

2.37 QW: Following the recent High Court decision penalty fees *Paciocco v ANZ Bank*- does the bank believe that late payment fees on credit cards could be set at level in which they are unlawful penalties?

**Answer**

The pricing of bank fees is based on a much broader set of principles including customer experience, competitor positioning, risk mitigation and economic factors.

As was confirmed by the High Court, the determination of whether a fee is an unlawful penalty is to be determined by reference to the terms and conditions of the relevant account. This requires an enquiry into matters extending beyond the level of the fee. Accordingly, the level of late payment fees is not solely determinative of whether they are unlawful penalties.