

ENFORCEABLE UNDERTAKING TO THE FINANCIAL MARKETS AUTHORITY

**Pursuant to ss 46 and 46A of the Financial
Markets Authority Act 2011**

ANZ Bank New Zealand Limited

Enforceable Undertaking dated 28 August 2025

1 Parties

ANZ Bank New Zealand Limited (ANZ), a duly incorporated company having its registered office at Ground Floor, ANZ Centre, 23-29 Albert Street, Auckland, 1010, New Zealand

and

Financial Markets Authority – Te Mana Tātai Hokohoko (FMA), an independent Crown entity established under s 6 of the Financial Markets Authority Act 2011 (**FMA Act**)

2 Introduction

- 2.1 The FMA has regulatory oversight in relation to the Financial Markets Conduct Act 2013 (**FMCA**).
- 2.2 The FMA has investigated ANZ's conduct in respect of:
- (a) the repayment by some of ANZ's customers, between 3 August 2014 and 22 August 2022 (**CC Relevant Period**), of cash contributions that ANZ paid to those customers; and
 - (b) amounts ANZ charged some of its customers for payments made by the customer that temporarily put the customer into unarranged overdraft, but were ultimately dishonoured, between 1 November 2012 and July 2023.
- 2.3 ANZ has agreed to give an enforceable undertaking under sections 46 and 46A of the FMA Act in respect of the conduct set out in section 3 below.

3 Background and admissions

- 3.1 The undertakings set out in this document are given by ANZ in relation to the matters set out below.

Cash contributions

- 3.2 ANZ provided cash contributions to some customers when they obtained a new floating, fixed, flexible, or business home loan from ANZ during the CC Relevant Period.
- 3.3 In order to qualify for and receive a cash contribution, customers had to:
- (a) meet any minimum equity threshold;
 - (b) meet certain lending criteria; and
 - (c) sign a Deed of Acknowledgement (**DOA**) regarding the terms of the cash contribution.
- 3.4 The DOA was a legally binding document. It made the cash contribution conditional on the customer keeping all of their banking and lending with ANZ for a set time period. If customers failed to do so ANZ could ask the customer to repay the cash contribution.

Repayment of cash contributions

- 3.5 During the CC Relevant Period, ANZ would usually assert a right to repayment of the cash contribution if a customer sought to discharge a mortgage with ANZ within 2 or 3 years of receiving the contribution (**DOA period**), because ANZ assumed that a customer seeking to discharge a mortgage was moving at least some of their lending or banking from ANZ.
- 3.6 Where the customer (or their solicitor) informed ANZ that this was not the case, ANZ did not seek repayment of the cash contribution or, if the customer had already repaid the cash contribution, ANZ reversed the payment.
- 3.7 Throughout the CC Relevant Period, ANZ communicated the requirement for repayment of the cash contribution in documents it sent to the customer (through their solicitor) as part of the settlement process, namely:
- (a) a “discharge letter of instructions”; and
 - (b) a settlement statement, or “confirmation of settlement proceeds” form.
- 3.8 The discharge letter of instructions included an indicative settlement amount. That was a single figure which (without separately itemising it) included the cash contribution amount.
- 3.9 The discharge letter of instructions said that ANZ would contact the solicitor acting for the customer “prior to 10.00am on settlement date to confirm the amount required to repay advances”.
- 3.10 On the day of settlement, ANZ staff sent the customer’s solicitor a “confirmation of settlement proceeds” form. The cash contribution was included as one line item together with a discharge fee. During the CC relevant period the discharge fee was disclosed in ANZ’s fees and charges brochure and was \$100 for simple discharges. The cash contribution was not separately itemised.
- 3.11 The “confirmation of settlement proceeds form”:
- (a) stated, in a footnote, that the amount set out in the form “must” be repaid in order for discharge to take place; and
 - (b) was expressed as a “confirmation” of the amounts owing.
- 3.12 The process outlined in paragraphs 3.5 – 3.11 above took place in respect of approximately 98% of mortgage discharges during the CC Relevant Period. The other 2% of mortgage discharges were prepared manually by staff. The discharges manually prepared by staff separately itemised the cash contribution repayment (i.e. separated out the discharge fee).

Application of the fair dealing provisions of the FMCA

- 3.13 During the CC Relevant Period, by sending a discharge letter of instruction and a confirmation of settlement proceeds form to some of its customers (via those customers’ solicitors) which contained the cash contribution amount, ANZ claimed that those customers had to repay their cash contributions (**Cash Contribution Representations**).
- 3.14 ANZ admits that the Cash Contribution Representations:

- (a) were representations made to its customers for the purposes of the FMCA;
 - (b) were made in trade; and
 - (c) were made in connection with the supply of financial services.
- 3.15 ANZ admits that the Cash Contribution Representations breached s 22(h) of the FMCA in that they were false representations of ANZ's right to require payment of the cash contribution under the DOA to those customers who were keeping to the terms of the DOA.

Scope and remediation

- 3.16 During the CC Relevant Period, ANZ sought repayment in instances where ANZ may not have been advised by the customer that they were not moving their banking or lending at the time they asked ANZ to discharge their security.
- 3.17 In most instances, ANZ now has evidence that the customer did in fact move at least some of their banking or lending from ANZ.
- 3.18 ANZ has remediated 1,019 customers where it has not been able to verify that the customer did not keep to the terms of the DOA, comprising refunds of cash contributions of \$2,428,006 and use of money payments of \$582,030.
- 3.19 In March 2024, ANZ introduced a new process, which requires the customer to provide a reason for discharge and clarifies that ANZ can require the customer to repay a cash contribution if the customer fails to do so.

Unarranged overdraft fee

- 3.20 At all times during the relevant period, customers were required under ANZ's General Terms and Conditions to ensure that they had sufficient funds or credit to cover any payments they made from their account. ANZ's Terms and Conditions provided that fees and charges may be payable if there were insufficient funds in a customer's account for a payment.
- 3.21 In certain circumstances, occurring between 20 December 2012 and 31 May 2023 (**UOF period**), ANZ charged some customers an unarranged overdraft fee (together with a charge for excess interest) (**Unarranged Overdraft Fee**) in circumstances where the payment was ultimately dishonoured.
- 3.22 In each case, the payment made by the customer left the customer's account and was settled with the payee bank. ANZ incurred costs associated with funding that payment until such time as it was reversed.
- 3.23 The Unarranged Overdraft Fee, charged on transactions that were ultimately dishonoured, were inconsistent with ANZ's Terms and Conditions in effect during the relevant periods. During the UOF period, ANZ's Terms and Conditions allowed *either* the Unarranged Overdraft Fee to be charged, *or* the payment to be dishonoured.

Breach of the FMCA

- 3.24 Part 2 of the FMCA came into force on 1 April 2014.
- 3.25 Where an Unarranged Overdraft Fee was charged to customers, it was shown as a line entry in the customer's relevant account. The line entries represented that:

- (a) the customer was charged the Unarranged Overdraft Fee; and
 - (b) ANZ was entitled to charge the Unarranged Overdraft Fee.
- (the **Fee Representation**).

3.26 ANZ admits that for the purposes of the FMCA:

- (a) the Fee Representation was a representation;
- (b) where the Fee representation was made in connection with certain products it was made "in connection with... the supply or possible supply of financial services... or use of financial services" in terms of s 22 of the FMCA;
- (c) the Fee Representation was made in trade; and
- (d) the Fee Representation was false and misleading, because the Unarranged Overdraft Fee was not payable under the relevant terms and conditions.

3.27 ANZ admits that the Fee Representation from 1 April 2014 breached s 22(h) of the FMCA, as it represented that ANZ had a right or remedy which ANZ in fact did not have.

Scope and remediation

3.28 The total number of customers affected by the Unarranged Overdraft Fee representation made in connection with financial services since 1 April 2014 is 209,960.

3.29 The total dollar value of overcharges as a result of the Unarranged Overdraft Fee being incorrectly charged in relation to financial services since the FMCA came into force is \$4,373,972 comprising refunds of the Unarranged Overdraft Fee of \$3,494,894 and \$879,078 of excess interest. ANZ has also paid use of money on remediation amounts of \$1,019,459.

3.30 ANZ has made remediation payments to all impacted customers who are currently ANZ customers, has made reasonable attempts to contact all former impacted customers and has paid all former customers that have claimed payments.

4 Purpose and effect of the Undertakings

4.1 ANZ have offered the undertakings set out in paragraph 5.1 below.

4.2 The Undertakings:

- (a) are accepted by the FMA as court enforceable undertakings in terms of sections 46, 46A and 47 of the FMA Act; and
- (b) come into effect when executed by ANZ, and signed as accepted by the FMA.

5 Undertakings

5.1 ANZ undertakes to:

- (a) Make a payment of \$1,170,000 in lieu of a pecuniary penalty in respect of the Cash Contribution Representations and \$2,080,000 in lieu of a

pecuniary penalty in respect of the Fee Representations, together \$3,250,000 (**Penalty Sum**), into a Crown Bank Account.

- (b) Make a payment to the FMA of \$82,369.50 legal fees plus \$7,000 expert fees in respect of the FMA's costs in respect of investigating ANZ's conduct and entering this enforceable undertaking (**Costs Sum**).
- (c) In the event ANZ fails to pay the Penalty Sum and Costs Sum within 20 working days of this undertaking becoming effective, the FMA may at its absolute discretion pursue recovery of the Penalty Sum and Costs Sum plus interest in accordance with the Interest on Money Claims Act 2016 and legal costs on a solicitor-client basis.
- (d) As soon as reasonably practicable, to the extent that it has not already occurred, make reasonable attempts to identify any further customers who were misled by the relevant Cash Contribution claim during the CC Relevant Period and who suffered loss, and refund the cash contribution to them (together with an amount of use of money interest).
- (e) As soon as reasonably practicable after any reasonable attempts have been made under paragraph 5.1(d), provide a written report to the FMA confirming it has satisfied 5.1(d).

(Undertakings).

6 Record of commitment

- 6.1 In addition to providing the Undertakings at paragraph 5.1 above, ANZ also records its commitment to developing and maintaining effective policies, systems, and processes to support good customer outcomes and to prevent issues of the kind referred to in these Undertakings from occurring in the future.

7 Miscellaneous

- 7.1 ANZ gives these Undertakings in full and final settlement of any claims that could have been made against ANZ or any of its current or former officers, employees, directors, or interconnected bodies corporate arising out of the conduct set out in section 3 above.
- 7.2 No amendment to the Undertakings (or anything else in this document) will be effective unless in writing, executed by ANZ, and signed as accepted by the FMA.
- 7.3 These Undertakings are properly executed if ANZ and the FMA sign the same copy, or separate identical copies of the execution page(s). Where separate copies are signed by ANZ and FMA, the signed copy can be the original document or an emailed copy.
- 7.4 In providing these Undertakings, ANZ:
- (a) acknowledges that the FMA:
 - (i) will make these Undertakings publicly available by publishing them on the FMA's website, including by giving the notice required by s 46A(3) of the FMA Act;
 - (ii) will also publish on its website a brief description of the

circumstances and nature of the alleged contravention to which the Undertakings relate; and

(iii) may make public reference to the Undertakings including in media statements or other publication.

(b) will ensure that any public statements made by them (or their related parties) relating to these Undertakings are consistent with Parts 2-5 above; and

(c) acknowledge that, in accepting the Undertakings, the FMA is not prevented from exercising its rights and power under any relevant legislation for any contravention of the Undertakings or in relation to any other matter not the subject of these Undertakings.

7.5 The FMA will provide ANZ with reasonable prior notice of the FMA's media release confirming the acceptance of the Undertakings. The content of the release will be consistent with the content and terms of these Undertakings. ANZ will be provided a reasonable opportunity to correct any factual inaccuracies.

EXECUTION

Signed by and on behalf of ANZ Bank New Zealand Limited



Authorised signature

DAVID BRICKLEBANK

Name

In the presence of:



Witness signature

Witness name: KERRIANE MARGARET ANDERSON.

Witness address:

[REDACTED ADDRESS]

Witness occupation: EXECUTIVE ASSISTANT

Date: 28 August 2025

ACCEPTANCE

Signed by and on behalf of **Financial Markets Authority**

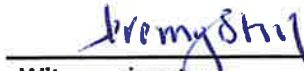


Authorised signature



Name

In the presence of:



Witness signature

Witness name: **JEREMY BRODRICK BOWES STEEL**

Witness address: **AUCKLAND**

Witness occupation: **SOLICITOR**

Date: **1 SEPTEMBER 2025**