Fee	1 May 2003 - 10 August 2008: \$40	11 August 2008 - 30 September 2009: \$50.00	1 October 2009 - present: \$9.00	
	Outward Dishonour Fee	1 May 2003 - 31 December 2005: \$40	1 January 2006 - 30 September 2009: \$50	1 October 2009 - present: \$9.00	
Credit Card	Overlimit Fee	Historically: unknown	As at 30 July 2010: \$9.00		
	Late Payment Fee	Historically: unknown	As at 30 July 2010: \$9.00		

NAB FEES

	FEE TYPE	FEE AMOUNTS		
Personal Accounts	Dishonour Fee	1 December 2003 - 22 February 2009: \$50.00	23 February 2008 - 30 September 2009: \$30.00	1 October 2009 - present: nil
	Reference Fee	1 December 2003 - 30 September 2009: \$30.00	1 October 2009 - present: nil	
	Periodical Non-Payment Fee	1 December 2003 - 22 February 2008: \$35.00	23 February 2008 - 30 September 2009: \$30.00	1 October 2009 - present: nil
Business Accounts	Items Dishonoured	1 May 2003 - 3 March 2009: \$60.00	Some time subsequent to 3 March 2009 - present: nil	
	Reference Fee	1 May 2003 - 3 March 2009: \$50.00	Some time subsequent to 3 March 2009 - present: \$35.00	
	Periodical payment - payment not made due to lack of funds	1 May 2003 - 3 March 2009: \$50.00	Some time subsequent to 3 March 2009 - present: nil	
Credit Card	Over limit Fee	30 March 2007 - 3 December 2009: \$25.00	4 December 2009 - present: nil	
	Late Payment Fee	30 March 2007 - 3 December 2009: \$30.00	4 December 2009 - present: \$5.00	

SCHEDULE 4: CARD CONTRACTS

	Column 1 Conditions of Use	Column 2 Fees Document	Column 3 Card Contract
1	Any contract in effect prior to around March 2004 pursuant to which ANZ agreed to open and maintain, and provide financial services associated with, a Card Account (further particulars to be provided after <u>discovery</u> the trial of the first applicant's claims)	Any contract in effect prior to around March 2004 pursuant to which ANZ agreed to open and maintain, and provide financial services associated with, a Card Account (further particulars to be provided after <u>discovery</u> the trial of the first applicant's claims)	Pre-March 2004 Card Contract(s)
2	"ANZ Credit Card – Conditions of Use - March 2004"	the Fees Document or Documents in effect during the period around March 2004 to around May 2004 (further particulars to be provided after discovery)	March 2004 Card Contract(s)
3	the document referred to immediately above	"ANZ Personal Banking Account Fees and Charges – May 2004"	May 2004 Card Contract
4	"ANZ Credit Card – Conditions of Use - November 2004"	"ANZ Personal Banking Account Fees and Charges – November 2004"	November 2004 Card Contract
5	the document referred to immediately above	"ANZ Personal Banking Account Fees and Charges – March 2005"	March 2005 Card Contract
6	"ANZ Credit Card – Conditions of Use - April 2005"	the document referred to immediately above	April 2005 Card Contract
7	"ANZ Credit Card – Conditions of Use - January 2006"	"ANZ Personal Banking Account Fees and Charges – January 2006"	January 2006 Card Contract
8	the document referred to immediately above	"ANZ Personal Banking Account Fees and Charges – August 2006"	August 2006 Card Contract
9	"ANZ Credit Card – Conditions of Use - September 2006"	"ANZ Personal Banking Account Fees and Charges – August 2006"	September 2006 Card Contract
10	the document referred to immediately above	"ANZ Personal Banking Account Fees and Charges – March 2007"	March 2007 Card Contract

	Column 1 Conditions of Use	Column 2 Fees Document	Column 3 Card Contract
11	"ANZ Credit Card – Conditions of Use - November 2007"	the document referred to immediately above	November 2007 Card Contract
12	the document referred to immediately above	"ANZ Personal Banking Account Fees and Charges – February 2008"	February 2008 Card Contract
13	"ANZ Credit Card – Conditions of Use - March 2008"	the document referred to immediately above	March 2008 Card Contract
14	"ANZ Credit Card – Conditions of Use - September 2008"	the document referred to immediately above	September 2008 Card Contract
15	"ANZ Credit Card – Conditions of Use - April 2009"	the document referred to immediately above	April 2009 Card Contract
16	"ANZ Credit Card – Conditions of Use - July 2009"	"ANZ Personal Banking Account Fees and Charges – July 2009"	July 2009 Card Contract
17	"ANZ Credit Card – Conditions of Use - November 2009"	the document referred to immediately above	November 2009 Card Contract
18	"ANZ Credit Card – Conditions of Use - 12.09"	"ANZ Personal Banking – Account Fees and Charges – 12.09"	December 2009 Card Contract
19	"ANZ Credit Card – Conditions of Use - March 2010"	the document referred to immediately above	March 2010 Card Contract
20	"ANZ Credit Card – Conditions of Use - June 2010"	the document referred to immediately above	June 2010 Card Contract
21	Any Conditions of Use document or documents in effect between September 2010 and October 2012, other than the document referred to immediately above (further particulars to be provided after discovery)	Any Fees Document or Documents in effect between September 2010 and October 2012, other than the document referred to immediately above (further particulars to be provided after discovery)	September 2010 Card Contract
22	"ANZ Credit Cards – Conditions of Use – 10.12"	"ANZ Personal Banking – Account Fees and Charges – 10.12"	October 2012 Card Contract

SCHEDULE 5: AMENDED TERMS IN CARD CONTRACTS

Term pleaded at paragraph 20	Amended Terms (save for any terms in the Fees Document or Documents in effect during the periods from around March 2004 to around May 2004, and from around September 2010 to around October 2012, further particulars of which to be provided after discovery)
<p>the person in whose name the credit card account has been opened and where relevant, the additional cardholder also (jointly, the Customer) must not exceed the credit limit unless ANZ has consented in writing or ANZ otherwise authorises the transaction which results in the Account Holder's outstanding balance exceeding the credit limit (clause 2(b))</p>	<p><i>Amended by December 2009 Conditions of Use:</i></p> <p>From time to time, there may be a debit made to the Customer's credit card account which, if processed, would temporarily result in the outstanding balance exceeding the credit limit. ANZ has an Informal Overlimit service to help the Customer in these circumstances.</p> <p>When a debit is initiated which, if processed, would result in the outstanding balance temporarily exceeding the credit limit, the Customer makes a request for an Informal Overlimit amount. ANZ will consider the Customer's request for an Informal Overlimit amount and, if both the debit and the account holder satisfy ANZ's credit criteria for Informal Overlimit amounts, ANZ will allow the debit to be processed as an Informal Overlimit amount</p> <p>An Informal Overlimit amount will only be provided if there is no available credit in the credit card account and both the debit and the account holder satisfy ANZ's criteria for Informal Overlimit amounts.</p> <p>The Informal Overlimit service is not available for all transactions types (for example, it is not available for a transaction that is not electronically authorised such as a purchase that is manually debited to the Customer's credit card account if EFTPOS is not available).</p>
<p>by authorising a transaction which results in the Customer's outstanding balance exceeding the credit limit ANZ is not increasing the Customer's credit limit (clause 2(b))</p>	<p><i>Amended by December 2009 Conditions of Use:</i></p> <p>By processing a debit as an Informal Overlimit amount, ANZ is not increasing the account holder's credit limit.</p>

Term pleaded at paragraph 20	Amended Terms (save for any terms in the Fees Document or Documents in effect during the periods from around March 2004 to around May 2004, and from around September 2010 to around October 2012, further particulars of which to be provided after discovery)
if the Customer exceeds his or her credit limit, the Customer must pay the amount by which the outstanding balance exceeds the credit limit immediately (clause 2(b))	<p><i>Amended by December 2009 Conditions of Use:</i></p> <p>The Informal Overlimit amount, any interest on that amount and any Overlimit Fees will be debited to the Customer's credit card account; and the Customer must repay the Informal Overlimit amount on the earlier of:</p> <ul style="list-style-type: none"> - the time shown for payment of 'Overdue/ Overlimit' amount on the next statement of account after the Informal Overlimit amount is debited to your credit card account; and - the day that is 60 days after the day on which the Informal Overlimit amount is debited to the Customer's credit card account.
if the account holder is in default under the credit card contract, the account holder will also be in default under any other credit contracts that the account holder has with ANZ (clause 29(a))	<p><i>Amended by December 2009 Conditions of Use:</i></p> <p>[deleted]</p>
ANZ reserves the right to close any credit card account at any time without prior notice if the credit limit has been exceeded (clause (30)(b)(i)(C))	<p><i>Amended by September 2006 Conditions of Use:</i></p> <p>ANZ reserves the right to cancel a credit card or refuse authorization of further transactions on any credit card account at any time without prior notice if the credit limit has been exceeded or a repayment is overdue</p> <p><i>Amended by April 2009 Conditions of Use:</i></p> <p>ANZ reserves the right to cancel a credit card at any time without prior notice</p>
ANZ may elect not to close a credit card account if the credit limit has been	<p><i>Amended by September 2006 Conditions of Use:</i></p> <p>ANZ may elect not to cancel a credit card or refuse authorization of a transaction if the credit limit has been exceeded or a repayment is overdue but the fact that ANZ has elected not to do so on one or more previous occasions does not stop ANZ</p>

Term pleaded at paragraph 20	Amended Terms (save for any terms in the Fees Document or Documents in effect during the periods from around March 2004 to around May 2004, and from around September 2010 to around October 2012, further particulars of which to be provided after discovery)						
exceeded but the fact that ANZ has elected not to do so on one or more previous occasions does not stop ANZ from closing a credit card account whenever the credit limit has been exceeded (clause (30)(b)(i)(C))	from taking these actions						
	Amended by April 2009 Conditions of Use:						
	[deleted]						
	Amended by April 2009 Conditions of Use:						
ANZ may cancel any card, customer registration number or electronic access without prior notice if the account has been overdrawn or the Customer has exceeded his or her agreed credit limit (Electronic Banking Conditions of Use)	ANZ may cancel any card, customer registration number or electronic access without prior notice						
a Late Payment Fee (Late Payment Fee) will be charged to the Account Holder's credit card account if the 'Monthly Payment' plus any 'Amount Due Immediately' shown on the statement of	Amended by November 2004 Fees Document: a Late Payment Fee will be	Amended by March 2005 Fees Document: a Late Payment Fee will be charged to the Account Holder's credit card	Amended by August 2006 Fees Document: a Late Payment Fee will be charged to the Account Holder's credit card account if the "Monthly Payment" plus any "Amount Due Immediately" shown on the statement of	Amended by March 2007 Fees Document: No amendment, save that the phrase	Amended by February 2008 Fees Document: No amendment, save that the phrase	Amended by July 2009 Fees Document: No amendment, save that: - the words	Amended by December 2009 Fees Document: a Late Payment Fee will be charged to

Term pleaded at paragraph 20	Amended Terms (save for any terms in the Fees Document or Documents in effect during the periods from around March 2004 to around May 2004, and from around September 2010 to around October 2012, further particulars of which to be provided after discovery)					
<p>account is not paid within 28 days of the statement date (Late Payment Event)</p> <p>(Credit Card Letter of Offer)</p>	<p>charged to the Account Holder's credit card account if the 'Monthly Payment' plus any 'Amount Due Immediately' shown on the statement of account is not paid within 28 days of the end of the 'Statement Period' shown on that statement</p> <p>account if the 'Monthly Payment' plus any 'Amount Due Immediately' shown on the statement of account is not paid within 28 days of the end of the 'Statement Period' shown on that statement</p> <p>account if the 'Monthly Payment' plus any 'Amount Due Immediately' shown on the statement of account is not paid within 28 days of the end of the 'Statement Period' shown on that statement</p>	<p>account is not paid within:</p> <p>- 28 days of the end of the "Statement Period" shown on that statement, in the case of any credit card account that is an ANZ Low Rate MasterCard, ANZ Gold, ANZ Frequent Flyer Visa Gold, ANZ Rewards Visa Gold, ANZ First - Low Interest or ANZ Low Interest MasterCard, or</p> <p>- 19 days of the end of the "Statement Period" shown on that statement, in the case of any credit card account that is an ANZ First, ANZ Frequent Flyer Visa, ANZ Rewards Visa or ANZ Free Days MasterCard</p> <p>In the case of any credit card account that is an ANZ Visa PAYCARD or ANZ Rewards Visa PAYCARD, a Late Payment Fee will be charged to the Account Holder's credit card account if any debit "Closing Balance" shown on the statement of accounts not paid in full within 19 days of</p>	<p>"ANZ Frequent Flyer Visa Platinum," is inserted prior to the words "ANZ Rewards Visa Gold"</p>	<p>"ANZ Balance Visa," is inserted prior to the words "ANZ Low Rate MasterCard"</p>	<p>"ANZ Frequent Flyer Visa Gold" are replaced by the words "ANZ Frequent Flyer Gold", and - the words "ANZ Frequent Flyer Visa Platinum" are replaced by the words "ANZ Frequent Flyer Platinum"</p>	<p>the Account Holder's credit card account if the "Minimum Monthly Payment" plus any amount "Payable Immediately" shown on the statement of account is not paid or, in the case of ANZ Visa PAYCARD and ANZ Rewards Visa PAYCARD accounts, paid in full, by the "Due Date" shown on that statement.</p>

Term pleaded at paragraph 20	Amended Terms (save for any terms in the Fees Document or Documents in effect during the periods from around March 2004 to around May 2004, and from around September 2010 to around October 2012, further particulars of which to be provided after discovery)				
			the end of the "Statement Period" shown on that statement. If the 19th day is a non ANZ business day the 'Late Payment Fee' will apply on the preceding business day.		
the amount of the Late Payment Fee is \$35 (Credit Card Letter of Offer)	Amended by February 2008 Fees Document: the amount of the Late Payment Fee is \$35, or if the Account Holder holds an ANZ Access Basic account, \$10	Amended by December 2009 Fees Document: the amount of the Late Payment Fee is \$20, or if the Account Holder holds an ANZ Access Basic account, \$0			
an Overlimit Fee (Overlimit Fee) will be charged to the Account Holder's credit card account, save for where that account is an ANZ Visa PAYCARD or a Telstra Visa PAYCARD account, at the statement date if the balance of the account exceeds the credit limit at any time during that statement	Amended by November 2004 Fees Document: an Overlimit Fee will be charged to the Account Holder's credit card account, save for where that account is an ANZ Visa PAYCARD or a Telstra Visa PAYCARD account, at the end of the "Statement Period" shown on the statement of account if the balance of the account exceeds the credit limit at any time during that statement period, and is charged at a maximum of once	Amended by March 2005 Fees Document: No amendment, save that the words "a Telstra Visa PAYCARD" are replaced by the words "an ANZ Rewards Visa PAYCARD"	Amended by December 2009 Fees Document: an Overlimit Fee will be charged to the Account Holder's credit card account, save for where that account is an ANZ Visa PAYCARD or an ANZ Rewards Visa PAYCARD account, at the end of the "Statement Period" shown on the statement of account if ANZ agrees to provide an Informal Overlimit amount during that statement period, and is charged at a maximum of once per statement period.		

Term pleaded at paragraph 20	Amended Terms (save for any terms in the Fees Document or Documents in effect during the periods from around March 2004 to around May 2004, and from around September 2010 to around October 2012, further particulars of which to be provided after discovery)		
period, and is charged at a maximum of once per statement period (Overlimit Event). (Credit Card Letter of Offer)	per statement period.		
the amount of the Overlimit Fee is \$35 (Credit Card Letter of Offer)	Amended by February 2008 Fees Document: the amount of the Overlimit Fee is \$35, or if the Account Holder holds an ANZ Access Basic account, \$10	Amended by December 2009 Fees Document: the amount of the Overlimit Fee is \$20, or if the Account Holder holds an ANZ Access Basic account, \$0	

SCHEDULE 6: BUSINESS CONTRACTS

	Column 1 Business PDS	Column 2 Business Fees Document	Column 3 Business Contract
1	Any contract in effect prior to around August 2004 pursuant to which ANZ agreed to open and maintain, and provide financial services associated with, a Business Account (further particulars to be provided after <u>discovery of the trial of the second applicant's claims</u>)	Any contract in effect prior to around August 2004 pursuant to which ANZ agreed to open and maintain, and provide financial services associated with, a Business Account (further particulars to be provided after <u>discovery of the trial of the second applicant's claims</u>)	Pre-August 2004 Business Contract(s)
2	a document or documents entitled 'ANZ Small to Medium Enterprise Banking – Business Transaction Accounts – Product Disclosure Statement' which had effect at all times during the period around August 2004 to around November 2004	'ANZ Small to Medium Enterprise Banking - Transaction Accounts Fees and Charges - August 2004'	August 2004 Business Contract(s)
3	'ANZ Small to Medium Enterprise Banking – Business Transaction Accounts – Product Disclosure Statement - December 2004'	the document referred to immediately above	December 2004 Business Contract
4	the document referred to immediately above	'ANZ Small to Medium Enterprise Banking - Transaction Accounts Fees and Charges', dated February 2005	February 2005 Business Contract
5	'ANZ Small to Medium Enterprise Banking - Business Transaction Accounts - Product Disclosure Statement - April 2005'	the document referred to immediately above	April 2005 Business Contract
6	'ANZ Business Banking - Business Transaction Accounts - Product Disclosure Statement - July 2005'	'ANZ Business Banking - Transaction Accounts Fees and Charges - July 2005'	July 2005 Business Contract
7	'ANZ Business Banking Business Transaction Accounts Product Disclosure Statement – March 2006'	'ANZ Business Banking - Transaction Accounts Fees and Charges - March 2006'	March 2006 Business Contract

	Column 1 Business PDS	Column 2 Business Fees Document	Column 3 Business Contract
8	'Business Transaction Accounts - Product Disclosure Statement – ANZ Business Banking - December 2006'	'ANZ Business Banking - Transaction Accounts Fees and Charges - December 2006'	December 2006 Business Contract
9	the document referred to immediately above	'Transaction Accounts Fees and Charges - ANZ Business Banking - November 2007'	November 2007 Business Contract
10	'Business Transaction Accounts Terms and Conditions – ANZ Business Banking – July 2008'	'Transaction Accounts Fees and Charges - ANZ Business Banking - July 2008'	July 2008 Business Contract
11	'Business Transaction Accounts Terms and Conditions – ANZ Business Banking – March 2009'	'Transaction Accounts Fees and Charges - ANZ Business Banking - March 2009'	March 2009 Business Contract
12	'Business Transaction Accounts Terms and Conditions – ANZ Business Banking – 12.09'	'Transaction Accounts Fees and Charges - ANZ Business Banking - December 2009'	December 2009 Business Contract
13	Any Business PDS or PDSs in effect between September 2010 and April 2012, other than the document referred to immediately above (further particulars to be provided after discovery)	Any Business Fees Document or Documents in effect between around September 2010 and around April 2012, other than the document referred to immediately above (further particulars to be provided after discovery)	September 2010 Business Contract
14	the document referred to immediately above	'Transaction Accounts Fees and Charges - ANZ Business Banking – 04.12'	April 2012 Business Contract
15	'Business Transaction Accounts Terms and Conditions – ANZ Business Banking – 11.12'	the document referred to immediately above	November 2012 Business Contract

SCHEDULE 7: AMENDED TERMS IN BUSINESS CONTRACTS

Amended Terms (save for any terms in effect during the periods from around August 2004 to around November 2004, and from around September 2010 to around April 2012, further particulars of which to be provided after discovery)				
Term pleaded at paragraph 28	Amended by July 2005 Business PDS:	Amended by March 2006 Business PDS:	Amended by July 2008 Business PDS:	Amended by November 2012 Business PDS:
<p>This Product Disclosure Statement (PDS) contains terms and conditions for the following:</p> <ul style="list-style-type: none"> > Business Classic Account > Business Extra Account > Business Cash Management Account > Business Mortgage Loan Offset Account > GST Payment Account > Term Deposits > Negotiator Account > Direct Debits > Periodical Payments > Internet Banking > Phone Banking > BPAY <p>The Business PDS document must be read in conjunction with the 'ANZ Small to Medium Enterprise Banking Transaction Accounts Fees and Charges' booklet, or the</p>	<p>This Product Disclosure Statement (PDS) contains terms and conditions for the following:</p> <ul style="list-style-type: none"> > Business Classic Account > Business Extra Account > Business Cash Management Account > Business Mortgage Loan Offset Account > GST Payment Account > Term Deposits > Negotiator Account > Direct Debits > Periodical Payments > Internet Banking > Phone Banking > BPAY <p>For ANZ Business Classic Accounts, ANZ Business Mortgage Loan Offset Accounts, ANZ GST Payment Accounts and ANZ Negotiator Accounts the Business PDS must be read in conjunction with the Business Fees and Charges customer's Business Contract for</p>	<p>This Product Disclosure Statement (PDS) contains terms and conditions for the following:</p> <ul style="list-style-type: none"> > Business Classic Account > Business Extra Account > Business Cash Management Account > Premium Business Cash Account > Business Mortgage Loan Offset Account > GST Payment Account > Term Deposits > Negotiator Account > Direct Debits > Periodical Payments > Internet Banking > Phone Banking > BPAY <p>This document must be read in conjunction with the Business Fees and Charges. Together they form the customer's Business Contract for the above</p>	<p>This document contains terms and conditions for:</p> <ul style="list-style-type: none"> > ANZ Business Classic Account > ANZ Business Extra Account > ANZ Business Cash Management Account > ANZ Premium Business Cash Account > ANZ Business Mortgage Loan Offset Account > ANZ GST Payment Account > ANZ Term Deposit Account > ANZ Negotiator Account > ANZ Equity Manager in a Company Name Account > Direct Debits > Periodical Payments > ANZ Internet Banking Business > ANZ Phone Banking > BPAY 	<p>This document contains terms and conditions for:</p> <ul style="list-style-type: none"> • ANZ Business Advantage Account • ANZ Business Classic Account • ANZ Business Extra Account • ANZ Business Cash Management Account • ANZ Premium Business Cash Account • ANZ Business Mortgage Loan Offset Account • ANZ Business Premium Saver Account • ANZ Business Cash Management Account • ANZ Premium Business Cash Account • ANZ Revolving Agri Line • ANZ Business Mortgage Loan Offset Account • ANZ GST Payment Account • ANZ Term Deposit Account • ANZ Negotiator Account • ANZ Equity Manager in a Company Name Account

Term pleaded at paragraph 28	Amended Terms (save for any terms in effect during the periods from around August 2004 to around November 2004, and from around September 2010 to around April 2012, further particulars of which to be provided after discovery)			
customer's confirmation letter for an ANZ Negotiator Account. Together they form the customer's Business Contract for the above products. (Inside Front Cover)	the above products.		products.	<p>> ANZ Mobile Phone Banking</p> <p>This document must be read in conjunction with the 'ANZ Business Banking Transaction Accounts Fees and Charges' booklet. Together they form your Terms and Conditions for the above products.</p> <ul style="list-style-type: none"> • ANZ Agri Finance Offset Account • Direct Debits • Periodical Payments • ANZ Internet Banking • ANZ Internet Banking for Business • ANZ Phone Banking • BPAY® • ANZ Mobile Phone Banking (p2)
The customer can use his or her ANZ Access Card to withdraw AUD\$1,000 per day via an ATM or EFTPOS from any account to which it is linked provided the account contains sufficient cleared funds (Withdrawals at page 2)				<p><i>Amended by November 2012 Business PDS:</i></p> <p>The customer can withdraw money from his or her accounts by using his or her linked ANZ card at any ATM, contactless or EFTPOS terminal that accepts the card. A daily limit applies to card transactions (see Daily withdrawal limit section). (p7)</p>
ANZ may waive fees under certain conditions, but if ANZ fails to collect a fee to which it is entitled, ANZ has not waived its right to collect	<p><i>Amended by the July 2008 Business PDS:</i></p> <p>ANZ may waive fees under certain conditions, but if ANZ fails to collect a fee to which it is entitled,</p>			<p><i>Amended by November 2012 Business PDS:</i></p> <p>ANZ may waive fees under certain conditions. If ANZ fails to collect a fee to</p>

Term pleaded at paragraph 28	Amended Terms (save for any terms in effect during the periods from around August 2004 to around November 2004, and from around September 2010 to around April 2012, further particulars of which to be provided after discovery)		which it is entitled, ANZ has not waived its right to collect the fee at a later date with notice to you; or for future transactions of the same nature. (p11)
<p>the fee for future transactions of the same nature (Fees at page 3)</p>	<p>ANZ has not waived its right to collect the fee for future transactions of the same nature, or at a later date with notice to the customer.</p>		
<p>unless the customer has made prior arrangements with ANZ the customer's account should have a credit balance at all times (Overdrawing at page 9)</p>	<p>Amended by the December 2009 Business PDS:</p> <p>Informal Overdraft facility For the purposes of this clause the following definitions apply: 'Informal Overdraft' means an amount advanced to the customer under the Informal Overdraft facility. 'Informal Overdraft facility' means the informal short-term credit facility ANZ may provide to the customer pursuant to this clause if a debit to the customer's account (excluding a periodical payment) would, if processed, result in either: > the customer's account becoming overdrawn; or > the approved limit on the customer's account being exceeded. When any debit (excluding a periodical payment) is initiated which, if processed, would result in either: > the customer's account becoming overdrawn; or > the approved limit on the customer's account being exceeded, the customer is deemed to request an Informal Overdraft.</p> <p>For accounts other than ANZ Equity Manager in a Company Name ANZ will consider the customer's request and assess the customer's eligibility for an Informal Overdraft based on</p>		

Term pleaded at paragraph 28	Amended Terms (save for any terms in effect during the periods from around August 2004 to around November 2004, and from around September 2010 to around April 2012, further particulars of which to be provided after discovery)
	<p>ANZ's credit criteria. The customer will be charged an Informal Overdraft Assessment Fee for this service in the circumstances described below.</p> <p>If the customer satisfies ANZ's credit criteria for an Informal Overdraft facility, ANZ will agree to the customer's request by allowing the debit to be processed as an Informal Overdraft, on the following terms:</p> <ul style="list-style-type: none"> > If the balance of the customer's Informal Overdraft facility exceeds \$50 at the time of the customer's request, or will exceed \$50 once the debit requested is processed, the customer will be charged an Informal Overdraft Assessment Fee on the day on which the debit is processed (or if that day is not a business day, on the next business day). The Informal Overdraft Assessment Fee (referred to in the customer's bank statements and in the 'ANZ Business Banking Transaction Accounts Fees and Charges' booklet as an 'Honour Fee') is payable immediately. > Interest will be charged on the sum of the Informal Overdraft and any fees and charges debited to the account at ANZ Retail Index Rate plus a margin (refer to 'ANZ Business Banking Transaction Account Fees and Charges' booklet for details). Interest will be calculated on the daily closing balance and will be charged in arrears on the same date in each month as the date on which the customer's account was opened (or if that day is not a business day, on the next business day). The daily interest rate is the specified rate divided by 365. > The Informal Overdraft, any Informal Overdraft Assessment Fee and any interest on both of those amounts will be debited to the customer's account; and > the customer must repay each of those amounts by the

Term pleaded at paragraph 28	Amended Terms (save for any terms in effect during the periods from around August 2004 to around November 2004, and from around September 2010 to around April 2012, further particulars of which to be provided after discovery)
	<p>earlier to occur of either:</p> <ul style="list-style-type: none"> • 7 days of the Informal Overdraft being debited to the customer's account; or • ANZ demanding repayment. Demand for payment may be made in the customer's next statement of account or by letter to the customer. <p>If the customer does not satisfy ANZ's credit criteria for an Informal Overdraft, ANZ will decline the customer's request and will not allow the debit to be processed. The customer will be charged an Informal Overdraft Assessment Fee (referred to in the customer's bank statements and in the 'ANZ Business Banking Transaction Accounts Fees and Charges' booklet as an 'Outward Dishonour Fee') and this fee is payable immediately.</p> <p>> Other than amounts debited to the customer's account in accordance with this clause, ANZ does not agree to provide any credit in respect of the customer's account without prior written agreement.</p> <p>The customer should tell ANZ as soon as possible if the customer is in financial difficulty.</p> <p>For ANZ Equity Manager in a Company Name Accounts</p> <p>If a debit would mean the customer's account is overdrawn, and both the debit and the account holder satisfy ANZ's criteria for the Informal Overdraft facility, ANZ will allow the debit to be processed using the Informal Overdraft facility on the following terms:</p> <ul style="list-style-type: none"> • interest will be charged on the Informal Overdraft at ANZ Retail Index Rate plus a margin (refer to 'ANZ Business Banking Transaction Account Fees and Charges' booklet for details);

Term pleaded at paragraph 28	Amended Terms (save for any terms in effect during the periods from around August 2004 to around November 2004, and from around September 2010 to around April 2012, further particulars of which to be provided after discovery)
	<ul style="list-style-type: none"> • if the balance of the customer's Informal Overdraft facility is more than \$50, an Overdrawn Fee will be charged. This fee will be charged for each ANZ Business Day that the balance of the customer's Informal Overdraft facility is more than \$50, up to a total of ten ANZ Business Days per calendar month (refer to 'ANZ Business Banking Transaction Account Fees and Charges' booklet for details); • the Informal Overdraft, any interest on that amount and any Overdrawn Fees will be debited to the customer's account; and • the customer must repay each Informal Overdraft and pay any accrued interest on that amount and any Overdrawn Fees within 30 days of the Informal Overdraft being debited to the customer's account. Any withdrawal, transfer or payment from the customer's account will be made firstly from any positive (Cr) balance, secondly from any available credit in any line of credit the customer has with ANZ that is linked to the customer's account, and thirdly from any amount made available via the Informal Overdraft facility. This Informal Overdraft facility is not available if the customer's account is an ANZ Equity Manager in a Company Name account with a credit limit. <p>Other than Informal Overdrafts ANZ does not agree to provide any credit in respect of the customer's account without prior written agreement. If the customer wants to avoid using the Informal Overdraft facility, the customer should ask ANZ about:</p> <ul style="list-style-type: none"> • other products which might better suit the customer's needs; • other ways in which the customer can monitor the balance of the customer's account.

Term pleaded at paragraph 28	Amended Terms (save for any terms in effect during the periods from around August 2004 to around November 2004, and from around September 2010 to around April 2012, further particulars of which to be provided after discovery)
<p>if the customer overdraws the account or the approved limit and ANZ dishonours the customer's withdrawal a fee will be charged to the customer's account</p> <p>(Overdrawing at page 9)</p>	<p>The customer should tell ANZ as soon as possible if the customer is in financial difficulty.</p> <p><i>Amended by the December 2009 Business PDS:</i></p> <p>For accounts other than ANZ Equity Manager in a Company Name</p> <p>If the customer does not satisfy ANZ's credit criteria for an Informal Overdraft at the time a debit (excluding a periodical payment) is initiated which, if processed, would result in either:</p> <ul style="list-style-type: none"> > the customer's account becoming overdrawn; or > the approved limit on the customer's account being exceeded, <p>ANZ will not allow the debit to be processed and the customer will be charged a Dishonour Fee.</p> <p>For ANZ Equity Manager in a Company Name Accounts [deleted]</p>
<p>if the customer overdraws and ANZ in its discretion honours the customer's withdrawal the customer will be charged an Honour fee and interest on the overdrawn balance</p> <p>(Overdrawing at page 9)</p>	<p><i>Amended by the December 2009 Business PDS:</i></p> <p>For accounts other than ANZ Equity Manager in a Company Name</p> <p>If the customer satisfies ANZ's credit criteria for an Informal Overdraft facility, and if the balance of the customer's Informal Overdraft facility:</p> <ul style="list-style-type: none"> - exceeds \$50, or - will exceed \$50 once the debit requested is processed, at the time a debit (excluding a periodical payment) is initiated which, if processed, would result in either: - the customer's account becoming overdrawn, or - the approved limit on the customer's account being

Term pleaded at paragraph 28	Amended Terms (save for any terms in effect during the periods from around August 2004 to around November 2004, and from around September 2010 to around April 2012, further particulars of which to be provided after discovery)	
	<p>exceeded, ANZ will allow the debit to be processed as an Informal Overdraft and the customer will be charged an Honour Fee on the day on which the debit is processed</p> <p>For ANZ Equity Manager in a Company Name Accounts If a debit would mean the customer's account is overdrawn, and both the debit and the account holder satisfy ANZ's criteria for the Informal Overdraft facility, ANZ will allow the debit to be processed using the Informal Overdraft facility and, if the balance of the customer's Informal Overdraft facility is more than \$50, an Overdrawn Fee will be charged. This fee will be charged for each ANZ Business Day that the balance of the customer's Informal Overdraft facility is more than \$50, up to a total of ten ANZ Business Days per calendar month.</p>	
<p>The customer can use his or her ANZ card to withdraw a total of AUD\$1,000 per day from any account to which it is linked provided the account contains sufficient funds (EFTPOS, MAESTRO, CIRBUS and PLUS – Daily Withdrawal Limit at p9)</p>		<p><i>Amended by November 2012 Business PDS:</i> Unless you have made special arrangements with us for a different limit, your combined ATM, EFTPOS, Maestro, Cirrus and PLUS daily* withdrawal limit is AUD\$1,000 per ANZ card. This means you can use your ANZ card to withdraw a total of AUD\$1,000 a day from the accounts linked to the card through ATMs and EFTPOS</p>

Term pleaded at paragraph 28	Amended Terms (save for any terms in effect during the periods from around August 2004 to around November 2004, and from around September 2010 to around April 2012, further particulars of which to be provided after discovery)	facilities, as long as the funds are available in your accounts. (p36)
<p>ANZ does not agree to provide any credit in respect of any Business Mortgage Loan Offset Account held by the customer (Specific Terms and Conditions for Business Mortgage Loan Offset Accounts at page 12)</p>	<p><i>Amended by the December 2009 Business PDS:</i></p> <p>An ANZ Business Overdraft Facility is not available on an ANZ GST Payment Account, ANZ Business Premium Saver Account, ANZ Business Cash Management Account, ANZ Premium Business Cash Account, ANZ Business Mortgage Loan Offset Account or an ANZ Agri Finance Offset Account.</p> <p>An ANZ Business Overdraft Facility can no longer be arranged on an ANZ Business Advantage Account; only an ANZ Business Advantage Overdraft Facility is available on an ANZ Business Advantage Account.</p> <p>(p28)</p>	<p><i>Amended by November 2012 Business PDS:</i></p> <p>An ANZ Business Overdraft Facility is not available on an ANZ GST Payment Account, ANZ Business Premium Saver Account, ANZ Business Cash Management Account, ANZ Premium Business Cash Account, ANZ Business Mortgage Loan Offset Account or an ANZ Agri Finance Offset Account.</p> <p>An ANZ Business Overdraft Facility can no longer be arranged on an ANZ Business Advantage Account; only an ANZ Business Advantage Overdraft Facility is available on an ANZ Business Advantage Account.</p> <p>(p28)</p>

Term pleaded at paragraph 28	Amended Terms (save for any terms in effect during the periods from around August 2004 to around November 2004, and from around September 2010 to around April 2012, further particulars of which to be provided after discovery)
the customer must not overdraw any Business Mortgage Loan Offset Account held by the customer (Specific Terms and Conditions for Business Mortgage Loan Offset Accounts at page 12)	Amended by the December 2009 PDS: [deleted]
If a Business Mortgage Loan Offset Account held by the customer becomes overdrawn then, although ANZ may in its discretion honour the customer withdrawal, immediate repayment will be required and the customer may be charged a fee (Specific Terms and Conditions for Business Mortgage Loan Offset Accounts at page 12)	Amended by the December 2009 Business PDS: [deleted]
ANZ may withdraw the customer's electronic access to accounts without prior notice if any one of the accounts is overdrawn or will become overdrawn, or is otherwise considered out of order by ANZ (Electronic Banking Conditions of Use – Withdrawal of Electronic Access at page 16)	Amended by the December 2009 Business PDS: ANZ may withdraw the customer's electronic access to accounts without prior notice if: <ul style="list-style-type: none"> - any one of the accounts is overdrawn or will become overdrawn (other than by use of the Informal Overdraft facility), or - any one of the accounts or the customer's use of an account is otherwise considered out of order by ANZ
ANZ charges an Honour Fee (Business Honour Fee) on each occasion that the customer's account is overdrawn or exceeds its maximum credit limit without prior arrangement with the customer's ANZ Manager (August 2004 Business Fees Document)	Amended by the December 2009 Business Fees Document: For accounts other than ANZ Equity Manager in a Company Name ANZ charges an Honour Fee at the time a debit (excluding a periodical payment) is initiated which, if processed, would result in either: <ul style="list-style-type: none"> > the customer's account becoming overdrawn; or Amended by the November 2012 Business Fees Document: For accounts other than ANZ Equity Manager in a Company Name ANZ charges a Business

Term pleaded at paragraph 28	Amended Terms (save for any terms in effect during the periods from around August 2004 to around November 2004, and from around September 2010 to around April 2012, further particulars of which to be provided after discovery)		
		<p>> the approved limit on the customer's account being exceeded, where the customer satisfies ANZ's credit criteria for an Informal Overdraft, and the balance of the customer's Informal Overdraft facility exceeds \$50 at the time of the initiation of that debit or will exceed \$50 after that debit has been processed.</p> <p>For ANZ Equity Manager in a Company Name Accounts ANZ charges an Honour Fee for each ANZ Business Day when the balance of the customer's Informal Overdraft facility is more than \$50 (up to a total of ten ANZ Business Days and a maximum amount of \$60 per calendar month).</p>	<p>Honour Fee for considering a request for an Informal Overdraft where the customer satisfies ANZ's credit criteria for an Informal Overdraft, and the balance of your Informal Overdraft facility exceeds \$50 after the debit requested has been processed.</p> <p>For ANZ Equity Manager in a Company Name Accounts A Business Honour Fee is payable for each ANZ Business Day when the balance of the customer's Informal Overdraft facility is more than \$50 (up to a total of ten ANZ Business Days and a maximum amount of \$60 per calendar month).</p>
<p>the amount of the Business Honour Fee is, for Business Cash Management Accounts, \$21.70, and for all other accounts, \$37.70</p>	<p><i>Amended by the November 2007 Business Fees Document:</i> the amount of the Business Honour Fee is \$37.70</p>	<p><i>Amended by the July 2008 Business Fees Document:</i> the amount of the Business Honour Fee is, for ANZ Equity Manager accounts in a company name, \$35, and for all other accounts, \$37.70</p>	<p><i>Amended by the December 2009 Business Fees Document:</i></p>

Term pleaded at paragraph 28	Amended Terms (save for any terms in effect during the periods from around August 2004 to around November 2004, and from around September 2010 to around April 2012, further particulars of which to be provided after discovery)			
(August 2004 Business Fees Document)			the amount of the Business Honour Fee is, for ANZ Equity Manager accounts in a company name, \$6, and for all other accounts, \$37.70	
the amount of the Business Dishonour Fee is \$37.70 (August 2004 Business Fees Document)	Amended by the July 2008 Business Fees Document: the amount of the Business Dishonour Fee is, for ANZ Equity Manager accounts in a company name, \$35, and for all other accounts, \$37.70	Amended by the December 2009 Business Fees Document: the amount of the Business Dishonour Fee is, for ANZ Equity Manager accounts in a company name, \$6, and for all other accounts, \$37.70		
ANZ charges an Outward Dishonour Fee (Business Dishonour Fee) when a cheque written, direct debit, or periodic payment from the customer's account is dishonoured due to the lack of cleared funds in the customer's account	Amended by the December 2009 Business Fees Document: ANZ charges an Outward Dishonour Fee at the time a debit (excluding a periodical payment) is initiated which, if processed, would result in either: > the customer's account becoming overdrawn; or > the approved limit on the customer's account being			Amended by the November 2012 Business Fees Document: For accounts other than ANZ Equity Manager in a Company Name A Business Dishonour Fee is charged for considering a request for an Informal Overdraft where the customer does not satisfy ANZ's credit criteria for an

Term pleaded at paragraph 28	Amended Terms (save for any terms in effect during the periods from around August 2004 to around November 2004, and from around September 2010 to around April 2012, further particulars of which to be provided after discovery)				Informal Overdraft. For ANZ Equity Manager in a Company Name Accounts A Business Dishonour Fee is charged when a cheque written, direct debit or periodic payment from your account is dishonoured due to the lack of cleared funds in your account.
(August 2004 Business Fees Document)	exceeded, where the customer does not satisfy ANZ's credit criteria for an Informal Overdraft.				
the amount of the Business Non-payment Fee is \$45 (August 2004 Business Fees Document)	<i>Amended by the December 2009 Business Fees Document:</i> the amount of the Business Non-payment Fee is, for ANZ Equity Manager accounts in a company name, \$6, and for all other accounts, \$45				
ANZ charges an inward dishonour fee when a deposit to the customer's account is dishonoured (August 2004 Business Fees Document)	<i>Amended by the December 2009 Business Fees Document:</i> [deleted]				
the amount of the inward dishonour fee referred to above is \$9 (August 2004 Business Fees Document)	<i>Amended by the December 2009 Business Fees Document:</i> [deleted]				

SCHEDULE 8: EXCEPTION FEES INCURRED BY THE FIRST APPLICANT

PART ONE – SAVING EXCEPTION FEES

DATE OF FEE	FEE AMOUNT	FEE TYPE	ACCOUNT TYPE	ACCOUNT NUMBER	ACCOUNT NAME(S)
18-Oct-99	35.00	Saving Dishonour Fee	Access		Paciocco Lucio Robert
26-Oct-99	35.00	Saving Dishonour Fee	Access		Paciocco Lucio Robert
18-Jan-00	35.00	Saving Dishonour Fee	Access		Paciocco Lucio Robert
18-Apr-00	35.00	Saving Dishonour Fee	Access		Paciocco Lucio Robert
15-Nov-01	21.70	Saving Honour Fee	Access		Paciocco Lucio Robert
03-Dec-01	21.70	Saving Honour Fee	Access		Paciocco Lucio Robert
18-Dec-01	21.70	Saving Honour Fee	Access		Paciocco Lucio Robert
15-Feb-02	29.50	Saving Honour Fee	Access		Paciocco Lucio Robert
18-Mar-02	29.50	Saving Honour Fee	Access		Paciocco Lucio Robert
15-Sep-08	35.00	Saving Honour Fee	Access Select Cheque		Paciocco Lucio Robert
26-Sep-08	35.00	Saving Non-Payment Fee	Access Select Cheque		Paciocco Lucio Robert
27-Jan-09	35.00	Saving Non-Payment Fee	Access Select Cheque		Paciocco Lucio Robert

TOTAL FEES : \$369.10 105.00

PART TWO – CARD EXCEPTION FEES

DATE OF FEE	FEE AMOUNT	FEE TYPE	ACCOUNT TYPE	ACCOUNT NUMBER	ACCOUNT NAME(S)
4-Sep-06	35.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
4-Mar-07	35.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
5-Aug-07	35.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
4-Nov-07	35.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
6-Apr-08	35.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
6-Jul-08	35.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
4-Aug-08	35.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
4-Feb-09	35.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
12-Aug-09	20.00	Overlimit Fee	Low Rate Mastercard		Lucio Robert Paciocco
12-Jan-10	20.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
12-May-10	20.00	Overlimit Fee	Low Rate Mastercard		Lucio Robert Paciocco
13-Jun-10	20.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
12-Jun-11	20.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
12-Oct-11	20.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
4-Jan-12	20.00	Overlimit Fee	Low Rate Mastercard		Lucio Robert Paciocco
5-Feb-12	20.00	Overlimit Fee	Low Rate Mastercard		Lucio Robert Paciocco
12-Feb-12	20.00	Overlimit Fee	Low Rate Mastercard		Lucio Robert Paciocco
4-Mar-12	20.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
12-Mar-12	20.00	Overlimit Fee	Low Rate Mastercard		Lucio Robert Paciocco
4-Apr-12	20.00	Overlimit Fee	Low Rate Mastercard		Lucio Robert Paciocco

DATE OF FEE	FEE AMOUNT	FEE TYPE	ACCOUNT TYPE	ACCOUNT NUMBER	ACCOUNT NAME(S)
12-Apr-12	20.00	Overlimit Fee	Low Rate Mastercard		Lucio Robert Paciocco
6-May-12	20.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
12-Jun-12	20.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
12-Jun-12	20.00	Overlimit Fee	Low Rate Mastercard		Lucio Robert Paciocco
12-Jul-12	20.00	Overlimit Fee	Low Rate Mastercard		Lucio Robert Paciocco
5-Aug-12	20.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
12-Aug-12	20.00	Overlimit Fee	Low Rate Mastercard		Lucio Robert Paciocco
4-Sep-12	20.00	Overlimit Fee	Low Rate Mastercard		Lucio Robert Paciocco
4-Sep-12	20.00	Late Payment Fee	Low Rate Mastercard		Lucio Robert Paciocco
6-Sep-12	20.00	Overlimit Fee	Low Rate Mastercard		Lucio Robert Paciocco
6-Nov-12	20.00	Overlimit Fee	Low Rate Mastercard		Lucio Robert Paciocco

TOTAL FEES : \$740.00

GRAND TOTAL: ~~\$1,109.10~~ 845.00

SCHEDULE 9: EXCEPTION FEES INCURRED BY THE SECOND APPLICANT

DATE OF FEE	FEE AMOUNT	FEE TYPE	ACCOUNT TYPE	ACCOUNT NUMBER	ACCOUNT NAME(S)
04-Mar-10	37.70	Business Honour Fee	Business Classic	[REDACTED]	Speedy Development Group Pty Ltd
09-Jul-10	37.70	Business Honour Fee	Business Classic	[REDACTED]	Speedy Development Group Pty Ltd
21-Nov-11	37.70	Business Honour Fee	Business Classic (with Overdraft Facility)	[REDACTED]	Speedy Development Group Pty Ltd
24-Nov-11	37.70	Business Honour Fee	Business Classic (with Overdraft Facility)	[REDACTED]	Speedy Development Group Pty Ltd
02-Aug-12	37.70	Business Honour Fee	Business Classic (with Overdraft Facility)	[REDACTED]	Speedy Development Group Pty Ltd
16-Aug-12	37.70	Business Honour Fee	Business Classic (with Overdraft Facility)	[REDACTED]	Speedy Development Group Pty Ltd
20-Aug-12	37.70	Business Honour Fee	Business Classic (with Overdraft Facility)	[REDACTED]	Speedy Development Group Pty Ltd
21-Aug-12	37.70	Business Honour Fee	Business Classic (with Overdraft Facility)	[REDACTED]	Speedy Development Group Pty Ltd

TOTAL FEES : \$301.60

SCHEDULE 10: EXCEPTION FEES

FEE TYPE	Prior to mid-2004	Mid-2004	From 2004 to 2009	December 2009 and after
Saving Dishonour Fee	Believed to be in or close to the order of the fees from 2004 onwards. Further particulars to be provided after discovery.	May 2004: \$45.00	From August 2008: \$35.00	From December 2009: \$6.00
Saving Honour Fee	As above	May 2004: \$29.50	From August 2008: \$35.00	From December 2009: \$6.00
Saving Non-Payment Fee	As above	May 2004: \$45.00	From August 2008: \$35.00	From December 2009: \$6.00
Late Payment Fee	As above	March 2004: \$35.00	From February 2008: \$35, or if the Account Holder holds an ANZ Access Basic account, \$10	From December 2009: \$20, or if the Account Holder holds an ANZ Access Basic account, \$0
Overlimit Fee	As above	March 2004: \$35.00	From February 2008: \$35, or if the Account Holder holds an ANZ Access Basic account, \$10	From December 2009: \$20, or if the Account Holder holds an ANZ Access Basic account, \$0

FEE TYPE	Prior to mid-2004	Mid-2004	From 2004 to 2009	December 2009 and after
Business Honour Fee	As above	August 2004: For Business Cash Management Accounts, \$21.70, and for all other accounts, \$37.70	From November 2007: \$37.70 From July 2008: For ANZ Equity Manager accounts in a company name, \$35, and for all other accounts, \$37.70	From December 2009: For ANZ Equity Manager accounts in a company name, \$6, and for all other accounts, \$37.70
Business Dishonour Fee	As above	August 2004: \$37.70	From July 2008: For ANZ Equity Manager accounts in a company name, \$35, and for all other accounts, \$37.70	From December 2009: For ANZ Equity Manager accounts in a company name, \$6, and for all other accounts, \$37.70
Business Non-payment Fee	As above	August 2004: \$45	Unchanged	From December 2009: For ANZ Equity Manager accounts in a company name, \$45

INWARD AND INBOUND DISHONOUR FEES CHARGED BY ANZ

Business - Inward Dishonour Fee	As above	August 2004: \$9.00	Unchanged	From December 2009: [deleted]
--	----------	---------------------	-----------	-------------------------------

SCHEDULE 11: GLOSSARY

In this Statement of Claim:

General

1. **ASIC Act Contracts** are those contracts referred to in paragraph 97;
2. **ANZ** is the respondent;
3. **Code Contracts** are those contracts referred to in paragraph 87;
4. **Contracts** are those Contracts referred to in paragraph 43(a)i;
5. the **December 2009 Redrafting** is referred to in paragraph 50;
6. **Dishonour Fees** are those fees referred to in paragraph 48;
7. **Exception Fees** are those fees referred to in paragraph 37;
8. **Exception Fee Charges** are those charges referred to in paragraph 42;
9. **Facilities** are referred to in paragraph 48;
10. **FTA Contracts** are those contracts referred to in paragraph 93;
11. **Group Members** are listed in a compact disc which comprises Schedule 'A' to the application;
12. **Honour Fees** are those fees referred to in paragraph 48;
13. **New Code Contracts** are those contracts referred to in paragraph 90;
14. **Overdraw Fees** are those fees referred to in paragraph 48;
15. an **Overdrawing Transaction** is a transaction referred to in paragraph 48;
16. **Overdraw Stipulations** are those stipulations referred to in paragraph 54;
17. **Penalty Provisions** are those provisions referred to in paragraph 41;
18. the **Redrafted Overdraw Fees** are those fees referred to in paragraph 50;
19. a **Timely Payment Stipulation** is a stipulation referred to in paragraph 47;

Saving Accounts

20. **Fees Documents** are those documents referred to in paragraph 10(d);

21. **PDSs** are those documents referred to in paragraph 10(c);
22. a **Saving Account** is any one of the following accounts:
- (a) ANZ Access Advantage
 - (b) ANZ Access Select
 - (c) ANZ Passbook Savings
 - (d) ANZ Progress Saver
 - (e) ANZ Premium Cash Management Account
 - (f) ANZ Term Deposit
 - (g) ANZ Home Loan Interest Saver
 - (h) ANZ One
 - (i) ANZ Equity Manager
 - (j) ANZ Prime Cash Management Account
 - (k) ANZ V2 PLUS
 - (l) ANZ Online Saver
23. **Saving Contracts** are those contracts referred to in paragraph 11;
24. a **Saving Dishonour Event** is:
- (a) an event stipulated in the terms set out at sub-paragraphs 12(c), 12(d) and 12(f); and
 - (b) any and all events stipulated by any amendments to those terms stipulated in Schedule 2;
25. a **Saving Dishonour Fee** is:
- (a) a fee charged pursuant to the terms set out at sub-paragraphs 12(b) and 12(f); and
 - (b) any and all fees charged pursuant to any amendments to those terms stipulated in Schedule 2;
26. **Saving Exception Fees** are those fees referred to in paragraph 34;
27. **Saving Exception Fee Charges** are those charges set out at sub-paragraphs 12(t), 12(v) and 12(w);

28. **Saving Group Members** are those Group Members referred to in paragraph 10(b);
29. a **Saving Honour Event** is:
 - (a) an event stipulated in the terms set out at sub-paragraphs 12(a), 12(l)ii and 12(u);
 - (b) any and all events stipulated by any amendments to those terms stipulated in Schedule 2;
30. a **Saving Honour Fee** is:
 - (a) a fee charged pursuant to the terms set out at sub-paragraph 12(a) and 12(u);
 - (b) any and all fees charged pursuant to any amendments to those terms stipulated in Schedule 2;
31. a **Saving Non-Payment Fee** is:
 - (a) a fee charged pursuant to the term set out at sub-paragraph 12(g);
 - (b) any and all fees charged pursuant to any amendments to that term stipulated in Schedule 2;
32. a **Saving Overdraw Condition** is:
 - (a) a condition stipulated in the term set out at sub-paragraph 12(k);
 - (b) any and all conditions stipulated by any amendments to that term stipulated in Schedule 2;
33. **Saving Penalty Provisions** are those provisions referred to in paragraph 38;
34. a **Saving Periodical Payment Dishonour Event** is:
 - (a) an event stipulated in the term set out at sub-paragraph 12(g); and
 - (b) any and all events stipulated by any amendments to that term stipulated in Schedule 2;

Card Accounts

35. a **Card Account** is any continuing credit facility opened in accordance with a Card Contract;
36. **Card Contracts** are those contracts referred to in paragraph 19;

- 37. **Card Exception Fees** are those fees referred to in paragraph 35;
- 38. **Card Exception Fee Charges** are those charges referred to in sub-paragraphs 20(q) and 20(s);
- 39. **Card Group Members** are those Group Members referred to in paragraph 18(a);
- 40. **Card Letters of Offer** are those letters of offer referred to in paragraph 18(b);
- 41. a **Card On-time Payment Condition** is:
 - (a) any condition or conditions stipulated in the terms set out at sub-paragraphs 20(c) and 20(g);
 - (b) any and all conditions stipulated by any amendments to those terms stipulated in Schedule 5;
- 42. a **Card Overdraw Condition** is:
 - (a) a condition stipulated in the term set out at sub-paragraph 20(a);
 - (b) any and all conditions stipulated by any amendments to that term stipulated in Schedule 5;
- 43. **Card Penalty Provisions** are those provisions set out in paragraph 39;
- 44. **Conditions of Use** are those documents referred to in paragraph 18(a);
- 45. a **Late Payment Fee** is:
 - (a) a fee charged pursuant to the term set out in sub-paragraph 20(p);
 - (b) any and all fees charged pursuant to any amendments to that term stipulated in Schedule 5;
- 46. a **Late Payment Event** is:
 - (a) an event stipulated in the term set out at sub-paragraph 20(p);
 - (b) any and all events stipulated by any amendments to that term stipulated in Schedule 5;
- 47. an **Overlimit Fee** is:
 - (a) a fee charged pursuant to the term set out in sub-paragraph 20(r);
 - (b) any and all fees charged pursuant to any amendments to that term stipulated in Schedule 5;

48. an **Overlimit Event** is:

- (a) an event stipulated in the term set out at sub-paragraph 20(r);
- (b) any and all events stipulated by any amendments to those terms stipulated in Schedule 5;

Business Accounts

49. a **Business Account** is any one of the following accounts:

- (a) Business Classic Account,
- (b) Business Extra Account,
- (c) Business Cash Management Account,
- (d) Business Mortgage Loan Offset Account,
- (e) GST Payment Account,
- (f) Term Deposits,
- (g) Negotiator Account,
- (h) ANZ Premium Business Cash Account,
- (i) ANZ Equity Manager in a Company Name Account;

50. **Business Contracts** are those documents referred to in paragraph 27;

51. a **Business Dishonour Event** is:

- (a) an event stipulated in the terms set out at sub-paragraphs 28(g), 28(h), 28(j) and 28(v); and
- (b) any and all events stipulated by any amendments to those terms stipulated in Schedule 9;

52. a **Business Dishonour Fee** is:

- (a) a fee charged pursuant to the term set out at sub-paragraph 28(v); and
- (b) any and all fees charged pursuant to any amendments to that term stipulated in Schedule 9.

53. **Business Exception Fees** are those fees referred to in paragraph 36;

54. **Business Exception Fee Charges** are those charges referred to in sub-paragraphs 28(s), 28(w) and 28(y);

- 55. **Business Fees Documents** are those documents referred to in paragraph 26(d);
- 56. **Business Group Members** are those members referred to in paragraph 26(b);
- 57. a **Business Honour Event** is:
 - (a) any event stipulated in the terms set out at sub-paragraphs 28(k) and 28(r); and
 - (b) any and all events stipulated by any amendments to those terms stipulated in Schedule 9;
- 58. a **Business Honour Fee** is:
 - (a) a fee charged pursuant to the terms set out at sub-paragraphs 28(k) and 28(r);
 - (b) any and all fees charged pursuant to any amendments to those terms stipulated in Schedule 9;
- 59. a **Business Non-payment Event** is:
 - (a) an event stipulated in the term set out at sub-paragraph 28(x); and
 - (b) any and all events stipulated by any amendments to that term stipulated in Schedule 9;
- 60. a **Business Non-payment Fee** is:
 - (a) a fee charged pursuant to the term set out at sub-paragraph 28(x); and
 - (b) any and all fees charged pursuant to any amendments to that term stipulated in Schedule 9;
- 61. **Business Penalty Provisions** are those provisions set out at paragraph 40;
- 62. **Business PDSs** are those documents referred to in paragraph 26(c).