

**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: 8/12/2023 2:52 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.



## ACCC'S SUBMISSIONS ON PARLIAMENTARY PRIVILEGE

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1. An issue arises as to the use that ANZ and Suncorp ask the Tribunal to make of statements the Queensland Treasurer and Minister for Trade and Investment made in the Queensland Legislative Assembly on 16 June 2023 (as recorded in Hansard): see Annexure to this note.
2. The Tribunal should exercise caution with how it uses those statements so that it does not act inconsistently with s 8 of the *Parliament of Queensland Act 2001* (Qld) (**POQ Act**). That section provides:
  - (1) The freedom of speech and debates or proceedings in the Assembly can not be impeached or questioned in any court or place out of the Assembly.
  - (2) To remove doubt, it is declared that subsection (1) is intended to have the same effect as article 9 of the Bill of Rights (1688) had in relation to the Assembly immediately before the commencement of the subsection.
3. "Proceedings in the Assembly" is defined in s 9(1) of the POQ Act to "include all words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly or a committee". The statements the Queensland Treasurer and Minister for Trade and Investment made in the Legislative Assembly clearly come within the meaning of "Proceedings in the Assembly".
4. As a matter of statutory construction, the words "or place out of the Assembly" in s 8 the POQ Act encompass the Tribunal.
  - a. As to text and context, the Tribunal is literally a "place out of the Assembly". It may be accepted that those words should not be given their literal meaning, because the use prohibition would then be over-inclusive. It would prohibit discussion of proceedings in the Assembly in the media for instance. The relevant limitation is to be found through reliance upon the ejusdem generis (of the same kind) maxim of statutory interpretation. The other places that s 8 refers to must be places that are of the same kind as courts: see *The President of the Legislative Council of WA v Corruption and Crime Commission (No 2)* [2021] WASC 223 (**President v CCC**) at [137] where the Supreme Court of Western Australia considered the words "other places" referred to in article 9 of the Bill of Rights (1688) and held they applied to the Corruption and Crime Commission of Western Australia. The Tribunal is "of the same kind" as a court (but, importantly, not a court) insofar as it makes findings of fact to reach a determination affirming, setting aside, or varying the determination of the Commission (s 102(1) of the *Competition and Consumer Act 2010* (Cth)(**CCA**)), takes evidence on oath (s 105), takes evidence in the form of written statements or orally (ss 107-108) and conducts its hearings in public (subject to exceptional circumstances listed in s 106 of the CCA). While it does not apply the rules of evidence (s 103(1)(c) of the CCA), and is less formal than a court, the rules of evidence and strict formality are not even a feature of every court proceeding. Proceedings in a summary jurisdiction are an example. So these departures from typical court proceedings do not mean that this Tribunal is not sufficiently like a court to be a relevant "place out of the Assembly".
  - b. As to purpose, ss 8 and 9 of the POQ Act "operate[] to ensure that a person who participates in parliamentary proceedings can do so knowing, at the time of that participation, that what they say cannot "later be held against them in the courts", thereby ensuring that such a person is not inhibited in providing information to the Parliament or in otherwise participating in parliamentary proceedings": *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737

at [106] (Gordon and Edelman JJ) citing *Prebble v Television New Zealand Ltd* [1995] 1 AC 321 at 334. That protection would be significantly lessened unless the words “or place out of the Assembly” encompassed tribunals (see *President v CCC* at [137]) including tribunals established by Commonwealth legislation.

5. The effect of s 8 of the POQ Act is that while it is open to the Tribunal to consider the statements the Queensland Treasurer and Minister for Trade and Investment made in the Queensland Legislative Assembly it may only do so for the purpose of establishing that those words were said in the Legislative Assembly if that bare fact alone is considered to be relevant in some way to the Tribunal’s determination, which seems doubtful. Obviously, the Tribunal cannot challenge the truth or accuracy of those statements without impeaching or questioning those statements. But equally, the Tribunal cannot accept or act on the truth of anything said in these statements. That is because a tribunal (or court) cannot entertain a dispute about the truth of the statements, as to do so would involve criticising the material or enabling a member of Parliament to create unchallengeable truth with respect to a factual situation simply by making a statement to Parliament: see *Mees v Roads Corporation* (2003) 128 FCR 418 at [81]-[86] (Gray J) considering art 9 of the Bill of Rights (1688) cited in *Guy v Crown Melbourne Ltd [No 2]* (2018) 355 ALR 420 at [398] (Mortimer J).
6. To be clear, statements made in media releases do not come within the term “Proceedings in the Assembly” in s 9(1) of the POQ Act. Media releases are “a separate exercise in public communication in the same way that any other statement by a member of Parliament or minister outside the Parliament would be”: *R v Collaery [No 6]* [2020] ACTSC 164 at [13] (Mossop J). Accordingly, the Tribunal would not be acting contrary to s 8 of the POQ Act if it were to use media statements (such as that at HB 9 /203) for the purpose of determining the issues before it, including for accepting the truth of anything said in them, even though similar (or even the same) statements may have been made in Parliament.

**Garry Rich SC, Robert Yezerski SC, Christopher Tran, Megan Caristo, Erin O’Connor Jardine**

**8 December 2023**

## Annexure

Document	Proposed use
<p>Queensland Hansard 16 June 2023</p> <p>HB 11/411 at PDF pages 6 to 7</p> <p>71925.042.001.0036</p> <p>(Duplicate at HB 9/202 at 531-532 at PDF pages 1 to 2)</p> <p>SML.0042.0001.0006</p>	<p>Suncorp at [25] (footnote 64) HB 4/22 at PDF pages 10 to 11 ABG.5001.0413.1538</p> <p>Suncorp's Reply at [17] (footnote 17) HB 4/21 at PDF page 6 ABG.5001.0415.0027</p> <p>Suncorp oral submissions (Day 3, T186:8-13)</p> <p>Suncorp aide memoire re Bendigo Counterfactual (p 1)</p>
<p>Second Examination of Steven Johnston 21 June 2023</p> <p>HB 14/539 at PDF pages 48 to 50</p> <p>71925.040.001.0423</p>	<p>Suncorp aide memoire re Bendigo Counterfactual (p 1)</p>
<p>Third Statement of Shayne Elliott 30 June 2023 [CONFIDENTIAL VERSION]</p> <p>HB 11/407 at PDF page 3 (see [10])</p> <p>71925.042.001.0030</p>	<p>N/A</p>
<p>Fourth Statement of Steven Johnston 13 July 2023 [CONFIDENTIAL VERSION]</p> <p>HB 9/196 at PDF pages 4-5 (see [13] and [15])</p> <p>71925.043.001.0582</p>	<p>Suncorp at [25] (footnote 64) HB 4/22 at PDF pages 10 to 11 ABG.5001.0413.1538</p> <p>Suncorp's Reply at [17] (footnote 17) HB 4/21 at PDF page 6 ABG.5001.0415.0027</p> <p>ANZ at [96] (footnote 351) HB 4/25 at PDF page 33 ABG.5001.0413.1472</p> <p>ANZ's Reply at [35] (footnote 74) HB4/25 at PDF page 11 ABG.5001.0414.0174</p>