

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged:	Submissions
File Number:	ACT 1 of 2023
File Title:	APPLICATIONS BY AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED AND SUNCORP GROUP LIMITED



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a 'U'.

REGISTRAR

Dated: 29/11/2023 2:18 PM

Important information

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 Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.



Form H

(regulation 17)

Commonwealth of Australia

Competition and Consumer Act 2010

In the Australian Competition Tribunal

File No. ACT 1 of 2023

Re ANZ application for review of Australian Competition and Consumer Commission Merger Authorisation Determination MA1000023-1

SUBMISSION IN SUPPORT OF THE TRIBUNAL SEEKING CLARIFYING INFORMATION FROM THE STATE OF QUEENSLAND

1. On 6 October 2023, the State of Queensland filed an application for leave to intervene in the application by Australia and New Zealand Banking Group Limited (**ANZ**) and Suncorp Group Limited (**Suncorp Group**) for review of Australian Competition and Consumer Commission Merger Authorisation Determination MA1000023-1 (**Determination**), with a supporting affidavit of Mr Michael Kimmins that contained, in Annexure MJK-1, submissions by the State of Queensland (**Proposed Queensland Submissions**).
2. At the Directions Hearing on 20 October 2023, the Tribunal granted leave to the State of Queensland to intervene to file a written submission addressing public benefits to the State of Queensland from the proposed acquisition the subject of the application for review before the Tribunal.
3. For the reasons set out below, the State of Queensland submits that it is reasonable and appropriate for the Tribunal to seek the information in the Proposed Queensland Submissions from the State of Queensland under section 102(10)(d) of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

Statutory test

4. Pursuant to s 102(10)(d) of the CCA, the Tribunal can have regard to information given to the Tribunal as a result of the Tribunal seeking such relevant information as it considers reasonable and appropriate for the sole purpose of clarifying information, documents or evidence given to the Commission in connexion with the making of the Determination.
5. In *Applications by Telstra Corporation Limited and TPG Telecom Limited* [2023] ACompT 1 the Tribunal observed
 - (i) the powers given to the Tribunal, to seek relevant information and to consult with persons, are consistent with the ordinary meaning of the word “clarify”, which is to make clear or intelligible: [78];
 - (ii) in certain circumstances, “clarifying” information, documents or evidence may include assisting the Tribunal to develop a clearer understanding of material that was given to the Commission, including by reference to contextual material: [79]; and

- (iii) the Tribunal must consider that something in the information, documents or evidence before the Commission is or may be unclear before it is permitted to seek information or consult with persons for the sole purpose of clarifying it: [79].

The Queensland Submissions clarify information, documents and evidence given to the Commission

6. The information, documents or evidence given to the Commission in connexion with the making of the Determination included information, documents or evidence about Implementation Agreements reached between the State of Queensland and each of ANZ and Suncorp Group, and public benefits said to flow from the proposed acquisition as a direct result of commitments made in those agreements. ANZ and Suncorp Group have submitted that the commitments given by each of them to the State of Queensland would result in substantial public benefits to the State of Queensland (although they would, in some respects also be national in reach). ANZ and Suncorp Group have submitted that the Queensland benefits (together with other public benefits) outweigh any countervailing detriments of the proposed acquisition.
7. The Commission in its Determination concluded that the potential benefits resulting from the Implementation Agreements would only occur in the future with the proposed acquisition ([7.102]) and any public benefits would be small in scope ([7.105]). The Commission also considered whether the Implementation Agreements are coincident agreements, and not a result of the proposed acquisition (at [7.99]), a position it has adopted before the Tribunal (at [168] of its submissions). Further, the Commission submits that the commitments made to the State of Queensland may not be public benefits if they result in correlative detriments elsewhere: (at [169] of its submissions).
8. The Commission did not seek information, documents or evidence about the Implementation Agreements or public benefits from the State of Queensland and the State of Queensland did not provide such information, documents or evidence directly to the Commission.
9. Some information included in the Proposed Queensland Submissions was referred to in the Commission's reasons for making the Determination or was included in information furnished, documents produced, and evidence given, to the Commission in connexion with the making of the Determination, by ANZ and Suncorp Group: see Annexure A. Some of that information tends to indicate the State of Queensland's views as regards its entry into the Implementation Agreements and the resulting public benefits but is not direct evidence from the State of Queensland of those matters.
10. The State of Queensland's views regarding its entry into the Implementation Agreements and how the commitments made in the Implementation Agreements advance its interests and result in public benefits would thus benefit from clarification by the State of Queensland. That information is uniquely within the knowledge of the State as the signatory to the Implementation Agreements. The Proposed Queensland Submissions provide the State of Queensland's direct views and context about those matters including:
 - (a) the State of Queensland's approach to the negotiation of and its decision to enter into Implementation Agreements with each of ANZ and Suncorp Group;

- (b) how the relevant commitments made in the Implementation Agreements directly or indirectly advance specific policies of the Queensland Government, and specific information about those policies; and
- (c) why the State of Queensland considers that commitments contained in the Implementation Agreements are public benefits for the State of Queensland,

and in each case the State of Queensland's views and contextual information may assist the Tribunal to develop a clearer understanding of the material that was furnished to the Commission about those matters.

11. It is reasonable and appropriate, in these particular circumstances, in accordance with section 102(10)(d) of the *Competition and Consumer Act 2010* (Cth), for the Tribunal to seek the information set out in the Proposed Queensland Submissions to clarify the information that was furnished to, documents that were produced and evidence that was given, to the Commission.

Eddie Scuderi
Corrs Chambers Westgarth
Solicitors for the State of Queensland
29 November 2023

ANNEXURE A

12. This Annexure describes information that was referred to in the Commission's reasons for making the Determination or was included in information furnished, documents produced and evidence given to the Commission in connexion with the making of the determination, by ANZ and Suncorp Group, which concerns the matters in the Proposed Queensland Submissions. The information in the Proposed Queensland Submissions will assist the Tribunal develop a clearer understanding of the following material.
13. The Commission's reasons for making the Determination, in paragraphs 7.91 to 7.105, under the heading "Benefits for the Queensland economy and Queenslanders" refer to, relevantly:
 - (a) the Implementation Agreements signed by the State of Queensland and each of ANZ and Suncorp Group;
 - (b) the fact that the Implementation Agreements contain specified commitments on the part of ANZ and Suncorp Group for the claimed benefit of Queensland, claimed to result from the proposed acquisition;
 - (c) witness statements made by witnesses on behalf of ANZ and Suncorp Group which gave further detail in relation to several of the commitments contained in the Implementation Agreements;
 - (d) specific employment, investment and lending commitments made by ANZ and Suncorp Group, as applicable;
 - (e) the fact that the Bank of Queensland made a submission that it was not clear that "Queensland's disaster preparedness requires the establishment of a Disaster Preparedness Centre to a degree that this represents a public benefit"; and
 - (f) the fact that Bendigo and Adelaide Bank submitted that "the direct benefits to Queensland are limited".
14. ANZ and Suncorp Group had furnished information, produced documents and evidence to the Commission regarding the claimed public benefits from the proposed acquisition arising from their commitments to the State of Queensland, as follows:
 - (a) **Submissions**
 - (i) ANZ's application for merger authorisation dated 2 December 2022, at paragraphs 8.62-8.68 (#71925.002.001.0596);
 - (ii) ANZ's response to the Commission's statement of preliminary views dated 17 May 2023, at paragraphs 9.135-9.170 (#71925.035.001.0184);
 - (iii) Suncorp Group's response to the Commission's statement of preliminary views on Queensland commitments dated 22 June 2023 (#71925.034.001.3934);
 - (iv) ANZ's submission dated 30 June 2023, which, among other things, included a link to the Queensland Treasurer's media release regarding the Implementation

Agreements (#71925.042.001.0001 (Confidential version); #71925.042.001.0183 (Public version));;

- (v) Suncorp Group's submission regarding public benefits dated 13 July 2023, at paragraphs 16-20 (#71925.043.001.0534); and
- (vi) Suncorp Group's submission in response to the expert reports of Mary Starks and the second submission of Bendigo and Adelaide Bank dated 14 July 2023, at paras 52-56 (#71925.043.001.0436 (Confidential version); #71925.043.001.0311 (Public version));

(b) **Witness statements**

- (i) Statement of Steven Johnston dated 25 November 2022, at paragraphs 86-107 (#SML.0004.0001.0061);
- (ii) Statement of Shayne Elliott dated 30 November 2022, at paragraphs 78-91 (#71925.002.001.9787);
- (iii) Further Statement of Steven Johnston dated 17 May 2023, at paragraphs 94-124 (#71925.038.001.0001);
- (iv) Third Statement of Steven Johnston dated 17 May 2023 (#SML.0032.0001.0032);
- (v) Statement of Shayne Elliott dated 17 May 2023, at paragraphs 112-136 (#71925.034.001.1622);
- (vi) Statement of Shayne Elliott dated 30 June 2023, and its exhibits, including relevantly Queensland Hansard of 16 June 2023 (#71925.042.001.0030); and
- (vii) Fourth Statement of Steven Johnston dated 13 July 2023, and its exhibits (71925.043.001.0582);

(c) **Other evidence**

- (i) the Transcript of Shayne Elliott's s 155 examination, at page 171.173, 176, 181 (#71925.031.001.0284);
- (ii) the document entitled "Economic Contribution of ANZ's Tech Hub in Queensland", prepared by Mandala, dated 10 May 2023, and included in exhibits to the witness statement of Shayne Elliott dated 17 May 2023 (#71925.034.001.1795);
- (iii) the document entitled "Economic Contribution of ANZ's Tech Hub in Queensland", prepared by Mandala, dated 7 June 2023, and included in exhibits to the witness statement of Shayne Elliott dated 30 June 2023 (#71925.042.001.0149);
- (iv) Queensland Hansard dated 16 June 2023 and included in exhibits to the witness statement of Shayne Elliott dated 30 June 2023 (#71925.042.001.0036);

- (v) Queensland Futures Institute – Annual Leaders Survey – Initiatives for 2023 (#ABG.5001.0177.6539);
- (vi) Queensland Energy and Jobs Plan Policy (#ABG.5001.0104.4322); and
- (vii) The Commission's Final Report entitled Northern Australia Insurance Inquiry dated November 2020 (#71925.046.001.1186).