NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 8/02/2021 4:00:20 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged**:**	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	VID133/2020
File Title:	TRACEY REILLY & ANOR v AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED & ORS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised

SEAL OF THE FEDERAL COURT OF AUSTRALIA

Sia Lagos

Dated**:** 8/02/2021 5:21:28 PM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Form 19
Rule 9.32

<u>Amended</u> Originating Application starting a representative proceeding under Part IVA of the Federal Court of Australia Act 1976

<u>Amended pursuant to leave granted by the Honourable Justice O'Bryan on 19 October 2020 and 5 February 2021</u>

No. VID 133 of 2020

Federal Court of Australia
District Registry: Victoria
Commercial and Corporations NPA
Regulator and Consumer Protection Sub-area

TRACEY REILLY and another named in the Schedule

Applicants

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED ACN 005 357 522 and others named in the Schedule

Respondents

To the Respondents

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne

Date: 2020

Filed on behalf of (name & role of party)	Tracey Reilly and Catherine Galli, the Applicants
Prepared by (name of person/lawyer)	Andrew Paull
Law firm (if applicable)	Slater & Gordon Lawyers
Tel	(03) 9190 0590 Fax (03) 9600 0290
Email	Andrew.Paull@slatergordon.com.au
Address for service (include state and postcode)	Slater & Gordon 485 La Trobe Street, Melbourne Vic 3000

DETAILS OF CLAIM

On the grounds stated in the accompanying amended statement of claim (**Amended Statement of Claim**), the Applicants claims for themselves, and on behalf of Group Members (as described under the heading 'Representative Action' below):

Note: Capitalised terms have the same meaning in the Amended Statement of Claim.

1. An order pursuant to s 12GF and/or s 12GM of the ASIC Act that the Respondents pay to the Applicants and the Group Members whose Policy was issued, or who have paid premiums under their Policy, during the six year period prior to commencement of this proceeding, the amount of the loss or damage suffered by them and/or likely to be suffered by them, by the unconscionable conduct of the Respondents.

2. An order pursuant to s 12GF and/or s 12GM of the ASIC Act that the Respondents pay to the Applicants and the Misled Group Members the amount of the loss or damage suffered by them and/or likely to be suffered by them by reason of the misleading or deceptive conduct of the Respondents.

3. An order pursuant to s 12GM(1) of the ASIC Act declaring void each Policy entered into as a result of the unconscionable conduct, further or alternatively the misleading or deceptive conduct, of the Respondents.

3A. An injunction pursuant to s 12GD of the ASIC Act restraining the First to Third Respondents from charging or continuing to charge premiums under the Policies, or interest in relation to premiums paid.

4. An order pursuant to s 961M of the Corporations Act that the First Respondent pay to the Second Applicant and the Advised Group Members the amount of the loss suffered by them because of the First Respondent's representatives' contraventions of Div 2 Pt 7.7A of the Corporations Act.

5. Orders pursuant to s 961N of the ASIC Act declaring void each Policy entered into as a result of the First Respondent's representatives' contraventions of Div 2 Pt 7.7A of the Corporations Act, and for the return of money paid under those policies.

5A. An order setting aside the Policies issued to the Applicants and the Mistaken Group Members.

6. Orders for restitution by the Respondents of the sums paid to them respectively under each Policy by the Applicants and the Mistaken Group Members.

7. Interest pursuant to s 51A of the *Federal Court of Australia Act 1976* (Cth).

8. Costs.

9. Such other or further relief as the Court may consider appropriate.

QUESTIONS COMMON TO CLAIMS OF GROUP MEMBERS

The questions of law or fact common between the claims of the Applicants and the Group Members are (using terms as defined in the accompanying Amended Statement of Claim) are:

1. Whether ANZ arranged, on behalf of the Second, Third and Fourth Respondents (**Insurers**), the issue of the Policies.

2. Whether at all material times ANZ knew and was involved in setting the terms of the Policies.

3. Whether the Insurers and ANZ earned substantial revenue and made substantial profits from the Policies, and were therefore motivated to issue and arrange as many Policies as possible.

4. Whether the Policies were sold by ANZ through sales channels including online, in branch, direct mail and telephone sales.

5. Whether the Policies were sold by ANZ under a general advice model.

6. Whether the Policies were of no value, or of no material value, to, and/or were unsuitable for, or further or alternatively conferred no benefits on, or no material benefits on the Applicants and the Group Members.

7. Whether ANZ and the Insurers knew, or ought to have known, that the Policies had no value, or no material value, to, and/or were unsuitable for, or further or alternatively conferred no benefits on, or no material benefits on the Applicants and the Group Members.

8. Whether the Respondents were in a stronger bargaining position than the Applicant and the Group Members, both generally and specifically in relation to financing and insurance products.

9. Whether the Applicants and the Group Members were required to pay higher premiums for the Policies than was reasonably necessary for the protection of the legitimate interests of the Insurers.

10. Whether ANZ benefited as a result of the Policies in that it was assured the satisfaction of any debt owed under the credit cards or personal loans in the event of the death of the Applicants or the Group Members.

11. Whether the Applicants and Group Members were given an adequate opportunity to consider whether the Policies were suitable for them.

12. Whether the Applicants and the Group Members were unable to understand the Policy documents.

13. Whether the Insurers had a contractual right to vary unilaterally the terms of the Policies.

14. Whether unfair tactics were used by the Respondents, or persons acting on behalf of the Respondents, in arranging the issue of the Policies.

15. Whether the only credit insurance policies that ANZ permitted in respect of its credit cards and personal loans were the Policies.

16. Whether the Applicants and the Group Members could have acquired similar Policies for other similar financing products, with a better claims ratio, from other suppliers.

17. Whether, the Code of Banking Practice (**Code**) applied to the relationship between ANZ and each of the Applicant and the Group Members.

18. Whether ANZ was obliged under the Code to provide effective disclosure of information, and failed to do so.

REPRESENTATIVE ACTION

The Applicants bring this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976* (Cth).

The group members (**Group Members**) to whom this proceeding relates are those persons who:

(a) at any time between 1 January 2010 and 30 June 2019 (**Relevant Period**), were issued at least one credit insurance policy with respect to a credit card issued, and/or a personal loan advanced, by the First Respondent (**ANZ**);

(b) have suffered loss or damage by reason of the contravening conduct of the Respondents, and/or at whose expense the Respondents were unjustly enriched, as pleaded in the accompanying <u>Amended</u> Statement of Claim; and

(c) are not, and have not been at any time since 1 January 2010:

(i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of any of the Respondents; or

(ii) a related body corporate (as defined by s 50 of the Corporations Act) of any of the Respondents; or

(iii) an associated entity (as defined by s 50AAA of the Corporations Act) of any of the Respondents; or

(iv) an officer of a close associate (as defined by s 9 of the Corporations Act) of any of the Respondents; or

(v) a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or this Court.

APPLICANTS' ADDRESS

The Applicants' address for service is:

Place: Slater & Gordon Lawyers, 485 La Trobe Street, Melbourne Vic 3000

Email: Andrew.Paull@slatergordon.com.au

The Applicants' address is c/- Slater & Gordon Lawyers, 485 La Trobe Street, Melbourne Vic 3000

SERVICE ON THE RESPONDENTS

It is intended to serve this application on all Respondents.

Date: ~~28 February 2020~~ 8 February 2021

Signed by Andrew Paull
Slater & Gordon
Lawyer for the Applicants

Schedule

No. VID of 2020

Federal Court of Australia

District Registry: Victoria

Commercial and Corporations NPA

Regulator and Consumer Protection Sub-area

Applicants

Second Applicant:	Catherine Galli

Respondents

Second Respondent:	OnePath Life Limited ACN 009 657 176
Third Respondent:	OnePath General Insurance Pty Limited ACN 072 892 365
Fourth Respondent:	QBE Insurance (Australia) Limited ACN 003 191 035

Date: ~~28 February 2020~~ 8 February 2021