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Wednesday 15 September 2021

## 21-249MR ASIC brings criminal charges against ME Bank for alleged misconduct against home loan clients

Members Equity Bank Limited (ME Bank) has appeared before the Federal Court, facing criminal charges for allegedly making false and misleading representations in letters to its home loan customers and allegedly failing to provide written notice about annual interest rate and repayment amount changes.

A total of 62 charges have been laid against ME Bank. 44 charges relate to letters issued by ME Bank to home loan customers between September 2016 and September 2018, which ASIC alleges made false and misleading representations about:

- customers' relevant annual interest rates, and/or
- the minimum repayment to be paid after the fixed-rate period expired, and/or
- the minimum repayment to be paid after the interest-only rate period expired.

A further 18 charges relate to ASIC allegations that, between December 2016 and February 2018, ME Bank failed to give written notice to home loan customers that their annual interest rates and minimum repayment amounts were changing after their interest-only rate and/or fixed-rate period expired.

ASIC alleges this misconduct occurred due to failures in ME Bank's systems and processes.

The matter is being prosecuted by the Commonwealth Director of Public Prosecutions following an investigation and referral by ASIC.

The matter will next return to court on 3 November 2021.

### Background

This is the first criminal prosecution under consumer protection provision s12DB of the ASIC Act. These criminal charges were originally filed in Federal Court on 25 May 2021 ([21-116MR](#)).

Making false and misleading representations to customers with respect to the price of services in connection with the supply of financial services is an offence under sections 12DB(1)(g) and 12GB(1) of the Australian Securities and Investments Commission Act 2001. The maximum penalty for this offence ranged between \$1.8 million and \$2.1 million at the time the conduct occurred.

A credit provider's failure to notify customers of interest rate changes or repayment rates are offences under section 64(1) and section 65(1) of the National Credit Code. The maximum penalty for these offences ranged between \$90,000 and \$105,000 at the time the conduct occurred.

#### Editor's note:

On 15 December 2021, in response to a question raised by ME Bank's legal team, Federal Court Justice Mortimer found that s12GB(6) of the ASIC Act imposes a three-year time limit on the commencement of a prosecution for a contravention of s12DB of the Act. As a result, some of the charges ASIC brought against ME Bank fall outside the statutory time limit. ASIC is considering the judgment. The matter has been adjourned to 31 January 2022 for a case management hearing.

#### Editor's note 2:

The case management hearing on 31 January 2022 was vacated. The next case management hearing is yet to be listed by the Court.

**Editor's note 3:**

On 28 January 2022, the CDPP filed a Notice of appeal in the Federal Court on the grounds that the primary judge, in her judgment dated 15 December 2021, erred in construing s12GB(6) of the ASIC Act as requiring, in every case to which the section applies, a prosecution to be commenced within three years after the commission of an offence.

**Editor's note 4:**

On 17 May 2022, the court heard the appeal lodged on 28 January 2022. Judgment was reserved.

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