

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE

CIV-2021-404-119

ANZ CCCFA REPRESENTATIVE PROCEEDING

NOTICE OF OPT OUT RIGHTS

This is an important notice issued to you by the High Court. You have received it because you may be a class member of the **ANZ CCCFA REPRESENTATIVE PROCEEDING**.

What you need to do to respond to this notice

As explained below, you can do one of two things in response to this notice:

1. **You can opt out** of being a class member of the proceeding by **26 September 2025**. If you opt out:
 - you will not be entitled to share in the benefit of any judgment or settlement; **but**
 - you will be able to pursue your own claim against ANZ.**Section 6** of this notice tells you how to opt out.
2. **You can do nothing** and remain a class member. If you remain a class member:
 - if the proceeding is successful, you may get to share in the benefits, including any money that ANZ is required to pay, subject to you taking certain steps and satisfying certain conditions; **but**
 - if the proceeding is not successful, you may not be able to take the same claim to court again.

The opt out deadline is 5.00pm, 26 September 2025.

A. ABOUT THIS NOTICE

1. Why is this notice important?

A representative proceeding has been commenced in the High Court of New Zealand against ANZ Bank New Zealand Limited (**ANZ**).

The High Court has ordered that this notice be sent to anyone who might be a “class member” on whose behalf the proceeding is brought.

You have been identified as someone who may be a class member. This notice contains important information about your legal rights and, in particular, your right to opt out of the proceeding. Please read it carefully.

Any questions you have concerning the matters contained in this notice should NOT be directed to the court. If there is anything in the notice that you do not understand, you should seek legal advice. You can also contact the plaintiffs’ lawyers, Russell van Hout, for further information, by emailing them at bankingclassaction@rvh.co.nz.

2. What is a representative proceeding?

A representative proceeding is a lawsuit brought by one or more people (**plaintiffs**) on behalf of themselves and other people (**class members**) who have similar claims against someone who is alleged to have affected their legal rights (**defendant**).

Class members who have not opted out of the representative proceeding are “bound” by the outcome. A binding outcome can happen in two ways: either a judgment issued by the Court, or an agreed settlement. A judgment or settlement will limit and may prevent class members from being able to bring their own proceedings against the defendant.

In particular:

- (a) In a judgment, the Court will decide various factual and legal issues in respect of the claims made by the plaintiffs and class members. Those decisions bind the plaintiffs, class members and defendant. Importantly, if a class member brings proceedings against the defendant, it is likely that neither of them will be permitted to raise arguments in that proceeding which are

inconsistent with a factual or legal issues decided in the representative proceeding.

- (b) Any settlement that provides for compensation to class members is likely to extinguish all rights to compensation which a class member might have against the defendant that arise in any way out of the events or transactions which are the subject-matter of the representative proceeding.

Class members may be required to take a positive step prior to or following any judgment or settlement in order to be able to claim any money under that judgment or settlement.

If you consider that you have claims against ANZ which are based on your individual circumstances or otherwise additional to the claims described in the representative proceeding, then it is important that you seek independent legal advice about the potential binding effects of the representative proceeding before the deadline for opting out (see Section 6 below).

B. INFORMATION ABOUT THIS REPRESENTATIVE PROCEEDING

3. What is this representative proceeding about?

Pursuant to s 22 of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**), when ANZ makes an agreed change to a home or personal loan that is a consumer credit contract, it is required to provide the relevant customer(s) with disclosure of the full particulars of the change within prescribed timeframes (**Variation Disclosure**).

Between 6 June 2015 and 28 May 2016 (**Relevant Period**), ANZ sent the plaintiffs and other class members Loan Variation Letters intended to contain Variation Disclosure which, due to a loan calculator error (**Loan Calculator Error**), contained incorrect information in respect of one or more of the following:

- (a) the total amount payable under the loan;
- (b) the total amount of interest payable under the loan;
- (c) the amount of the new regular payment;

- (d) the total number of payments to be made;
- (e) the date of the final repayment.

(Incorrect Information)

In 2018 and 2019, ANZ wrote to class members informing them of the Loan Calculator Error and credited their ANZ Loans or otherwise paid them various amounts. In 2020, ANZ entered into a settlement agreement with the Commerce Commission relating to the Loan Calculator Error pursuant to which it made further payments to certain class members.

The plaintiffs allege that during the Relevant Period, ANZ breached s 22 because the Loan Variation Letters that contained Incorrect Information did not comply with s 22 and therefore did not constitute Variation Disclosure. They are seeking:

- (a) orders under the CCCFA directing ANZ to refund or credit them and other class members all of the costs of borrowing (interest and fees) they have paid since the breaches of s 22 occurred; or
- (b) orders under the CCCFA requiring ANZ to pay them and other class members statutory damages.

They are also seeking declarations, interest and costs.

ANZ denies the plaintiffs' claims against it and is defending the proceeding. ANZ has raised a number of defences, including that it did not breach s 22 of the CCCFA because it provided the information that it was required to provide and that information was correct, and it was entitled to receive the payments made. ANZ also says the payments it made to its customers following the Commerce Commission investigation have left customers in a better position than they would have been in even if there was no Loan Calculator Error. In other words, the plaintiffs and class members have not suffered any loss.

On 31 March 2025, the Credit Contract and Consumer Finance Amendment Bill 137-1 was introduced into Parliament. If the Bill becomes law in the form introduced, it will amend the CCCFA retrospectively. The plaintiffs' position is that the amendment could

impact the quantum of relief available in the representative proceeding and therefore the economics of the case. ANZ's position is that the Bill simply confirms that the Court has the discretion, which already exists under the CCCFA, to ensure a just and equitable outcome in the proceeding.

The ANZ CCCFA representative proceeding is being run together with a representative proceeding against ASB Bank Limited which also relates to Variation Disclosure.

4. **Are you a class member?**

You are a class member if you:

- (a) entered into one or more home or personal loans with ANZ that was a consumer credit contract between 6 June 2015 and 28 May 2016 (the Relevant Period) (**ANZ Loan**);
- (b) requested and ANZ made one or more agreed changes to one or more of your ANZ Loans during the Relevant Period in relation to which ANZ was required to provide you with Variation Disclosure (**Agreed Changes**); and
- (c) ANZ sent you at least one Loan Variation Letter intended to disclose the full particulars of an Agreed Change which, as a result of the Loan Calculator Error, contained Incorrect Information in respect of one or more of the following:
 - (i) the total amount payable under the loan;
 - (ii) the total amount of interest payable under the loan;
 - (iii) the amount of the new regular payment;
 - (iv) the total number of payments to be made;
 - (v) the date of the final repayment.

It is likely that you are a class member if you received one or more letters and/or payments from ANZ in relation to the Loan Calculator Error between 2018 and 2020.

However, you will not be a class member if your loan was not a consumer credit contract, for example because you borrowed as a trustee or through a company, or because the loan was for investment or business purposes.

If you are unsure whether you are a class member, you can seek your own legal advice.

5. Who are the plaintiffs and who are their lawyers?

The plaintiffs bringing the representative proceeding are Andrew Beavan and Mei Lim.

The plaintiffs' key responsibilities are to make decisions about the conduct of the representative proceeding, including settlement, and instruct the lawyers representing them. In carrying out these responsibilities, they must consider the interests of the other class members and avoid or manage any conflicts of interest that may affect their role.

Russell van Hout are the solicitors for the plaintiffs. More information about the legal team can be found at www.bankingclassaction.com/team.

6. What is an “opt out” representative proceeding and what are your options?

The plaintiffs did not need to seek the consent of class members to commence the representative proceeding on their behalf. However, class members may choose not to be part of the proceeding if they want. This is called “opting out”. Explanations of how you can opt out and what will happen if you opt out and if you don't are set out below.

What will happen if you opt out?

If you opt out, you will not be bound by or entitled to share in the benefit of any judgment or settlement in the representative proceeding. This means you will not receive any money from the representative proceeding if it is successful.

If you opt out, you will be entitled to bring your own separate lawsuit against ANZ, provided that you file your legal proceedings within any time limit (known as a “limitation period”) that may apply to your claim. If you

wish to bring your own claim against ANZ, you should seek legal advice about your claim and the applicable limitation period before opting out as it may be too late to bring a separate claim.

How can you opt out?

If you do not want your legal rights to be determined by this representative proceeding, you must opt out.

To opt out, you can complete the “Opt Out Form” attached to this notice, then send it to Russell van Hout by email or post. Alternatively, you can fill in an Opt Out Form and submit it to Russell van Hout online at www.bankingclassaction.com.

IMPORTANT: Your completed Opt Out Form must reach Russell van Hout no later than 5pm on 26 September 2025, otherwise it will not be effective.

If you are a joint borrower under an ANZ Loan, you can complete the Opt Out Form individually (with each borrower completing and signing a separate form) or together with the other borrowers (with each borrower completing and signing the same form).

If you are not sure whether you are a class member but you are sure you do not want to be part of the representative proceeding, you should opt out.

What will happen if you do not opt out?

If you do not opt out you will remain a remain a class member. If you remain a class member, you will be bound by any judgment in or settlement of the representative proceeding. If the representative proceeding is successful, you may be entitled to share in the benefit of any order, judgment or settlement in favour of the plaintiffs and class members. However, you may have to take certain steps or satisfy certain conditions before your individual entitlement arises.

If the proceeding is unsuccessful, or not as successful as you would have wished, you may not be able to pursue the same claims against ANZ in other legal proceedings. You will not be liable for any legal or other costs.

What do you need to do to remain a class member?

If you wish to remain a class member there is nothing you need to do at the present time.

However, you are invited to visit www.bankingclassaction.com and register with your most up to date contact details to receive updates on the progress of the proceeding from Russell van Hout.

7. How is the representative proceeding being funded?

Class members are not individually responsible for the legal costs associated with bringing the proceeding. Only the plaintiffs are responsible for those costs.

The plaintiffs' legal and other costs are being funded by a New Zealand litigation funder called LPF Litigation Funder No. 33 Limited (**LPF**). Australian litigation funder CASL Management Pty Ltd is also funding the proceeding under a co-funding agreement with LPF. More information about the funders can be found at www.bankingclassaction.com/team.

If the representative proceeding is **unsuccessful**, class members will not be liable to contribute to the plaintiffs' costs. They also will not, in any circumstances, be liable for any adverse costs orders made against the plaintiffs (that is, orders requiring the plaintiffs to pay ANZ's costs if they lose).

Pursuant to a "common fund order" (**CFO**) made by the Court of Appeal, if the representative proceeding is **successful**, all class members who are entitled to share in the benefit of the judgment or settlement will be required to contribute towards reimbursing LPF for the costs it has funded and to LPF's commission (calculated on a percentage basis). The costs and LPF's commission will be deducted from the overall sum recovered from ANZ before any payments are made to the plaintiffs and class members.

Under the CFO, LPF's commission will depend on a number of factors, including how much it incurs in costs and how much is payable by ANZ. The commission rates that apply in different circumstances are set out in the CFO. For example:

- (a) If LPF incurs costs of \$1 million or more and ANZ is required to pay \$100 million, LPF's commission will be 22.5% of the amount paid by ANZ.
- (b) If LPF incurs costs of \$1 million or more and ANZ is required to pay less than \$10 million, LPF's commission will be 23.5% of the amount paid by ANZ.

It is not possible to say what percentage of the total amount payable will be paid to LPF as commission at this time.

No amounts will be paid from any judgment or settlement to LPF unless the Court approves those amounts. The Court may, for example, decide to lower the applicable commission under the CFO if it considers that it is not fair and reasonable.

Copies of the funding agreement between the plaintiffs, certain class members and LPF, and the CFO are available at www.bankingclassaction.com/claim-materials.

It is highly recommended that you view and consider the CFO before deciding whether or not to opt out. If you do not understand the effect of the CFO, seek independent legal advice.

C. WHERE TO FIND RELEVANT DOCUMENTS

Copies of relevant documents, including the relevant pleadings (as amended from time to time) and court judgments issued in the case so far can be obtained by:

- (a) downloading them from the representative proceeding website, www.bankingclassaction.com/claims-materials; or
- (b) contacting the Auckland High Court Registry on 09 916 9600 or by email at aucklandhc@justice.govt.nz.

If you think you are or may be a class member, it is recommended that you read these documents as they will assist you to understand the representative proceeding and the orders that have been sought and made by the Courts to date.

Please consider these matters carefully. If you are unsure about anything, you should contact Russell van Hout by email at bankingclassaction@rvh.co.nz or seek your own separate legal advice. You should not delay in making your decision.