Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

ANZ SUBMISSION IN RESPONSE TO THE COMMISSION'S LETTERS OF 15 DECEMBER 2017

1. INTRODUCTION

1.1 This submission responds on behalf of Australia and New Zealand Banking Group Limited (**ANZBGL**) and its associated entities (collectively, **ANZ**) to the questions that the Commission asked in its letters of 15 December 2017 to ANZBGL and its subsidiary, OnePath.[1] ANZ is committed to cooperating with the Commission.

1.2 ANZ recognises that the Royal Commission has been called because the community's trust in banks, including ANZ, has diminished. ANZ believes that it has not done enough to demonstrate fairness and empathy in the way it behaves towards its customers and the community. ANZ is working to earn trust and will listen to the expectations of the community as articulated through the Commission.

1.3 In the vast majority of its dealings, ANZ meets or exceeds its legal and regulatory obligations and the expectations of its customers, business partners, shareholders and the broader community. This is a result of, among other things, the quality and dedication of its staff and representatives and the governance and risk-management processes that underpin its activities.

1.4 ANZ acknowledges, however, with regret, that there have been too many instances in which its conduct, and the conduct of some of its employees and representatives, has not met community standards and expectations (**CSEs**) or has amounted to misconduct. It is unacceptable that some ANZ customers affected by these instances have experienced financial harm and emotional stress. ANZ apologises to its customers and to the community for this. ANZ has taken steps to fix the issues it has identified, to reduce the risk of their recurrence and to compensate and support affected customers, but accepts that this work is ongoing and there is more for it to do.

2. STRUCTURE OF THIS SUBMISSION

2.1 In this submission, ANZ:

(a) provides an overview of ANZ's businesses (section 3);

(b) responds to questions 1 to 3 generally and then by reference to divisions and certain Group functions (sections 4 to 8);

(c) acknowledges some additional matters where ANZ has not identified any misconduct or failure to meet CSEs, but which have been the subject of regulator or community concern (section 9); and

(d) responds to question 4 (section 10).

2.2 Appendix 1 contains defined terms used in this submission.

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[1] Since ANZBGL and OnePath are associated entities for the purposes of s 50AAA of the Corporations Act, ANZ has prepared this one submission in response to the Commission's letters. ANZ has endeavoured to represent the position for all associated entities carrying out activities within the scope of the Letters Patent. Where there are limitations on ANZBGL's ability to access information relating to a particular entity (eg those which it does not control), it has responded based on its own knowledge of that entity's affairs.

3. OVERVIEW OF ANZ

3.1 ANZ is one of the five largest listed companies in Australia. As at 30 September 2017, it had total assets of $897 billion and over 550,000 shareholders (most of whom are members of the Australian community). It employs about 47,000 people (approximately 21,000 in Australia) and operates in 34 markets, providing banking and financial services to around 8 million customers, of which about 6 million are in Australia.

3.2 ANZ's three Australian-focused business divisions are: Wealth Australia (**Wealth**) (providing insurance, investment, superannuation and financial advice services); Australia (providing banking and related services to consumer and commercial customers); and Institutional (servicing global institutional and large business customers). The activities of each of the divisions are supported by centres of expertise including Technology, Services, Operations, Compliance and Risk.

4. QUESTIONS 1 TO 3: GENERAL MATTERS

A. Approach

4.1 In its letters of 15 December 2017, the Commission asked ANZ to identify the steps it has taken to remedy the consequences for consumers or other businesses of the identified conduct, practice, behaviour or activity. In referring to "consumers or other businesses" ANZ understands the Commission to be interested in matters which have had consequences for ANZ's customers in Australia.

4.2 ANZ has sought to cover, either individually or by describing groups of similar events, both misconduct and conduct that ANZ considers has failed to meet CSEs and which has either had a material impact on a large number of customers or a significant impact on a smaller number of customers in Australia.[2]

4.3 This submission does not generally cover instances of misconduct or failures to meet CSEs which have not had this kind of impact, including most failures that are the subject of individual complaints or cases.[3] In part, this is due to the scale of ANZ's businesses, the 10 year period of time covered by the Commission's questions (**relevant period**) and the page limit for the submission. It also reflects ANZ's understanding of what the Commission is seeking, given that both letters of 15 December 2017 and the Letters Patent focus on consumers who have suffered detriment and the effectiveness of mechanisms of redress for those consumers. ANZ is willing to provide further assistance to the Commission.

4.4 By adopting this approach to its submission, ANZ in no way wishes to diminish or understate the importance of any particular case or category of conduct, whether covered in this submission or not. ANZ acknowledges that there have been and will be individual cases where it will not have met CSEs or will have engaged in misconduct. ANZ is committed to addressing cases of that kind through its complaints and internal dispute resolution (**IDR**) processes, and will also look closely at any matters brought to its attention through the Royal Commission.

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[2] As the Letters Patent focus on the Australian financial services sector, this submission does not deal with ANZ's businesses outside Australia, or the ANZ divisions solely associated with them (New Zealand, Asia Retail & Pacific).

[3] By way of context, ANZ dealt with more than 65,000 customer complaints in its FY2017. Within Australia division, 67% of complaints were resolved within five days and 97% within 21 days. Within Wealth, 77% of complaints were resolved within 15 days. Of the total customer complaints in FY2017, 3,181 were resolved by the relevant external dispute resolution body (which, in some cases, referred the complaints to ANZ). ANZ also has a Customer Advocate whose role is to review disputes from Retail, Small Business and Wealth customers in Australia where the customer is not satisfied with the outcome of ANZ's internal dispute resolution process. In 2017, 1,271 complaints within Australia division and 418 complaints within Wealth were referred to the Customer Advocate.

B. Misconduct and community expectations

4.5 The definition of "misconduct" in the Letters Patent is not exhaustive. ANZ has sought to apply its spirit, having regard to the primary character of the conduct in question.

4.6 By paragraph (d) of the definition, "misconduct" extends to matters such as breaches of the Australian Bankers Association Code of Banking Practice (**CBP**). The CBP applies to personal and small business bank customers of ANZ. At the same time, ANZ regards certain industry codes, such as the CBP, as an encapsulation of CSEs. This leads, in practice, to an extensive overlap between conduct amounting to misconduct and conduct that fails to meet CSEs. While ANZ considers that many breaches of the CBP would not ordinarily be described as "misconduct", and are qualitatively different from the matters in (a), (b) and (c) of the definition of "misconduct", ANZ has taken the view that the definition ought to be given its clear meaning. ANZ has therefore treated breaches of the CBP as falling within the definition of "misconduct" for the purposes of this submission. ANZ has not treated breaches of contract as misconduct unless they involved an identified statutory breach or a breach of an industry code of practice such as the CBP.

4.7 ANZ has treated breaches of statutes or regulations which impose rules or standards of conduct as "misconduct", by analogy with paragraph (d) of the definition.

4.8 CSEs change and evolve over time. There can also be conflicts between what different parts of the community expect. A central community expectation, which ANZ has returned to as a touchstone, is that ANZ will act in accordance with its espoused values and will do what it has said publicly that it will do. This informs, but does not define, CSEs.

4.9 ANZ's "ICARE" values are integrity, collaboration, accountability, respect and excellence. ANZ's key commitments as to conduct towards its customers include that: (a) its products and services should be suitable and clearly explained; (b) it should protect customers' money and information; (c) its management, processes, technology and governance should deliver what is promised to customers; (d) it should fix mistakes quickly and transparently, recognising any power imbalances; (e) it should help those in hardship; (f) poor behaviour should be identified and acted on; and (g) ANZ executives and staff members should be accountable for their behaviour.

4.10 ANZ believes that the community views CSEs as standards to be considered in a real world context rather than as prescriptive rules. For example, an inadvertent breach of contract might not fall below CSEs, provided ANZ took appropriate steps to remedy it once it was identified. However, a breach which affected a number of customers over a long time may not meet CSEs. In addition, while these commitments focus on the interests of customers, ANZ believes that the community understands that ANZ also has obligations to shareholders, staff and the community.

C. Question 3(b) – (d)

4.11 It is not always possible to attribute conduct in a particular case or class of case to specific culture, governance or other practices. Sometimes, in order to understand why particular conduct has occurred or recurred, it is necessary to take a broader perspective. In this regard, ANZ wishes to acknowledge the following practices which have, or may have, contributed to the occurrence of misconduct and failures to meet CSEs which ANZ has taken and is taking steps to address, as detailed in answer to question 3(e).

4.12 First, recurring factors in many of the instances described in this submission as giving rise to customer detriment are: (a) the complexity of the technological and other systems and processes applied to deliver the banking and financial services ANZ's customers expect; (b) the pace of technological, market and regulatory change over the relevant period; (c) the impact of staff changes on continuity and day-to-day management of operations; and (d) the need to innovate to meet the continually rising expectations of the community and ANZ's customers. In some cases, ANZ's desire to meet this need has introduced complexity and risk into those systems and processes or led to an insufficient focus on whether ANZ's systems will function as expected in all scenarios or be adequate to manage and supervise the relevant conduct of staff and representatives.

4.13 Second, clear and effective supervision, and associated processes, are necessary to ensure an appropriate, organisation-wide focus on reducing the risk of conduct of the kind described in this submission. ANZ has worked over the relevant period to improve its processes but acknowledges that continuous improvement is required in this area.

4.14 Third, while ANZ has improved its remuneration and incentive structures over the relevant period, ANZ acknowledges that, at times, these structures have not adequately discouraged, and may even have encouraged, poor conduct.

4.15 Fourth, while ANZ has held its management and staff accountable for misconduct on a number of occasions, it has not always appropriately assigned responsibility for failures which have had significant customer impact, particularly amongst management. CSEs in relation to management accountability have developed over the relevant period and continue to evolve. ANZ acknowledges that it must be clearer and more exacting in this area, while affording procedural fairness and ensuring that consequences are proportionate and consistent. ANZ continues to seek the right balance between encouraging all staff to identify issues and deterring the behaviour that has led it into error in the past. ANZ is responding to these issues through the ongoing development and implementation of its performance and remuneration structures and its implementation of the Bank Executive Accountability Regime, which it supports.

4.16 Finally, ANZ accepts that there is further work to do to embed a customer-focused mindset across the bank. That said, where it has identified pockets of poor culture over the relevant period, it has moved or is moving to address them.

D. Question 3(e)

4.17 ANZ works hard to remedy the consequences of misconduct and failures when they are identified, so that affected customers are not left in a position of disadvantage. Remediation generally includes interest or other compensation to reflect the time between the failure occurring and ANZ compensating the customer. In 2017, ANZ, in consultation with its Customer Fairness Advisor, sought to articulate the principles applicable to all remediation carried out by the bank (**remediation principles**). They are: (a) we will listen; (b) we will apologise; (c) we will compensate; (d) we will commit resources to fix the problem; (e) we will explain our approach clearly; (f) we will act speedily; and (g) we will learn from mistakes when they are made. One of the Customer Fairness Advisor's priorities is to look at remediation across ANZ and consider improvements to establish a more consistent approach.

4.18 ANZ has taken a number of steps during the relevant period to reduce the risk of misconduct and conduct falling below CSEs, both proactively and in response to concerns identified through its risk management framework, internal and external dispute resolution and customer feedback. ANZ acknowledges that at times over the relevant period it could have been better at identifying and implementing these changes more quickly, but it has learned lessons and has renewed its focus on getting this right in recent years. It also acknowledges that there is more to do and a number of initiatives are ongoing. Some important measures are detailed below.

4.19 First, ANZ has taken a number of steps over the relevant period to improve its culture, including:

(a) periodically refreshing and relaunching its 2009 Code of Conduct and 2008 ICARE values to all staff, including most recently in 2017;

(b) mandatory annual staff training and assessment on the Code of Conduct (including, since 2017, heightened consequences for performance assessment and remuneration where staff fail to undertake and pass the assessment);

(c) regular senior management communications to, and engagement with, staff regarding values, purpose and the Code of Conduct;

(d) introducing in 2016 a program of regular culture assessments of ANZ business units, conducted by internal audit and external consultants, with significant issues reported to senior management, who then supervise remedial action, and the Board;

(e) the appointment, in 2017, of former Australian Commonwealth Ombudsman, Colin Neave AM, as ANZ's first Customer Fairness Advisor, reporting directly to the CEO and independently identifying and providing guidance to the bank on key issues for customers; and

(f) the creation, in 2017, of a senior management committee, the Responsible Business Committee, and revisions to the Charter of the Environment, Sustainability and Governance Committee of the Board in order to improve ANZ's decision-making about products and services.

4.20 Second, ANZ has changed its performance management and remuneration structures to increase accountability and reduce the risk that incentives encourage inappropriate conduct, including by:

(a) Introducing the mandatory deferral of incentives for its management board (now ExCo) in 2008. This was introduced uniformly across ANZ in 2009, with the ability to withhold deferred remuneration in certain circumstances, including for reasons related to behaviour and conduct. A clawback review group was established in 2013 which determines whether to withhold deferred remuneration.

(b) Introducing a new Global Performance Improvement and Unacceptable Behaviour policy in 2009, to set out the processes and principles ANZ would apply when its standards of performance, behaviour and compliance were not met by employees.

(c) Making values and behaviours an important component of performance assessments. ANZ uses a "balanced scorecard" approach to performance assessment, which has been refined over time. It includes a focus on behaviours in line with ANZ's ICARE values and Code of Conduct and adherence to ANZ's risk and compliance processes.

(d) Incorporating mandatory "compliance hurdles" into incentive plans for frontline staff from 2010, which have also been refined over time, meaning that incentives are disallowed or reduced if certain inappropriate behaviours are demonstrated.

(e) Increasing ANZ's formal expectations of senior management in relation to role modelling ANZ's values in 2016. Similar changes have now been made at all levels. Staff, including senior management, who are assessed as inconsistently demonstrating ANZ's ICARE values will likely have their performance and incentive outcomes adversely affected, with greater emphasis on this since 2016.

(f) Adopting a balanced scorecard approach to incentives for certain financial advisers, markets, branch and call centre staff in 2016 and 2017 (see [5.26(d)], [6.100(c)] and 7.14(b)). This means that incentives are calculated with reference to the assessment of the employee's performance as a whole, rather than predominantly on financial metrics. These moves are supported by the Sedgwick Review[4]

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[4] Stephen Sedgwick AO, *Report on Retail Banking Remuneration Review* (19 April 2017).

recommendations, which ANZ has committed to implementing, to the extent it has not already done so.

(g) Increasing the focus on risk management in the allocation of incentives in 2017, by adjusting the ANZ incentive pool available to all staff in line with ANZ's assessed risk performance.

4.21 Third, ANZ has an operational risk management and compliance framework which has been accredited by APRA. This framework assists with the identification, management and reporting within ANZ of potential conduct issues. Over the relevant period ANZ has taken, and continues to take, steps to invest and improve the framework and its supporting systems. Key improvements to ANZ's systems for detecting instances of misconduct and failures to meet CSEs include: (a) changes to whistleblower policies; (b) strengthening its complaints monitoring framework to ensure regular reporting on potential systemic issues; and (c) a range of changes to systems and monitoring technology, some of which are dealt with below in relation to specific topics.

4.22 Finally, ANZ is simplifying its products, business structures and systems to reduce the risks of complexity and business changes causing or permitting misconduct or failures to meet CSEs including as described in [5.40], [5.71] and [6.33] and [6.100].

5. QUESTIONS 1 TO 3: WEALTH DIVISION

A. Overview

5.1 ANZ's Wealth division primarily provides insurance, investment and superannuation solutions to customers, and is comprised of the Pensions and Investments (**P&I**), Advice and Insurance business units. It also includes Share Investing Limited (formerly E*TRADE Australia Securities Limited) (**SIL**).

5.2 Wealth provides financial advice to approximately 285,000 Australians, through a network of approximately 872 authorised representatives and employed financial advisers. It operates superannuation funds with funds under management of approximately $43.5 billion and approximately 715,000 members, and is the responsible entity of 218 managed investment schemes (**MIS**). ANZ issues life insurance (including death benefit, total and permanent disability, income protection and critical illness/trauma cover) to approximately 1.45 million policyholders, and consumer credit insurance to approximately 300,000 policyholders. ANZ also distributes general insurance, including home, car, travel and mortgage/loan protection cover, to approximately 250,000 policyholders.[5]

5.3 The business activities of Advice are conducted by ANZBGL under the trading name ANZ Financial Planning (**ANZFP**), and by three subsidiaries of ANZBGL (referred to as the aligned dealer groups, **dealer groups**): FSP, RI and M3.

5.4 P&I business activities are conducted by: (a) OPFM, which acts as responsible entity or trustee of various registered and unregistered MIS; and (b) licensees of registrable superannuation entities (**RSE Licensees**), being OPC and OAFM. ANZ Staff Superannuation (Australia) Pty Ltd also holds an RSE licence (and is licensee of the ANZ Staff Superannuation Scheme (**Staff Fund**)). Although it is managed and operated independently of Wealth, for convenience it is referred to in this part of the submission. Insurance business activities are conducted by OPL and OPGI, both of which provide certain consumer credit insurance products, and which also provide life insurance and distribute general insurance respectively.

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5 General insurance is issued by QBE Insurance (Australia) Limited, and for policies that have a life insurance component, it is co-issued with OnePath Life Limited.

5.5 Prior to 30 November 2009, all of the Wealth businesses (with the exception of ANZFP and SIL) were conducted by a joint venture with ING, in which ANZ had a 49% interest and ING 51%. ANZ purchased ING's stake on that date.

5.6 As part of its strategy to create a simpler, better balanced bank, ANZBGL is in the process of selling its P&I business and the dealer groups to IOOF, and its life insurance business to Zurich. It is retaining the ANZFP business, which currently employs approximately 250 advisers. Completion of both sales is expected to occur in late-2018, subject to regulatory approval. Following completion of the sales, ANZ will continue to make superannuation and investment products, and life insurance, available to ANZ customers through arrangements with IOOF and Zurich respectively.

5.7 SIL's primary business is the provision of a trading platform, through which customers trade in listed securities. ANZ has entered into an arrangement with CMC Markets, as a result of which customers of SIL are being migrated to CMC Markets' platform. SIL's trading platform is expected to be decommissioned later this year.

B. Documented annual service reviews to customers

5.8 Some Advice customers pay fees for ongoing financial planning services, which can include a documented annual review. For customers of ANZFP, this is known as the "Prime Access" service.

5.9 ANZFP financial advisers did not provide documented annual reviews to 9,178 Prime Access customers from 2008 to 2013.[6] This has been the subject of an extensive ANZ investigation, with oversight from ASIC since August 2013 when ANZ reported the matter to ASIC. As part of the investigation, the files of all Prime Access customers from 2006 to 2013 were reviewed. Where a file contained insufficient evidence of an annual review meeting having been held, or an annual review document having been provided to the customer, ANZ issued an apology and remediated the failure by paying compensation.

5.10 This remediation methodology was developed with the assistance of an external consultant and was disclosed to ASIC. Compensation amounts were equivalent to a proportion of the Prime Access service fee paid for the relevant year reflecting the value of the service not delivered, together with interest to compensate customers for the loss of money over time. ANZ has compensated 9,167 affected Prime Access customers in a total amount of $43,719,222.16 in relation to the period from 2008 to 2013. ANZ is in the process of remediating the final 11 customers in the sum of $31,229.84, and expects to complete this by 28 February 2018.[7]

5.11 ASIC is conducting an enforcement investigation and ANZ is engaging with ASIC in that regard. The remediation methodology and compensation paid have been notified to ASIC.

5.12 ANZ has also identified failures by four authorised representatives of FSP, RI and M3 to provide documented annual reviews to 691 customers between May 2013 to April 2016. These matters have been reported to ASIC. ANZ understands that ASIC has commenced investigations in relation to two of the four authorised representatives. ANZ is in the process of remediating the failures of those authorised representatives, with monthly progress reports to ASIC, applying the principles referred to above. At ASIC's request, ANZ is currently investigating whether any other such failures have occurred in FSP, RI and M3 during the period after 1 July 2008. An external consultant is assisting with that investigation.

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6 ANZ has also identified the non-provision of documented annual reviews between 2006-2008, which are not addressed in this submission.

7 ANZ expects that compensation in respect of approximately 30 customers will need to be remitted as unclaimed monies. The 11 customers who have not yet been remediated are either deceased or subject to extenuating circumstances (for example, joint customers who are now divorced).

5.13 ANZ attributes its failures to a combination of: (a) system controls and supervision and monitoring processes being inadequate to track ongoing service delivery; (b) staff turnover; and (c) possible culture amongst financial advisers (which may also exist in the broader industry) of inadequate attention to service delivery, particularly in circumstances where fee-charging or remuneration structures involve upfront payments made before all services have been delivered, or periodic payments that are deducted from customers' accounts (and, in some cases, made to advisers) automatically irrespective of whether services have been delivered, or by a combination of both types of payment.

5.14 ANZFP has implemented several measures to reduce the risk of recurrence, including (and see further [5.26]): (a) improved systems controls, and in particular, alerts to prompt advisers to complete ongoing service obligations; a requirement for advisers to create a record in ANZ's centralised financial planning software when they deliver documented annual reviews to Prime Access clients; and daily reports circulated to advisers and practice managers identifying clients whose annual reviews are overdue; (b) increased focus on service delivery in annual advice assurance reviews, which are taken into account in assessing advisers' performance; (c) establishment of a dedicated team in 2014 with responsibility for supervising and monitoring ongoing service delivery; and (d) changes to remuneration structure, including service delivery criteria for performance bonus eligibility.

5.15 The dealer groups have implemented the change in [5.14(b)], and are in the process of implementing changes analogous to those in [5.14(a)] and [5.14(c)].

5.16 In addition to being the subject of ASIC Report 499[8] published in 2016, the non-delivery of financial advice services was referred to in the House of Representatives Standing Committee on Economics, *Review of the Four Major Banks* (**Four Major Banks Review**)[9] and the Senate Economics References Committee, *Inquiry into Scrutiny of Financial Advice*.[10]

5.17 **Summary**: **1** and **2** Yes, as described in [5.9] and [5.12]. **3(a)** Yes. ASIC investigations ([5.11] and [5.12]) and other inquiries ([5.16]). **3(b)-(d)** ANZ attributes the failures to the matters referred to in [5.13]. **3(e)(i)** ANZ has taken the remedial steps in [5.9] and [5.10] and is in the process of taking the steps in [5.12]. **3(e)(ii)** ANZ has taken or is taking the steps in [5.14] and [5.15].

C. Conduct of financial advisers

5.18 Some financial advisers employed by ANZ or who are authorised representatives of ANZ have engaged in improper or non-compliant conduct on a number of occasions in the relevant period. This submission focuses on conduct that ANZ notified to ASIC in 2015 as giving rise to serious compliance concerns (**SCC notification**)[11] and other conduct that ANZ has subsequently reported or notified to ASIC.

5.19 ANZ made the SCC notification in response to a notice issued by ASIC as part of its project that is the subject of Report 515.[12] The SCC notification identified conduct of 39

8 ASIC Report 499, *Financial Advice: Fee for no service* (2016).

9 *First Report*, November 2016, [9.6]-[9.7]; *Second Report*, 21 April 2017, [2.67]; Transcript 11 October 2017, p. 45; Transcript 20 October 2017, pp. 13-14.

10 Transcript 21 April 2015, p. 24 and pp. 31-33.

11 ASIC defined "serious compliance concerns" as being where an advice licensee believes, and has some credible evidence in support of the concerns identified, that an adviser – in the course of providing financial services – may have engaged in: (i) dishonest, illegal, deceptive and/or fraudulent misconduct; (ii) any misconduct that, if proven, would be likely to result in the instant dismissal or immediate termination of the adviser; (iii) deliberate non-compliance with financial services laws; or (iv) gross incompetence or gross negligence (ASIC Report 515, *Financial advice: Review of how large institutions oversee their advisers* (2017), [108]).

12 ASIC Report 515, *Financial advice: Review of how large institutions oversee their advisers* (2017).

advisers that occurred during the period from 1 January 2009 to 7 July 2015 whilst they were employed or authorised by ANZ or the dealer groups (**SCC advisers**).[13] ANZ engaged an external consultant to independently assess the completeness of the process undertaken to identify the SCC advisers. ANZ had already reported or notified the conduct of many of the SCC advisers to ASIC and/or taken other disciplinary or remedial action in relation to the advisers. 35 of the SCC advisers either resigned during the course of investigations or were terminated[14] and ASIC has made banning orders against 10 of these.

5.20 Since the SCC notification (ie from 1 July 2015 to 31 December 2017), ANZ has made 40 additional reports/notifications to ASIC concerning the conduct of a total of 41 financial advisers/authorised representatives (the **2015-2017 reports**).[15] The 2015-2017 reports include conduct of 13 SCC advisers (10 of whom are no longer employed or authorised by ANZ) and 28 other advisers/authorised representatives (25 of whom are no longer employed or authorised or have submitted their resignation, and a further one of whom is currently suspended).[16]

5.21 The adviser conduct referred to above includes:

(a) Improper use of customer funds: two advisers who engaged in this conduct were included in the SCC notification[17] and a third was reported to ASIC in 2016. All three advisers were referred to the police. Two were convicted and are currently serving sentences of imprisonment. No charges were laid in the other case. The two convicted advisers are also the subject of banning orders. ANZ has commenced a client remediation program in relation to the conduct of a fourth adviser (who had been terminated in 2012) alleged to have misappropriated customer funds. ANZ notified ASIC of those allegations.

(b) Misleading conduct concerning advisers' qualifications or authorisations, falsifying customer or compliance documentation: conduct of this kind was engaged in by 18 SCC advisers and included in 23 of the 2015-2017 reports. Two of the 2015-2017 reports related to advisers purporting to witness customer signatures on nomination of beneficiary forms (**beneficiary forms**) despite the customer not having signed the beneficiary form in the adviser's presence and (in one case) forging the signature of the second witness on the form. ANZ has reported 29 advisers (in addition to the two mentioned above) to ASIC who have or may have engaged in similar conduct in relation to beneficiary forms. ANZ understands that this may be an industry-wide issue.[18]

(c) Deliberate overcharging of fees: one SCC adviser engaged in conduct of this kind, and ANZ had reported it to ASIC before the SCC notification. The adviser had ceased to be an authorised representative of ANZ before the matter was identified, and received a one year banning order from ASIC in relation to not providing documented annual reviews to customers.

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[13] The conduct of a further six advisers in the SCC notification occurred at a time when they were not employees or authorised representatives of ANZ. There were approximately 3,100 individual authorised/employed advisers over the course of the period covered by the request.

[14] The other four SCC advisers (who are authorised representatives of the dealer groups) have been counselled, placed in additional compliance training and supervision, and have been cooperative with remediation activities.

[15] There were approximately 1,114 individual authorised/employed advisers over the course of that period.

[16] In some instances, a report was made in respect of a corporate authorised representatives that had more than one adviser attached to it.

[17] Those advisers were also the subject of separate reports/notifications made by ANZ to ASIC.

[18] See ASIC, "ASIC warns financial services licensees against 'cutting corners' on death nomination forms", *ASIC media release 18-015MR*, 19 January 2018.

(d) Provision of poor quality financial advice to customers, failure to act in customers' best interests in providing advice: 22 of the SCC advisers engaged in conduct of this kind. Seventeen of the 2015-2017 reports included conduct of this kind.

In addition, some authorised representatives of FSP, RI and M3 provided advice to customers in relation to Timbercorp investments prior to March 2009 (ie before FSP, RI and M3 were controlled by ANZ; ANZFP did not provide any such advice). During the inquiry conducted by the Senate Economics References Committee in 2014, ANZ committed to reviewing that advice and seeking a resolution with any customers found to have been given inappropriate advice (the **Timbercorp review**). ANZ engaged an external consultant to assure the framework of the Timbercorp review. To date, ANZ has reviewed 76 files and identified 11 instances of inappropriate advice requiring compensation. Total compensation for those 11 instances is approximately $1 million (including interest). ANZ has made 10 of the 11 compensation payments. The final payment will be made shortly.

(e) Non-compliance with requirements relating to disclosure and/or documentation of advice: conduct of this kind was engaged in by 19 SCC advisers and included in 19 of the 2015-2017 reports. In addition, between October 2012 and May 2014, product comparison software used by ANZ excluded exit fee information when comparing certain products. This resulted in Statements of Advice not disclosing the exit fees. Approximately 256 customers were affected. They have been paid compensation totalling $15,208.57.

5.22 At ASIC's request (and with the assistance of an external consultant), ANZ is undertaking a "look back review" to identify any systemic advice issues[19] during the period since 1 January 2009 not covered by the SCC notification. ANZ is providing ASIC with progress reports on the outcome of that review. ANZ expects to complete file reviews by May 2018 and will report to ASIC in June 2018.

5.23 ANZ is in the process of reviewing the customer files of the SCC advisers (it estimates there are 7,800 files) to identify the impacts of each adviser’s conduct on customers and remediate those impacts (the **SCC review**). The compensation methodology for affected customers has been disclosed to ASIC. That methodology requires, among other things, that ANZ takes into account the changing value of money over time and compensation being given at an appropriate interest rate or rate of return. The SCC review is governed by ANZ's Advice Remediation Framework, which was introduced in July 2016 in consultation with ASIC and with independent expert review by an external consultant (the **Remediation Framework**). ANZ has reviewed 3,602 customer cases and paid $7,190,418 in compensation to date. Monthly progress reports have been provided to ASIC. ANZ has found no evidence of financial loss in around 80% of the cases reviewed to date. ANZ estimates that the SCC review will be completed by the end of 2018.

5.24 ANZ is in the process of remediating the conduct of the advisers who were the subject of the 2015-2017 reports under the Remediation Framework and in accordance with the overarching compensatory principle referred to above. In the three identified cases in [5.21(a)], ANZ has to date paid a total amount of $7,626,537.04 to affected customers, including a refund of the whole of the misappropriated amounts. In relation to the fourth adviser still under investigation, ANZ is committed to compensating customers if the allegations are substantiated.[20] In the beneficiary form cases in [5.21(b)], remediation involves arranging for the forms to be re-executed and properly witnessed.

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19 ASIC defines a "systemic advice issue" as an issue causing actual or potential loss or detriment to a number of clients as a result of misconduct or other compliance failures by an advice licensee or its current or former representatives (ASIC Regulatory Guide 256, *Client review and remediation conducted by advice licensees* (2016), [21]).

20 Subject to the adviser being an authorised representative at the time of the conduct and the adviser not acting outside of its authority in circumstances where that lack of authority was clearly disclosed to the client.

5.25 A number of different factors caused or contributed to the improper or non-compliant conduct of advisers, including the failure of ANZ's processes, controls and supervision to protect against that conduct. The matters in [5.21(a)] and [5.21(c)] were caused principally by human factors specific to the advisers in those cases. Gaps in qualifications or training of advisers and a lack of understanding of the importance of following proper processes contributed to the matters in [5.21(b)], [5.21(d)] and [5.21(e)]. In cases involving falsification or alteration of customer or compliance documentation (excluding those in [5.21(a)]), advisers have typically intended to mislead the ANZ advice assurance audit team so as to pass audits. ANZ considers there are pockets of poor culture which might contribute to the issue, and is working to address them.

5.26 Steps taken to reduce the risk of recurrence of these problems include:

(a) Improved training such as Advice Quality Coaches introduced in December 2015; a best practice toolkit for advisers, introduced in June 2015; weekly or fortnightly newsletters to financial planners which go through changes to standards and promote webinars which are available to planners through central webinar technology introduced in January 2016; and professional development days to assist planners to stay abreast of the latest changes, introduced in January 2015.

(b) Improved supervision and monitoring, including by reference to the Key Risk Indicators in ASIC Report 515 Appendix 4 and the data analytics referred to below. In December 2017, ANZ introduced an Adviser "Hub", which is a central data repository that enables ANZ to more efficiently and effectively monitor services provided by its advisers and authorised representatives than was previously the case. For example, the Adviser Hub means ANZ's back office teams no longer need to manually transfer/handle data or spend time sifting through emails to monitor such things as turn-around times in advice being provided to customers. Historical data is being migrated to the Adviser Hub in early 2018.

(c) An improved advice assurance review process since October 2016, including enhanced use of data analytics and a scorecard that has been reviewed by ASIC and addresses the substance of Appendix 3 to ASIC Report 515.

(d) A balanced scorecard for ANZFP adviser performance assessment and incentives, which was introduced on 1 October 2016 and further enhanced on 1 October 2017 (see [4.20]);

(e) Adherence to the ABA Reference Checking & Information Sharing Protocol since 1 March 2017, which is directed towards improving reference checking during the recruitment of financial advisers, and promoting better information sharing about the performance history of financial advisers focussing on compliance, risk management and advice quality;

(f) Rolling out, from October 2017, a new technology tool (called "Grow for Advice") for ANZFP financial planners to use with customers in an interactive way. Grow for Advice is designed to enable personal insurance advice to be provided to customers in a more consistent and efficient way than has typically been the case in the past. A logic based advice engine automatically makes over 100 decisions about insurance strategy and product selection once a customer's preferences and information has been entered. This new technology is expected to reduce the risk of poor quality advice being provided to customers.

(g) Disciplinary consequences for advisers where appropriate, including termination of employment and reporting matters to the police as occurred in some of the matters referred to above, and strengthening of processes surrounding imposing such consequences including the introduction of a consequence management committee.

(h) Changes to management structures within Wealth (see [5.71]).

5.27 ANZ has also instituted a practice of notifying customers in writing if a banning order is made against their financial adviser, and it provides information to assist the customer to raise a question, concern or complaint, or to provide other information to ANZ.

5.28 Financial adviser conduct issues, including those of the kinds referred to above, have been considered in the Four Major Banks Review[21] in addition to being considered in ASIC Report 515. Financial advice in respect of Timbercorp has been referred to in the Senate Economics References Committee's inquiries into Forestry MIS[22] and Scrutiny of Financial Advice,[23] and the Four Major Banks Review.[24]

5.29 **Summary**: **1** and **2** Yes, as described in [5.18] to [5.21]. **3(a)** Yes. ANZ's SCC notification process and "look back review" conducted in consultation with ASIC ([5.19] and [5.22]); ASIC's project documented in Report 515; other inquiries ([5.19], [5.21(d)], [5.28]). **3(b)-(d)** ANZ attributes the failures to the matters in [5.25]. **3(e)(i)** ANZ has taken or is in the process of taking the remedial steps in [5.23] to [5.25]. **3(e)(ii)** ANZ has taken the steps in [5.26] and [5.27].

D. Fees and charges

5.30 On three occasions since 1 January 2008, ANZFP failed to pay agreed rebates on certain charges and commissions:

(a) ANZFP failed to rebate a total of $239,903 in upfront charges to about 162 customers and a total of $432,307 in trail commissions to about 698 customers, between about January 2009 and about July 2010. ANZ notified ASIC and compensated affected customers by rebating units in funds held by those customers, with interest;

(b) ANZFP failed to rebate a total of $114,080 in trail commissions to about 506 customers between 2010 and 2013. ANZ compensated affected customers, with interest, and has notified ASIC; and

(c) ANZFP failed to rebate a total of approximately $7.8 million in trail commissions to about 5,600 customers between about 2009 and 2017.[25] ANZ notified ASIC, and ASIC is currently investigating. ANZ is taking steps to compensate affected customers, applying a methodology disclosed to ASIC and independently assured by an external consultant. ANZ has engaged the consultant to independently review its process of identifying affected customers and the compensation process, including verifying the calculation of the compensation amount. All compensation is expected to be paid by about mid-2018. The total amount expected to be paid to customers is $12.6 million, including interest of approximately $4.8 million.

5.31 From 2003 to 2015, certain OnePath entities continued to deduct Adviser Service Fees (**service fees**) from the accounts of about 2,900 members of MIS and superannuation funds after those accounts ceased to be allocated to an adviser. The total service fees incorrectly deducted were $931,647.56. The incorrect deductions were not remitted to any adviser. OPC, OPFM and OPL reported the breach to ASIC and (in the case of OPC) APRA. ANZ has reimbursed customers for the incorrectly charged service fees, together

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21 *First Report*, November 2016, (see especially recommendations 9 and 10).

22 Senate Economics References Committee, *Agribusiness managed investment schemes – Bitter harvest* (March 2016), in particular at chapter 7; Transcript 6 August 2015, pp. 53-58.

23 Senate Economics References Committee, *Inquiry into Scrutiny of Financial Advice*, Transcript 21 April 2015, pp. 24-26 and 31-32.

24 Transcript 5 October 2016, pp. 17-18 and 31-32.

25 Dollar amounts reflect the value of units that should have been rebated.

with interest, according to a methodology developed by ANZ, assured by an external consultant, and disclosed to ASIC.[26] ASIC closed the breach on 5 July 2017.

5.32 From June 2007 to August 2016:

(a) Service fees were deducted from ANZFP customers' accounts in amounts or at rates in excess of those quoted in their service agreements. ANZ estimates that this affected approximately 4,035 customers and had a total monetary value of about $4.5 million. ANZ has reported the issue to ASIC. ANZ is committed to compensating affected customers, including with interest on the money that was wrongly deducted from their accounts. The remediation process is expected to commence in the first half of 2018.

(b) ANZFP continued to deduct service fees from the accounts of some Prime Access customers, and failed to refund a proportion of upfront Prime Access fees paid in advance, after customers cancelled their Prime Access services. The total number of customers affected and the service fees involved have not yet been ascertained. ANZ has notified ASIC of the issue and expects to update ASIC in the near future. ANZ is committed to compensating affected customers, including with interest, and has to date paid $563,981.61 to 198 customers.

5.33 Some customers also had their Prime Access status incorrectly recorded on ANZFP's systems and as a result were charged Prime Access fees but did not receive all of the services they were entitled to in the period to February 2013. ANZ is committed to compensating affected customers, including with interest, and has to date paid around $1 million to 351 clients. ANZ is continuing to investigate this issue and will shortly provide an update to ASIC.

5.34 ANZ attributes these problems to issues including: (a) advisers failing to complete application forms in the manner required for the rebates to be processed and applied; (b) operational process failures due to, for example, the manual nature of many of the processes, which led to failures such as advisers' connections with customers' accounts being removed without cancelling ongoing service fees deductions; and (c) certain of ANZ's processes and controls not being sufficiently robust or effective to protect against staff errors.

5.35 Steps taken to reduce the risk of fee errors in the future include training, including for advisers, in relation to pricing structures and documentation, and the steps referred to in [5.14] and [5.26].

5.36 ANZ failed to provide fee waivers and discounts to which certain clients and their immediate family members (**client groups**) were entitled as a part of a Private Bank (which at the time was part of Wealth) membership package offered by ANZ to those clients, between May 2011 and January 2016. This was due to a combination of human error and ANZ's systems not being sufficiently robust to ensure that the fee waivers and discounts were applied to all relevant accounts of those clients. ASIC was notified. 2,843 client groups, who held a total of approximately 6,135 accounts, were affected. By June 2016, ANZ had paid compensation to the affected client groups totalling $898,177.51, inclusive of interest. To minimise the risk of recurrence, ANZ implemented a number of changes, including additional training of personnel, updating processes to highlight fee waivers on internal forms used to process account openings, and the implementation of new monthly reports to enhance detection.

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26 The reimbursements were made in the form of monetary payments or units credited to the customer's account, depending on the customer's circumstances. No reimbursement or compensation was made to 255 affected customers who suffered financial impacts of $20 or less and who had exited the relevant MIS or fund. That approach was also taken to certain other remediations referred to in section 5, consistent with the joint ASIC and APRA guide, *Unit pricing: guide to good practice* (August 2008). Amounts not paid to customers in those circumstances were paid into the relevant fund.

5.37 ANZ has made errors in relation to premiums, fees and charges for insurance policies from time to time in the relevant period, including:

(a) Incorrect calculation of sums insured and premiums for 7,656 members, who held approximately 13,000 life insurance policies, due to the member's date of birth being recorded incorrectly. ANZ is in the process of determining the financial impact of this on affected members, and remediating them. The matter was reported to ASIC in September 2017.

(b) Failure to apply a discount to life insurance policies at the time of renewal during the period from 1 April to 15 May 2016, which affected approximately 9,700 customers with a total value of approximately $800,000. This was reported to ASIC. ANZ compensated customers for the overcharged premium amounts by refund or credit, with interest, by August 2017.

(c) Failure to apply percentage discounts to certain home and landlord insurance policies as promoted during the period from 2005 to June 2015, affecting approximately 121,075 customers and having a total value of approximately $1.78 million, inclusive of interest. This was reported to ASIC. As part of its remediation activities, ANZ undertook to review other insurance discounts. As a result of that review, ANZ identified an issue with the application of multi-policy discounts which affected 8,495 customers with a value of $1.3 million, inclusive of interest. Those customers have also been remediated.

(d) At various times between about 2011 and 2014, continuing to charge mortgage protection insurance and/or mortgage repayment insurance after mortgages had been discharged. This affected 2,480 customers involving incorrectly charged premiums of $3,014,000. This was reported to ASIC, and ANZ refunded the incorrectly charged premiums to customers, together with interest.

5.38 ANZ has also made errors in relation to superannuation fees, charges and unit pricing, including:

(a) The accounts from which service fees were deducted as referred to in [5.31], which included superannuation accounts.

(b) Failure by ING Funds Management Limited (now OPFM) to apply two kinds of rebates from March 2007 to May 2008, affecting approximately 668 members and rebates totalling $82,619 in one instance, and 1,509 members and rebates totalling $551,783 in the other. This was reported to ASIC and affected members have either received compensation including interest or had the rebate credited to their account at the unit price that was current at the time of remediation so as to reflect the changing value of money over time.

(c) Between September 2008 and May 2009, as a result of an error in calculating a provision for tax, the Staff Fund was undervalued. This was reported to ASIC and APRA. It adversely affected 3,264 exited members. ANZ Staff Superannuation (Australia) Pty Ltd paid rectification amounts to exited members totalling $2,207,593.42, and corrected unit pricing.

(d) Fees were overcharged to investors in two MIS from the date of their initial investments until May 2010. This was reported to ASIC. Remediation was completed by about November 2010 and involved adjustments to unit prices and total compensation payments of approximately $2,510,000 including interest.

(e) Unit prices for the OneAnswer Vanguard Index Diversified Fund were overstated by approximately 40 basis points (net total amount of about $459,000) between about March 2009 and February 2011. This was reported to ASIC. Affected investors included individuals and other investment funds. ANZ compensated all affected investors, including approximately 230 individual investors who received a total of $29,663.74 including interest.

(f) Between 25 November 2013 and 28 February 2014, one of ANZ's systems did not correctly process the effective date for customer contributions to superannuation accounts. This resulted in incorrect unit prices being attributed to contributions. Approximately 25,500 customers, in respect of approximately 45,000 transactions, were affected. Remediation of the issue was completed by July 2014. The issue was reported to APRA, which indicated in September 2014 that it considered the breach to be closed.

(g) Between January 2016 and March 2017, the Staff Fund was overvalued as a result of an incorrect journal entry. This was reported to APRA. It adversely affected approximately 1,112 members. ANZ Staff Superannuation (Australia) Pty Ltd paid rectification amounts totalling $117,586 and corrected unit pricing.

5.39 These failures occurred for reasons connected with ANZ's fee calculation systems, processes and controls (many of which have required manual input, including to implement the complex and frequently changing regulatory framework), and staff errors in applying those processes. For example, the error in [5.38(e)] occurred because ANZ's product research team provided an incorrect management expense ratio to the product actuary, who applied that incorrect ratio in calculating the fee charged to investors. ANZ acknowledges that repeated failures of this kind can suggest the existence of a cultural issue or supervisory failures by management to prevent instances of poor operational effectiveness. ANZ accepts that steps recently taken to enhance its culture and improve supervisory arrangements must be continued.

5.40 In addition to rectifying the errors that have been identified, ANZ has introduced a number of improvements to its system controls and processes to reduce the risk of recurrence of errors of these kinds: for example, implementing central controls to verify service fee charges and promptly resolve any discrepancy between a customer's agreed service fee and the amount being charged, and the substantial investment in technology and simplification of its superannuation platform referred to in [5.71].

5.41 **Summary**: **1** and **2** Yes, as described in [5.30] to [5.33], [5.36] and [5.38]. **3(a)** ASIC/APRA have been notified of all conduct mentioned above and ASIC is investigating at least the conduct referred to in [5.30(c)]. The conduct in [5.31] is the subject of the inquiries referred to in that paragraph. The issue of incorrect charging of fees was also referred to in the Four Major Banks Review.[27] **3(b)-(d)** ANZ attributes the failures to matters including those in [5.34] and [5.39]. **3(e)(i)** ANZ has taken the remedial steps in [5.30(a)], [5.30(b)], [5.31], [5.37(b)], [5.37(c)], [5.37(d)] and [5.38], and is committed to taking the steps in [5.30(c)], [5.32] and [5.37(a)]. **3(e)(ii)** ANZ has taken steps including those in [5.35] and [5.40].

E. Implementation of MySuper reforms

5.42 In the course of implementing the MySuper reforms, the following issues occurred.

5.43 First, ANZ scheduled the creation of MySuper accounts for about 3,500 inactive default members[28] to occur *after* 1 January 2014 (the implementation date of the reforms), not anticipating the significant volume of contributions that would in fact be received from those members after that date but before their accounts were established. This was reported to APRA, and ANZ continued to liaise with APRA through the process of establishing MySuper accounts for those members, reversing contributions paid into the

27 Transcript 5 October 2016, p. 4.

28 That is, default members for whom no contributions were received between 1 March and 31 October 2013.

legacy accounts after 1 January 2014, and contacting affected members to advise them of the new MySuper requirements.

5.44 Second, between January and October 2014, ANZ incorrectly processed approximately $28 million worth of default contributions for about 2,500 members into their legacy superannuation accounts rather than their new MySuper accounts. This occurred as a result of a failure to flag certain accounts by the team dedicated to identifying default members in anticipation of the MySuper reforms. ANZ reported this to ASIC and APRA. ANZ re-allocated contributions to the MySuper accounts of affected members and paid compensation of approximately $600,000 to account for differences in returns and fees. In addition, 1,127 members who were not identified through the initial remediation methodology were remedied in a similar manner in December 2017, with funds of approximately $18 million and compensation of $423,659.13 being paid into new MySuper accounts opened for them. OPC made systems improvements, including conducting and implementing the recommendations of an internal end-to-end review of its contribution processes and implementing the recommendations of a review of its compliance framework conducted by an external consultant at ASIC's request. While making some recommendations, the consultant concluded that the framework was well designed and captured the key elements of a sustainable and effective governance and compliance model. OPC strengthened its compliance systems in light of the review. APRA and ASIC closed this breach on 1 and 26 May 2017 respectively.

5.45 **Summary**: **1** and **2** Yes, as described in [5.43] to [5.44]. **3(a)** The matter described in [5.44] was referred to during the Four Major Banks Review at a stage when 1,400 customers were identified as being affected.[29] ASIC/APRA were also informed and there were discussions with APRA. **3(b)-(d)** ANZ attributes the failures to the matters identified in [5.43] and [5.44]. **3(e)(i)** ANZ has taken the remedial steps in [5.43] and [5.44]. **3(e)(ii)** The issue in [5.43] occurred during the MySuper transition process. It has been resolved by the creation of the 3,500 MySuper accounts. The steps in [5.44] have been taken to minimise the risk of similar errors in future.

F. Processing and allocating superannuation monies

5.46 From time to time, ANZ has failed to process superannuation contributions and rollovers within the timeframes required by relevant legislation and regulations. Many of these instances involve failures to comply strictly with a rule requiring the rollover of funds to other providers within three days. ANZ has notified or reported these and other processing delays to ASIC and APRA. ANZ rectified these issues in a number of ways, including by processing contributions with the correct effective date, deploying additional staff to assist in processing contributions, and paying compensation for any financial loss suffered.[30] Various steps have been taken to minimise recurrence, including implementing system fixes, restructuring processing teams to achieve processing efficiencies, introducing weekly monitoring reports with agreed actions to address gaps, developing new policies, and increased interaction with external fund managers to improve turnaround times.

5.47 ANZ failed to process proceeds from a class action totalling $13.7 million in a timely way, as a result of human error and the failure of ANZ's processes, controls and supervision to protect against such error, resulting in a delay between approximately October 2008 and September 2013 in allocating the proceeds to members. This affected approximately 13,629 customers. As part of remediating its error, ANZ has paid compensatory interest totalling over $1.5 million.

5.48 **Summary**: **1** and **2** Yes, as described in [5.46] to [5.47]. **3(a)** No, although the matters were reported to ASIC/APRA. **3(b)-(d)** ANZ attributes the failures to a range of

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29 Transcript 5 October 2016, pp. 3-4.

30 In this instance, interest in the sum of $1,555,834.94 was paid as compensation.

technological process breakdowns, systems issues and human error. **3(e)(i)** Remediation steps have varied from case to case, but ANZ has typically applied contributions with an effective date of the date on which they were received or the date by which they should have been processed. **3(e)(ii)** ANZ has taken the steps in [5.46].

G. Other matters relating to Wealth

5.49 The matters below have also been identified by ANZ as misconduct or conduct falling below CSEs since 1 January 2008 in its Wealth division.

5.50 There was an error in the price of units made available under an OPL master investment life insurance policy due to a control gap in OPL's annual tax reconciliation during 2009 to 2013. This affected about 59,782 members with a total monetary value of approximately $6,518,000. ANZ reported this to ASIC and paid compensation, including interest, to affected customers.

5.51 From August 2014 to May 2015, there was an error in the link between two ANZ systems storing information for approximately 12,428 Smart Choice customers. Consequences of the error included that customers may have been able to view information relating to other customers. 401 customers were affected, with a total financial impact of $384,821. ANZ reported the matter to ASIC, notified affected customers and paid compensation, including interest.

5.52 There was a failure to pay an investment guarantee when 659 members of the ING Capital Stable Investment Fund redeemed units at a redemption price less than the guaranteed amount during the period February 2008 to August 2009. The total unpaid amount was $206,922. ANZ reported the matter to APRA, paid the guaranteed amounts and amended annual statements to members.

5.53 ANZ reported to APRA on 20 March 2009 that the operation of an employer sponsored superannuation product, OPC's Corporate Super 01 Account, was inconsistent with various aspects of the applicable legislation, the trust deed and Product Disclosure Statements (**PDS**s). Issues included funds being invested differently from the employer's instructions. ANZ provided monthly updates to APRA thereafter, including in relation to rectification measures, until August 2011. APRA advised on 15 August 2011 that it would take no further action on the basis that OPC rectified the matter. The rectification action included the implementation of several improved controls to provide transparency to Corporate Super 01 Account transactions.

5.54 Between about July 2010 and December 2015, ANZ failed to identify and pay the balances of approximately 64,000 lost/inactive superannuation accounts to the ATO where customers were no longer a member of the relevant employer sponsored fund. The account balances totalled approximately $133 million. ANZ reported this to ASIC and APRA on 8 March 2016 and transferred the account balances to the ATO on 28 April 2016, after issuing notices to the 64,000 members. Because members did not have their balances transferred to the ATO at the correct time, they may have been incorrectly charged fees, life insurance premiums or suffered a loss when comparing the investment gains/losses of the fund to the ATO interest accrued on transferred amounts. On 28 April 2017, ANZ remitted $7.2 million, representing compensation for members who had suffered such losses. ANZ implemented process changes.

5.55 While preparing to remit lost/inactive balances to the ATO for the period ending 31 December 2017, ANZ identified 9,000 lost/inactive member balances, collectively totalling approximately $41 million, that should have but had not been transferred for the periods ending 31 December 2016 and 30 June 2017. This arose as a result of transaction history information not being carried across in ANZ's systems when those members were transferred from legacy products to MySuper products, which in turn led to ANZ's systems not detecting when balances met criteria to be transferred to the ATO. ANZ also identified some balances that were transferred outside of the required timeframes, but does not yet know how many members that affected. ANZ is investigating the nature and extent of any adverse financial impact to members. ANZ is committed to remediating those members in a similar manner as set out in [5.54], should that be required, and implementing system fixes.

5.56 1,640 policyholders were not paid stamp duty and transfer costs when their claims for total loss pursuant to a certain car insurance policy were settled between April 2011 to September 2013. The claims administration was carried out by QBE on behalf of OPGI and QBE (who were in a co-insurance arrangement). The issue was discovered after the FOS made a determination in a particular case that the relevant disclosure document required a payout to include those amounts. All affected customers were paid additional amounts, including interest, by 13 November 2014. QBE implemented changes to its systems so that future claims to which the relevant disclosure statement applied included such payments.

5.57 In April 2014, ANZ identified a breakdown in its processes which meant that it had not set up "insurance only" accounts within employer sponsored plans after being instructed to do so when an employee rolled over their balance to a new non-ANZ fund. This resulted in some customers not having life insurance cover. 647 members were affected across 12 employer plans. Remediation was completed in December 2014.

5.58 There were errors relating to life insurance cover in respect of about 50,000 superannuation fund members, including the provision of benefits to dual account members, during the period 1 July 2013 to 31 March 2017. ANZ did not consider each matter to be individually reportable, but identified them as collectively significant and so made reports to APRA and ASIC. The errors were rectified by, among other things, reviewing policies to ensure members were provided with the correct insurance, accepting claims for consideration where insurance had lapsed in error or was due to lapse, and issuing appropriate notices to policyholders. To reduce the risk of recurrence, ANZ rectified system errors and implemented new control mechanisms. APRA closed the breach on 31 May 2017.

5.59 During 2017, ANZ carried out a number of reviews relating to life insurance in superannuation (one of which was undertaken by an external consultant). The reviews identified inconsistencies and gaps in ANZ's systems, processes and disclosures, including: (a) incorrect calculation of sums insured and premiums, as referred to in [5.37(a)]; and (b) some customers not having insurance when they should have, because policies were cancelled or lapsed when that should not have occurred, and other customers being provided with insurance when they should not have been, for example, because they did not meet the eligibility requirements for automatic cover.

5.60 ANZ has made a report to ASIC in relation to these matters. ANZ is continuing to investigate the matters to assess, among other things, the impact on its customers and is working to fix the issues that have been identified with respect to its systems, processes and disclosures. ANZ expects all impacted customers to be remediated by July 2018.

5.61 In or about May 2014, ANZ identified that it had issued approximately 32,000 cheques (for matters including insurance claim proceeds, and payment of superannuation benefits and refunds), totalling approximately $14.5 million, that had remained unpresented for more than 12 months. ANZ had not taken steps to contact the recipients or otherwise remit the funds to ASIC as unclaimed monies. ANZ reported the matter to ASIC. ANZ subsequently remitted approximately $2.9 million to the payees and the $11.6 million balance to ASIC. ASIC advised that the matter was closed on 19 November 2015. To reduce the risk of recurrence, ANZ developed and implemented an "Unclaimed Monies Standard" with new internal processes to identify and action unpresented cheques in a timely manner.

5.62 From time to time, system issues and human error have resulted in SIL breaching legal/regulatory requirements, or otherwise falling short of CSEs. The errors include approximately nine incidents between 2008 and 2017 resulting in penalties from the ASX or the ASIC Markets Disciplinary Panel ranging between $20,000 and $130,000. Where errors such as incorrect charging were identified, SIL undertook remediation programs, the most significant of which (by value) involved SIL refunding a total of approximately $46,000 to over 400 customers in late 2014/early 2015 in relation to incorrect brokerage rates charged to those customers.

5.63 **Summary**: **1** and **2** Yes, as described in [5.50] to [5.62]. **3(a)** ASIC is investigating the matter referred to in [5.60], and certain matters referred to in [5.62] were the subject of ASX and ASIC Markets Disciplinary Panel proceedings. The other matters were reported to ASIC/APRA. **3(b)-(d)** See [5.50] to [5.62]. **3(e)(i)** ANZ has taken the remedial steps described in [5.50] to [5.62]. **3(e)(ii)** ANZ has rectified the errors that caused the matters and taken the steps described in [5.50] to [5.62].

H. Remediation

5.64 Remediation programs involving financial advice typically require a manual review, by suitably qualified and independent persons, of advice files and other records to objectively and fairly assess the advice provided, taking into account individual circumstances. The review may extend over a substantial period of time in some cases.[31] Significant time is spent collating the data and other records needed to assess the quality of the advice clients received. These matters mean that customer remediation in financial adviser cases can take a substantial period of time.

5.65 ANZ acknowledges that, over the relevant period, it has not remediated all financial adviser matters within a timeframe that is consistent with CSEs. For example, in a number of matters which were identified in 2013 or 2014, remediation is not yet complete or was completed in late 2017. ANZ considers that this is, in part, a result of it not having had the necessary structures, processes and resources in place to efficiently deal with large-scale remediations.

5.66 ASIC receives regular reports on many of ANZ's customer remediation programs relating to financial advice, and ASIC also received data about the time taken to remediate customers as part of its Breach Reporting Project.

5.67 ANZ has sought to improve its governance practices around remediation in order to streamline processes. In particular:

(a) A specialist Advice Remediation Team for Wealth was established on 1 July 2016 to undertake significant remediation programs where a preliminary root cause analysis suggests that there will be significant remediation required, or the remediation process will be complex or time consuming.

(b) In 2016, Wealth developed the Remediation Framework, including the Advice Remediation Standards and Procedures Manual. The Remediation Framework was developed having regard to ANZ's experience of large-scale remediation, as well as ASIC's Regulatory Guide 256[32]. The Remediation Framework was developed over a period of some months in consultation with ASIC and with independent assurance by an external consultant. Adjustments were made following feedback to bring about remediation outcomes more favourable to customers.

(c) The Remediation Framework is subject to regular internal and external audit/review, and was most recently reviewed by an external consultant and subsequently updated by ANZ in 2017 to, among other things, clarify the process

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31 Wealth considers a period of at least seven years, but goes beyond that time where relevant records exist and it is in the interests of the customer to do so.

32 ASIC Regulatory Guide 256, *Client review and remediation conducted by advice licensees* (2016).

for closing a remediation project, including specifying the requirements that must be met before matters can be deemed resolved.

(d) As part of the Remediation Framework, there is a Remediation Governance Forum which is responsible for overseeing the process undertaken by the Advice Remediation Team and other remediation activities. Matters remain under active consideration by the Remediation Governance Forum until they are resolved.

(e) ANZ frequently obtains specialist assistance from external consultants as part of its efforts to expedite and ensure the robustness of its remediation programs.

(f) Compensation generally includes interest to reflect the time between the error and ANZ remediating the customer.

5.68 Remediation programs in P&I and Insurance at times face similar issues of timeliness, generally caused by difficulty in extracting data, as experienced in the Australia division (discussed at [6.35] to [6.43]). P&I and Insurance have focussed on allocating resources and priority to customer remediation to reduce the time between identifying an incident and completing remediation.

5.69 **Summary**: **1** No. **2** Yes, as described in [5.65] and [5.68]. **3(a)** No, although as noted in [5.66], ASIC receives reports. **3(b)-(d)** ANZ does not attribute this issue to any particular practice; see [5.65]. **3(e)** ANZ has taken the steps referred to in [5.67]-[5.68].

I. Other concerns

5.70 ANZ acknowledges that there have been compliance failures not specifically referred to in this submission which have not had any (or any material) adverse financial impact on customers but which ANZ nevertheless takes very seriously. These include matters relating to Wealth that have been reported or notified to ASIC and/or APRA where ASIC/APRA have advised within three months that no further information is required, no further action is to be taken or that the breach or issue is closed.

J. Question 3(e)(ii)

5.71 In the sections above, ANZ has provided specific answers to question 3(e)(ii) in the context of each identified case or class of cases. In addition, ANZ has taken more overarching steps to improve culture and conduct across the division which it considers will reduce the likelihood of the recurrence of the matters set out above as well as other types of misconduct or conduct falling below CSEs. Key measures since 2008 include:

(a) Creating a Wealth division in 2012, with the CEO Wealth on the ANZ Group Management Board (now ExCo), to further focus resources and management attention on the Wealth business. ANZ has taken further steps to ensure appropriate escalation from the Wealth division to Group level, including improvements to the escalation arrangements from the Boards of the Wealth entities and regular meetings from 2016 between the non-executive directors of those entities and Group senior executives to discuss issues and concerns.

(b) Strengthening Wealth's risk and compliance framework and ensuring its consistency across Financial Planning, Insurance and P&I, including by: restructuring the risk reporting functions in the Wealth division; implementing comprehensive governance frameworks over new products and projects so that they are aligned with Group standards; and establishing governance forums to ensure that key risks are identified, elevated appropriately and addressed consistently across Wealth.

(c) Following the Stronger Super reforms, beyond taking steps required by the reforms, ANZ invested in putting superannuation products, including a number of legacy products, onto a single, new technology platform with lower fees and integrated investment, insurance and online offerings. ANZ considers that this process, which was completed in 2017, provides a simpler operating model which will reduce the complexity that has contributed to a number of past incidents.

(d) The establishment of a program in December 2016 in the P&I and Insurance businesses to increase Board oversight of risk culture. The program introduced a raft of measures, including the collection of risk metrics and direct interactions between the relevant Boards and staff.

(e) Investment in technology to improve the identification of risk. In addition to the "Grow for Advice" tool, Advice Quality Coaches, the Adviser Hub and the use of data analytics to improve supervision and monitoring referred to at [5.26(b)], Wealth has recently introduced a smart data analytics capability to change the way operational risk is managed, by automating controls and enhancing key risk indicators to improve risk insights.

(f) The sale of parts of the Wealth business (which ANZ has announced and is in the process of executing) reflects ANZ's drive to simplify, in this case by partnering with high quality institutions with a narrower focus on wealth management and insurance, which should further improve processes and outcomes for customers.

6. QUESTIONS 1 TO 3: AUSTRALIA DIVISION

A. Overview

6.1 The frontline business units within Australia division are Retail, and Business & Private Banking (**B&PB**). Retail provides everyday banking services to consumer customers, such as home loans, credit cards, personal loans and asset finance. The Retail branch network extends throughout Australia. B&PB provides services to general businesses, small business, private banking customers, agri-businesses and farmers, including business loans and overdrafts, commercial credit cards and trade finance.

6.2 As at 30 September 2017, Australia division held more than $200 billion in customer deposits, in approximately 4 million transactional accounts, approximately 5.1 million savings accounts and more than 310,000 term deposit accounts.

6.3 As at the same date, Australia division had on loan more than $345 billion to Australian individuals and businesses. Home lending comprised over $264 billion, representing more than 1 million home loan accounts, with on average 171,000 new home loans written each year over the past five years. Business lending comprised approximately $60 billion, representing more than 500,000 business customers. Australia division had also advanced personal loans of $2.8 billion to more than 200,000 customers and provided asset finance of more than $7 billion. Australia division has approximately two million credit card customers, facilitating an average of around 1.1 million transactions per day.

B. System, process and human failures

6.4 ANZ uses a range of technical systems and processes to perform its everyday operations. Some are specific to particular products and others support a range of customer activities. Inadvertent system, process and human failures sometimes occur which lead to charging fees which ANZ is not entitled to charge, charging too much or paying too little interest in relation to deposits, loans, credit cards or overdrafts, not providing benefits associated with credit cards, inconsistencies between advertising material and ANZ's terms and conditions or the design of the product, or other problems which cause detriment to customers.[33]

6.5 There are a number of reasons why these failures occur, including: (a) product implementation issues arising from the complexity of ANZ's underlying banking systems; (b) ambiguity in terms and conditions; (c) the unanticipated effect of changes to systems on existing processes; (d) human failures to follow processes; (e) lack of management oversight; and (f) other mistakes such as coding errors. ANZ acknowledges that repeated failures of this kind can suggest the existence of a cultural issue and supervisory failures by management to prevent instances of poor operational effectiveness. ANZ accepts that steps recently taken to enhance its culture and improve supervisory arrangements must be continued.

6.6 While ANZ has controls in place to prevent and detect these issues,[34] some failures go unnoticed by both customers and ANZ for some time and, as a result, impact a number of customers. ANZ has identified a number of incidents in the Australia division over the relevant period, the largest being the Mortgage Breakfree Offset issue (discussed below). To assist the Commission and illustrate the kinds of failures that have occurred, ANZ sets out five case studies below, all of which had a significant customer impact.

Commercial Cards Letter of Offer

6.7 In October 2014, ANZ identified a potential inconsistency between the interest rates and fees set out in the original letters of offer for certain commercial credit cards and those charged by ANZ systems to some customers. As a result, ANZ conducted investigations which, over time, identified a number of other inconsistencies in the letters of offer, including instances where letters were not updated to reflect changes in interest rates or fees. The inconsistencies occurred between 2009 and February 2016. ANZ's investigations indicated that the inconsistencies were caused by breakdowns in the document management processes for some letters of offer as a result of, among other things: a lack of a version control process; a lack of routine reviews built into product review processes; unclear review and approval processes; human failures; and a lack of staff training.

6.8 ANZ informed ASIC of this matter on 14 April 2015 and provided updates to ASIC in relation to its further investigation and remediation. The matter impacted 52,135 accounts. Affected customers were refunded approximately $10.4 million in 2017, which comprised $8.4 million in reimbursements for the interest rate and fee errors, and approximately $1.9 million in compensation.[35] The average payment per customer was approximately $200.

6.9 ANZ has since rectified the discrepancies in its letters of offer for both new and existing customers. It has also put in place a new quality assurance and control process.

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33 There are also many system, process and human failures that do not cause customer detriment. Such failures have not been discussed in detail in this submission. Nevertheless, ANZ recognises that failures of this kind have, at times, led to outages or disruptions that have caused inconvenience to customers (such as those that have resulted in the temporary or permanent rejection of ANZ credit or debit cards). ANZ acknowledges that in some circumstances such failures may fall below CSEs.

34 Such as regular internal audits and forensic reports, manual checks and quality assurance.

35 The reimbursements were credited to the customers' accounts or sent via cheque to the customers' known addresses. No reimbursement has been made to approximately 6,700 affected customers, where no alternative ANZ bank account was open and the refund amount due was $15 or less. ANZ is arranging for that money to be paid to charity. Compensation in respect of approximately 1,488 customers will also be remitted as unclaimed monies.

Mortgage Breakfree Offset Remediation Program

6.10 From 2003 until July 2013, certain Breakfree home loan customers were charged an interest rate higher than they should have been according to the Breakfree terms and conditions. In addition, some offset accounts were not properly linked to home loans, resulting in customers being charged excess interest. These matters primarily arose because of limited system controls to ensure the correct Breakfree package interest discounts were applied, a disaggregated process for implementing offset linkages, and a lack of oversight and detection controls. The program that was designed and implemented to remediate the errors was known as the Mortgage Breakfree Offset Remediation Program (**MBORP**).

6.11 The MBORP identified approximately 400,000 affected accounts[36] and refunded customers approximately $69.3 million, which comprised reimbursements of $61.9 million in interest and $7.4 million in compensation to recognise that the customers had not received the interest rate discount from the Breakfree package or the benefit of linking their offset account to their loan.[37] The average payment per customer was approximately $300. ANZ informed ASIC of this matter on 17 June 2010 and provided updates in relation to its further investigation and remediation. The program was completed in April 2014.

6.12 As a result of the MBORP, ANZ made a number of process and control enhancements in respect of both the Breakfree package benefits and offset account linkages. ANZ also performed forensic data analytics across its home loans portfolio to compare customer contracts to the operation of core systems. As part of its ongoing review, in July 2017, ANZ identified certain further issues. In particular, it became apparent that: (a) the MBORP had not properly addressed the processes where customers selected a Breakfree package after drawdown or linked an existing home loan to a new Breakfree package; (b) some of the reporting tools for managing offset account linkages that were implemented as part of the MBORP were not working as effectively as intended; and (c) even where unlinked offset accounts were being correctly reported through to the operations team, due to human error, some offset accounts were not being linked to home loans.

6.13 As part of a broader review of other product processes, ANZ's Commercial Lending business also looked at offset linking processes. That review identified that those processes did not always work as intended and, as a consequence, there were linkage errors in relation to commercial lending offset products.

6.14 The recurrence of the Breakfree and offset issues and the additional offset linkage issues identified by ANZ's Commercial Lending review were notified to ASIC on 5 October 2017. ANZ continues to update ASIC on its progress. The remediation process began in October 2017 and is expected to complete later this year. ANZ estimates that it will refund around $4.3 million in overcharged fees and interest, with additional compensation.

6.15 Work to reduce the risk of further recurrence is underway and includes the implementation of increased controls to better capture customer instructions, enhanced exception reporting to identify issues or potential future issues with loan and offset accounts, and enhanced controls at loan and offset origination.

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36 For the period 23 May 2006 to July 2013 in the case of the Breakfree issue, and for the period 26 September 2003 to 14 December 2012 in the case of the offset issue.

37 No reimbursements were made to customers who suffered financial impact of less than $2 (for open accounts) or $20 (for closed accounts). Approximately 165,000 accounts fell into those categories. A sum equivalent to that impact ($716,370) was paid to charity. Approximately $230,000 was also remitted as unclaimed monies.

Esanda Loan Administration Charge

6.16 In August 2015, ANZ began investigating a potential failure in one of the inputs to the calculation of break costs for certain irregular fixed term asset finance contracts[38] where the loan had been repaid early. ANZ had included a monthly $5 loan administration charge (**LAC**) when constructing the amortisation schedule, which was used as an input in determining the interest and principal components for the break cost calculations and, as a result, had overcharged some customers in relation to the break costs.

6.17 ANZ identified the issue during its work in preparing for the sale of the Esanda Dealer business.[39] It was discovered that the LAC had been incorrectly included in the break cost calculations for some irregular consumer car loans since October 2007, and on some irregular commercial chattel mortgages since November 2013, until 27 April 2016, when a system change fixing the calculation error was put into place. ANZ informed ASIC of the matter on 10 June 2016.

6.18 While investigating the issue, ANZ became aware of four other issues in connection with the LAC, caused by system failures, and an incorrect contract term, that had resulted in ANZ overcharging some customers. System changes fixing these issues were implemented on 21 April 2017. ANZ updated ASIC on its investigation and remediation of all of these issues. ANZ identified 41,579 impacted contracts entered into between 2009 and 2017. Affected customers in respect of those contracts were refunded approximately $9.8 million in October 2017, which comprised approximately $8.7 million in repayments and approximately $1.1 million in compensation.[40]

6.19 ANZ has implemented permanent system changes to rectify the calculation errors. This has ensured that the LAC is no longer included in break cost calculations and customers are not overcharged as a result of the other identified issues.

Positive Balances in Closed Accounts

6.20 ANZ has recently identified that it has retained positive balances in a number of commercial and personal loan accounts and commercial and consumer credit and debit card accounts which have been or should have been closed:

(a) In the case of commercial and personal loan accounts, a process is in place to automatically close an account where the loan balance has been paid in full, with a $5 debt or credit tolerance. However, if a customer's final payment results in a credit balance of more than $5, accounts are not automatically closed.[41]

(b) In the case of commercial and consumer credit and debit cards, when an account is closed, credit transactions are not automatically rejected. This allows the processing of credits from payment networks, including in respect of disputed transactions, even after accounts have or should have been closed.

6.21 In each case, ANZ issues statements to customers to notify them of a positive balance. For commercial and personal loan accounts, these statements are issued as part of a

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38 An irregular contract is one where the payments are not structured evenly across the terms of the contract, or where there is residual payment as part of that contract. The affected contracts were commercial chattel mortgages and finance leases, and consumer car loans.

39 See [6.46] for further detail relating to the sale of the Esanda Dealer business.

40 For branch ANZ ATMs, no reimbursement was made in relation to 10,375 affected contracts where the contract was closed and the financial impact was $15 or less. That money ($85,497) was paid to charity. $1,990 was identified as being connected with stop payments and $137,384 was remitted as unclaimed monies. ANZ also retains $42,111 should customers come forward and seek payment.

41 This does not apply to home loans, where a process has been in place for some time to proactively manage loans accounts with credit balances and promptly return any credit funds to customers.

customer's ordinary statement cycle. With commercial and consumer credit and debit cards, statements are issued when a transaction results in a positive account balance.

6.22 ANZ informed ASIC of this matter on 4 January 2018. ANZ's preliminary view is that the issue indicates potential gaps in its processes for: (a) proactively closing accounts and returning credit funds to customers; (b) cancelling direct debit loan payment arrangements from customers' deposit accounts; and (c) communicating with customers about this possibility and how to deal with it at the time of account closure.

6.23 ANZ is still investigating the extent of customer impact. At this stage, ANZ is investigating approximately 228,000 accounts. The bulk of the accounts being investigated are consumer and commercial credit card accounts. The initial indication is that, for the majority of these accounts, the positive balance is under $50. A program to proactively return customer positive balances and compensate customers will be put in place. ANZ will also identify appropriate measures, such as additional process or system controls, to reduce the risk of recurrence.

ATM Retractions

6.24 In December 2015, ANZ became aware that ANZ customers may not have been proactively refunded amounts of cash which were retracted into a non-branch ANZ ATM because they had been left in the ATM cash dispenser by the customer.

6.25 Prior to April 2011, ANZ customers who had a cash retract at a non-branch ANZ ATM were proactively refunded.[42] The proactive aspect of this process did not continue due to an oversight when operational tasks were reassigned in April 2011 and, as a result, ANZ customers who had a cash retract at a non-branch ANZ ATM between April 2011 and 1 December 2015 were not proactively refunded. On 16 December 2015, ANZ reinstituted the proactive refunds process, backdating refunds to 1 December 2015.

6.26 ANZ notified ASIC of this issue on 24 December 2015 and is providing updates to it in relation to the remediation. Around 23,500 customers were affected between April 2011 and November 2015, with the total financial impact being approximately $2.5 million. A reimbursement pilot commenced on 13 February 2017 and 196 customers were remediated. Remediation of the remaining customers is expected to occur by April 2018. Affected customers will be (and those in the pilot were) refunded the retracted cash amount plus compensation.

6.27 ANZ also implemented a daily reporting process to match all proactive refund amounts, as a check that the process was working effectively. It has recently been identified that the proactive process reinstituted in December 2015 was not working as effectively as intended and not all customers were being proactively reimbursed. Affected customers will be remediated.

Other issues

6.28 Other examples of the kinds of system, human and process failures which arise include: (a) issues relating to overseas transaction fees on credit cards; (b) issues where some customers did not receive certain fee waivers to which they were entitled in relation to their Progress Saver, Access Advantage, Access Basic and ANZ Passbook Savings accounts; (c) an issue over 2013-2015 where ANZ failed to correctly apply bonus interest to some Progress Saver accounts; (d) an issue where ANZ incorrectly charged fees and/or interest on overdrafts, internet banking for business, commercial bills and indemnity

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42 Prior to 2017, ANZ did not proactively refund ANZ customers who had a cash retract at an ANZ branch ATM. Reactive reimbursement occurred when customers contacted ANZ, either via branch staff or via ANZ's dispute resolution process. ANZ's data indicated that this approach was effective to ensure customers were refunded in 90-95% of cases. In 2017, ANZ implemented a new, centralised branch reconciliation process, enabling proactive reimbursement in this scenario.

guarantee products; (e) an issue over 2010-2017 where some home loan and commercial lending accounts were not receiving the full benefit of offset arrangements due to the way the Offset sub-system calculates interest as compared to the Loan sub-system; (f) an issue where some ANZ customers did not receive benefits in relation to their business select and community packages; (g) an issue relating to redraw on some home, commercial and personal loans; and (h) Private Bank issues relating to package fee waivers and interest calculations. ANZ has remediated, or is in the process of remediating, these issues.

Nature of conduct, causes, reporting and remediation

6.29 System, process and human failures causing detriment to a number of customers will frequently involve a breach of contract. Failures which affect a number of customers over a long period of time do not meet CSEs. There are also instances where ANZ has identified misconduct (for example, breaches of s 912A(1)(a) of the Corporations Act) and it is possible that some conduct may contravene the CBP or other Codes.

6.30 Either in compliance with its obligations under s 912D of the Corporations Act or because of their scale and significance, ANZ has notified ASIC of a number of these cases and subsequently informed ASIC about the progress and approach taken on its remediation activities. ANZ is also currently involved in a class action relating to its contractual entitlement to charge certain periodical payment non-payment fees,[43] having earlier paid $28.8 million to customers through a remediation program in 2016.

6.31 These system, process and human failures have a variety of causes, reflecting the range and complexity of the underlying products, systems and processes. ANZ nonetheless considers that there have been too many failures over the relevant period and that it should have put more focus on preventing and detecting matters of this kind. ANZ has taken and is taking action to address this, as explained below.

6.32 Where ANZ identifies an issue, it remediates customers who are impacted (as the case studies demonstrate), takes steps to fix the problem and considers whether anything is required to reduce the risk of recurrence. For example, as highlighted in the case studies, ANZ, among other things implements system, process and control enhancements.

6.33 ANZ has been actively working to minimise the number of systemic issues relating to incorrect charging of fees and interest. For example, ANZ monitors the continuing alignment of fees and charges for its Retail and Commercial product lines with its terms and conditions. ANZ has also built and is building a number of forensic reporting tools to assist in identifying system, process or human failures earlier. ANZ is also working to simplify its product offerings and systems to reduce the incidence of problems.

6.34 **Summary: 1** Yes, in some instances, as described in [6.29]. **2** Yes, as described in [6.29]. **3(a)** ASIC receives reports about ANZ's investigation and remediation activities in many cases: [6.30]. One matter is presently the subject of litigation: [6.30]. **3(b)-(d)** See [6.5], [6.31]. **3(e)(i)** ANZ has taken, is taking or is committed to the steps referred to in [6.32]. **3(e)(ii)** ANZ has taken, is taking or is committed to the steps referred to in [6.33].

C. Remediation

6.35 Within Australia division, remediation of customer financial loss is a process that can involve significant complexity, as the case studies discussed at [6.7]-[6.27] show.

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43 *Andrews v ANZ* (VID811/2010).

6.36 ANZ is committed to taking proper steps to identify the extent of an issue, the customers affected, and the amount of appropriate remediation. This necessarily takes some time to get right.

6.37 For cases involving incorrect charging or payments, remediation can involve the retrieval of historical data about transactions, fees charged or interest awarded over time.[44] Such information is often archived, or must be reconstructed with the assistance of external providers. For example, in remediating the Commercial Cards Letter of Offer issue (discussed at [6.7]-[6.9]), affected customers had to be identified following a close analysis of customer data against six separate sets of contractual terms, which varied over time and between customers. This involved the manual review of some customer data and the recovery of information from archives.

6.38 It is also often necessary to develop a technical solution to identify and extract all information necessary for the remediation. For example, in the ATM Retractions matter (discussed from [6.24]-[6.27]), external providers were engaged to build a solution to calculate remediation payments. In the MBORP matter (discussed from [6.10]-[6.15]), it was necessary to isolate and analyse billions of lines of data to reconstruct home loan information in order to determine customer entitlements. The proper discounts and interest rates were then applied to this data-set, to accurately identify the impact on the customer.

6.39 ANZ accepts that in some instances, even having regard to the complexity of the issues identified, it has not completed customer remediation programs in a timely way and therefore has not met CSEs. This, coupled with the detection of a number of issues by ANZ over recent years, has led to the existence of a backlog of matters that have not been appropriately progressed. For example, for the:

(a) Commercial Cards Letters of Offer matter, it took approximately three years and three months from the date that investigations began (October 2014) to the completion of customer remediation (December 2017); and

(b) ATM Retractions matter, investigations began in December 2015 and, while there was a pilot remediation program in February 2017, it is expected that the remainder of customers will not be reimbursed until April 2018 due to the data complexities.

6.40 ASIC has received data about times for ANZ's remediation activities including as part of its Breach Reporting Project, which is discussed from [8.1].

6.41 Prior to 2017, accountability for each remediation rested with the sponsoring business executive, with support as needed from risk, compliance and legal staff, and the project delivery team which typically carries out large remediation programs. This structure created clear accountability for individual remediation programs but had the effect of disaggregating ANZ's efforts and inhibiting its ability to take an overarching approach.

6.42 ANZ is now moving towards a more centralised and systematised approach to remediation within Australia division. Key steps that ANZ has taken to date include:

(a) The articulation of the remediation principles described at [4.17].

(b) The creation of the Australia division Executive Remediation Governance Forum in 2017. The forum is involved in overseeing remediation within Australia division and, where necessary, seeking resources and funding to ensure that remediation progresses in a timely way.

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[44] The availability of data is a significant issue where the remediation extends over a long time period. Over the relevant period, Australia division has generally remediated affected customers over a six or seven year period prior to the identification of the issue.

(c) Committing resources to projects in FY2017-2018 to try to address the backlog referred to above including the allocation of approximately 130 staff to deal with large customer remediation programs in the new Responsible Banking team (discussed at [6.100(b)]).

6.43 **Summary: 1** No. **2** Yes, as described in [6.39]. **3(a)** No, although ASIC has received data: [6.40]. **3(b)-(d)** See [6.41]. **3(e)** ANZ has taken or is taking the steps referred to in [6.42].

D. Consumer credit

6.44 A significant portion of the business of the Australia division involves the provision of credit to ANZ's consumer customers. The division's consumer credit activities are conducted by Retail, which provides housing finance, credit cards, personal loans and overdraft facilities, and by ANZ's consumer asset finance business, which provides motor vehicle and equipment finance.

6.45 The responsible lending obligations imposed by the NCCP Act since 2011 require credit providers to, among other things, make certain reasonable inquiries before entering into a consumer loan. Compliance with these obligations depends on a consideration of the circumstances of each borrower, assessed on a loan-by-loan basis. Over the relevant period, ANZ has identified instances in which it needed to improve its responsible lending practices and in which it failed to comply with its responsible lending obligations.

Motor vehicle finance – 2018 ASIC proceeding

6.46 In April 2016, ANZ completed the sale of its Esanda Dealer Finance portfolio to Macquarie Group Limited (**Macquarie**). As a result, most customers who had an Esanda contract arranged through a car dealership were transferred to Macquarie and Esanda/ANZ ceased to accept contracts sold through car dealerships (who operate under a point of sale exemption). Following the sale, Esanda customers who arranged their contracts with Esanda or ANZ directly, or through a broker, stayed with ANZ. ANZ continues to arrange contracts through brokers, by telephone and online.

6.47 On 18 January 2018, ASIC commenced a civil penalty proceeding in the Federal Court against ANZ for breaches of Chapter 3 of the NCCP Act in respect of the Esanda business. ANZ and ASIC have filed a Statement of Agreed Facts and Admissions in that proceeding, in which ANZ accepted that it failed to take reasonable steps to verify the income figures stated in relation to 12 motor vehicle finance applications introduced to Esanda by three third party intermediaries, when it had reason to doubt the reliability of that information.[45]

6.48 ANZ had processes at the relevant time for investigating suspected fraud by third party intermediaries and banning them where such behaviour was identified. In this case, once ANZ suspected fraud, it ought to have taken additional steps to verify the stated income figures by reference to additional source documentation.

6.49 ANZ has developed a remediation program, in coordination with ASIC, to address customer detriment. Broadly, the program involves: (a) the identification of suspected fraud-affected loan contracts introduced by the relevant third party intermediaries; (b) an assessment by ANZ based on criteria agreed with ASIC as to whether or not any loss was suffered by affected customers; (c) where loss is established, an appropriate remedial response which may include a refund or waiver of certain fees and charges or the opportunity for the customer to re-finance on more favourable terms; and (d) the removal from the customer's credit record of any default listings resulting from the loan. ANZ expects to remediate approximately 320 car loan customers for loans taken out through

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45 The conduct of the third party intermediaries was detected and reported by ANZ.

the relevant third party intermediaries from 2013 to 2015, in a total amount of around $5 million.

6.50 To reduce the risk of the recurrence of this type of conduct, ANZ no longer accepts consumer credit applications from two of the third party intermediaries. It also no longer accepts consumer credit applications from the individual from the other third party intermediary who was involved in the suspected fraud.

Motor vehicle finance – guarantor swap incident

6.51 Following an ASIC investigation into a car finance broker, Esanda agreed to remediate more than 70 customers for car loans provided by Esanda. ASIC identified that between 2011 and 2014, the broker had arranged loans for customers who did not meet Esanda's lending criteria by writing the application in the name of an individual who did not own or have possession of the vehicle, but who agreed to guarantee the loan.[46] ANZ accepts that the systems Esanda had in place at the time were ineffective to detect this broker's misconduct and thus failed to meet CSEs.

6.52 Affected customers were offered a new loan on more favourable terms, or where the loan had been paid out were refunded interest and the premiums for some add-on insurance products. ANZ did not seek further payments where vehicles had been repossessed. ANZ also removed any default listings resulting from the conduct. In addition, ANZ ultimately suspended the accreditation of some individual brokers implicated in the guarantor swap issue and ceased dealing with them. ANZ also required all loan applications originated via the broker to be submitted for manual assessment, so as to facilitate identification of any irregularities with the loan applications.

Motor vehicle finance – process enhancements

6.53 To address the type of conduct described at [6.47] and [6.51], ANZ has implemented a number of process changes in asset finance including: (a) the suspension or heightened monitoring of brokers suspected of fraud; (b) the creation of a broker forum and clarification of ANZ's broker consequence management framework; (c) the use of data analytics and monthly sample file reviews to audit broker compliance with ANZ's policies and procedures; (d) training for brokers including on responsible lending; (e) brokers must meet the standard set by a new customer interview guide; and (f) enhanced training for relevant ANZ staff to increase fraud detection skills.

Overdrafts

6.54 In 2015, ASIC commenced an investigation in respect of the ANZ Assured overdraft facility. Between November 2014 and January 2015, ANZ had issued a series of mail-outs to a group of existing customers holding transaction accounts. The mail-outs offered customers an overdraft facility with limits of $500 or $1,000. In February 2016, ASIC issued five infringement notices totalling $212,500 for alleged failures to comply with requirements to make inquiries about the maximum credit limit required by the customer in respect of pre-approved offers. ANZ paid these amounts and ceased making ANZ Assured pre-approved offers in early 2015.

Mortgages

6.55 In 2015/2016, as part of an industry-wide review into interest only home loans, ASIC made inquiries into ANZ's compliance with its responsible lending obligations. After calling for a sample of 25 customer files, ASIC raised concerns as to whether ANZ had made genuine inquiries into customers' living expenses. While ANZ did not accept that it

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[46] The broker also sold add-on products, such as insurance or warranties, to some borrowers without their knowledge or consent. The premiums inflated the amount they borrowed, thus increasing the overall amount of interest paid by borrowers.

had not made genuine inquiries, it did accept that there were instances in which it lacked evidence to show that genuine inquiries had been made.

6.56 At ASIC's request, ANZ conducted a review of home loans relating to the period 1 January 2011 to 4 April 2016, to identify any customers who had suffered financial difficulty within 12 months of taking out a loan, and whose living expenses were stated to be the Household Expenditure Measure (**HEM**) benchmark, in order to identify whether there was a causal link. ANZ engaged a consultant to conduct the review, which considered 1,359 such cases and did not identify any instances in which a customer's financial difficulty was attributable to a lack of enquiries into their living expenses.

Other matters

6.57 There were additional instances in which ANZ did not comply fully with its responsible lending obligations in the relevant period, which were identified through ANZ's complaints handling processes. Most complaints made to ANZ are resolved through its IDR process, but some proceed to external dispute resolution, largely through the FOS. In the last seven years ANZ has had around 120 consumer responsible lending and analogous small business lending complaints proceed to the FOS, of which around 50 were decided against it.[47] While each FOS decision depended on its own facts, issues raised include: (a) the extent of the inquiries ANZ made into the circumstances of its customer(s); (b) the degree of scrutiny it applied to information received; and (c) the suitability of the loan or credit that it provided.

6.58 Some of the cases decided against ANZ by the FOS suggest that there have been times when ANZ has not complied with its responsible lending obligations. ANZ has taken the steps required to remediate customers where appropriate.

6.59 ANZ is committed to continuously improving its responsible lending practices and procedures across all of its consumer products to reduce the risk that a customer will enter into an unsuitable loan. ANZ has implemented a number of initiatives to enhance its policies, systems, processes and training relating to the collection and verification of information from customers.

6.60 For example, ANZ has enhanced its statement of financial position for consumer home loans to require a greater level of itemisation in the expenses category. ANZ intends to expand use of this statement to other consumer lending areas. ANZ believes that this will assist customers to provide a more detailed picture of their living expenses.

6.61 ANZ is also preparing to implement the mandatory comprehensive credit reporting (**CCR**) regime announced by the Treasurer on 2 November 2017. The CCR regime will further assist lenders to comply with responsible lending obligations by providing further and better information about customers' credit histories.

6.62 In addition, work is being done by a group of banks including ANZ, including liaising with ASIC and APRA, to enhance industry responsible lending practices where that is appropriate. This has led, for example, to the development of an industry standard interview guide for brokers.

6.63 **Summary**: **1** and **2** Yes as described in [6.47] and [6.58]. **2** Yes, as described in [6.51] and [6.54] **3(a)** Yes as described in [6.47], [6.51] and [6.54]. **3(b)-(d)** See [6.48] and [6.51]. **3(e)(i)** ANZ has taken or is in the process of taking the steps in [6.49], [6.52], and [6.57]. **3(e)(ii)** ANZ has taken steps as described in [6.50], [6.53], [6.54] and [6.59]-[6.62].

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47 The outcomes against ANZ in the last four years are: 10 out of 22 cases in 2014; 2 out of 15 cases in 2015; 2 out of 19 cases in 2016; and 3 out of 17 cases in 2017.

E. Small business credit

6.64 In 2017, ANZ and other members of the ABA agreed on a set of principles to reduce banks' small business loan contractual rights. In summary, ANZ and other banks agreed to limit the use of non-monetary covenants, including financial indicator covenants and some other contractual rights. In addition, ANZ agreed to simplify its main small business lending contract, which was finalised at the end of 2017.

6.65 This work responded to recommendations from several inquiries including the Parliamentary Joint Committee inquiry into the Impairment of Customer Loans, Australian Small Business and Family Enterprise Ombudsman inquiry into Small Business Loans, and the Independent Review of the CBP.[48] It also followed guidance ANZ received from ASIC as to its expectations in relation to certain contractual rights for small business loan contracts.

6.66 While reducing contractual rights, and in particular non-monetary covenants may appear to be cost-free to the community, there is a trade-off involved. From a credit and risk management perspective, loan contracts with reduced rights can carry greater risk for banks. This can affect the price and availability of such loans. CSEs on this issue are evolving in a dialogue between banks, regulators and the community.

6.67 Nevertheless, ANZ acknowledges that, in the past, management of ANZ's contractual rights may in some instances have fallen below CSEs. ANZ has now put in place a simplified contract for its main small business loan contracts. In addition, ANZ has removed material adverse change and entire agreement clauses, removed financial indicator covenants as events of default for most customers,[49] clearly defined the circumstances in which specific event covenants will operate, and ensured that default, indemnity and unilateral variation clauses are narrower in scope for all its standard form small business loan contracts.

6.68 **Summary**: **1** No. **2** See [6.67]. **3(a)** Yes, as described in [6.65]. **3(b) – (d)** CSEs in this area have changed over time (see [6.64]). **3(e)** ANZ continues to take steps to implement recommendations made by the various inquiries, review its own processes and procedures and to work with the ABA and ASIC on these issues (see [6.64]–[6.65] and [6.67]).

F. Sales conduct

6.69 ANZ has identified instances during the relevant period where frontline staff and representatives, and third party brokers, have engaged in inappropriate sales practices in an effort to increase incentive payments, including selling or referring customers to unsuitable products. A number of reviews[50] have concluded that this conduct is neither systemic nor widespread either at ANZ or in the wider industry. Nonetheless, ANZ acknowledges that any instance can cause detriment to the customers involved. Where such detriment is identified, ANZ takes steps to remediate it.

6.70 ANZ has taken steps in recent years to change its incentive structures and improve its systems for detecting inappropriate sales conduct and has incorporated into its work the recommendations of the Sedgwick Review and the ASIC Report 516, *Review of mortgage broker remuneration* (to the extent that it had not already implemented them).

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[48] Australian Small Business and Family Enterprise Ombudsman, *Inquiry into Small Business Loans*, December 2016; Parliamentary Joint Committee on Corporations and Financial Services, *Impairment of Customer Loans*, May 2016; Phil Khoury, *Independent Review of the CBP*, 31 January 2017.

[49] Financial indicator covenants have been retained for certain specialised lending, namely property development, margin lending and lending to self-managed superannuation funds.

[50] Report on Retail Banking Remuneration Review (Stephen Sedgwick AO); ASIC Report 516 - Review of mortgage broker remuneration; and ASIC's direction to ANZ (and seven other banks) to conduct an audit of its sales practices, following the misconduct uncovered at Wells Fargo in the United States (2016/2017).

6.71 From 2010, ANZ's incentive structures for staff included compliance hurdles which enabled the reduction or disallowance of incentives for inappropriate conduct. In 2017, as explained at [6.100(c)], ANZ moved to a "balanced scorecard" approach to frontline incentives. ANZ has also made changes to specific aspects of its commissions practices. For example, ANZ is removing volume-based commissions for Retail brokers and introducers effective from 1 February 2018. Further, ANZ's Esanda business ceased the use of "flex commissions" in motor vehicle finance from 1 December 2017, prior to the legislative requirement to do so by November 2018. The use of "flex commissions" is widespread in the motor vehicle finance market, but such commissions are not transparent to customers and ANZ acknowledges that these commission structures may encourage brokers to sell consumer motor vehicle finance at high interest rates, contrary to CSEs.

6.72 In its home lending business, ANZ has created a Sales Conduct Dashboard which uses data analytics to identify high risk staff, representatives and brokers, based on trends in the kind and volume of loans they are arranging and related statistics. While there is often a legitimate explanation for these trends, where they are identified, staff, representatives and brokers are subject to qualitative file reviews to identify any conduct issues. Where ANZ identifies inappropriate sales practices, it responds with appropriate consequence management, which may include termination of staff or of relationships with brokers and representatives, depending on the seriousness of the issue. Other businesses including small business banking also monitor indicators in relation to potential conduct issues and take similar action.

6.73 Finally, one purpose of the measures to improve culture and performance management at ANZ (see [4.19]-[4.20]) is to attract and retain staff with strong values and customer focus. These measures have been supplemented by specific training and observational coaching on matters such as responsible lending and customer conversations, supervision by managers and consideration of complaints.

Lending related fraud

6.74 Over the relevant period ANZ has identified instances where its staff or representatives were involved in submitting false information in connection with loans and loan applications.[51] Specific examples include:

(a) In 2008, an ANZ branch employee was found to have falsified more than 100 loan applications, resulting in inflated lending above the value of the underlying security. The employee was dismissed.

(b) In 2017, two ANZ business banking managers were found to have been colluding with external third parties to make 47 fraudulent loans. One was dismissed. The other resigned during the disciplinary process.

(c) Between 2006 and 2009, an ANZ mobile franchisee used falsely inflated contracts of sale and false documentation in relation to eight mortgage applications, resulting in potential losses of around $2 million (due to a shortfall in security). ANZ terminated the relevant franchisee agreement in 2009.

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51 From time to time, suspected instances of such conduct are also identified in relation to third party intermediaries, such as finance and mortgage brokers, introducers and financial advisers. Examples, each of which were raised with or known to ASIC, include: (a) from a review conducted by ANZ, suspicious information regarding foreign income was identified in relation to approximately 4,500 home loans (2016); (b) over 150 suspicious loan applications submitted by brokers working for a broker firm, which led ANZ to suspend the brokers (2016); and (c) an independent financial advisory firm falsifying documents to obtain, on behalf of their clients who were ANZ customers, progress payments for building construction loans when building work had not been completed (2016). ANZ has suspended or terminated its relationships with those responsible for the suspected conduct and, where appropriate, remediated customers.

6.75 There have been instances of the forgery of signatures on lending applications by ANZ staff. Where signature fraud is identified, ANZ contacts customers to notify them and check whether any detriment resulted. Where customers are not involved in fraudulent conduct and suffered detriment, ANZ remediates them.

6.76 ANZ takes these matters extremely seriously. Where appropriate, ANZ has reported matters to ASIC and/or other law enforcement agencies and taken disciplinary action against staff. In addition, ANZ has recently strengthened its fraud and other sales conduct risk controls, including enhancing its fraud controls to better facilitate the identification of suspect applications and introducing the measures referred to in [6.71]-[6.73].

6.77 **Summary: 1** Yes, as described in [6.74] and [6.75]. **2** Yes, as described in [6.69], [6.71] and [6.74]-[6.75]. **3(a)** Yes, as described in [6.69] and [6.76]. **3(b)–(d)** ANZ acknowledges that remuneration structures impact on the prevalence of this kind of conduct. ANZ considers that its structures were in line with industry practice at the relevant time (see [6.71]). **3(e)(i)** See [6.69] and [6.75]. **3(e)(ii)** ANZ has taken the steps described in [6.70]-[6.73] and [6.76].

G. Agribusiness issues – Landmark

6.78 In March 2010, ANZ acquired the Landmark loan book ($2.4 billion) and deposit book ($300 million) (**Landmark acquisition**). At the time of the Landmark acquisition, approximately 225 Landmark loans were impaired or in financial difficulty.

6.79 There have been a number of recent public inquiries into ANZ's management of impaired or defaulting loans of former Landmark customers.[52] A number of civil proceedings have been brought by former Landmark customers against ANZ. A private prosecution was commenced against an ANZ officer, but was discontinued by the Commonwealth Director of Public Prosecutions.[53]

6.80 The allegations made against ANZ in these contexts have been of three main types:

(a) allegations relating to conduct by Landmark (with which ANZ was not involved) prior to the Landmark acquisition (for example, in making a particular loan to a Landmark customer);

(b) allegations relating to the circumstances of the Landmark acquisition (namely, that ANZ was somehow incentivised to default or foreclose on customers because it had purchased Landmark for 16% of the value of the Landmark loan book or that it had made the purchase to reduce its securitisation exposure); and

(c) allegations relating to ANZ's conduct after the Landmark acquisition (for example, poor communication with former Landmark customers after the acquisition; "engineering defaults" by relying on non-monetary defaults and constructive breaches; inappropriate enforcement action; unilaterally and significantly altering loan terms and conditions; and not making customers aware of valuations carried out on their security properties).[54]

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52 Senate Select Committee, *Inquiry into Lending to Primary Production Customers*, December 2017; Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into the Impairment of Customer Loans*, 4 May 2016.

53 There has also been some media attention regarding Landmark. For example, footage of a meeting between Mr Charles Phillott (a former Landmark customer) and ANZ's then CEO, Mr Mike Smith, was aired on *60 Minutes* on 30 August 2015. During that meeting, Mr Smith apologised to Mr Phillott and acknowledged there was "quite a bit of fault" on the part of ANZ. The parties reached a commercial resolution of the issues between them.

54 Save as noted in [6.82] in relation to the first allegation, these allegations are incorrect: Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into the Impairment of Customer Loans*, Official

6.81 The allegations made about the circumstances of the Landmark acquisition (set out in [6.80(b)]) are demonstrably incorrect and were addressed during the inquiries referred to above. These allegations are not addressed further in this submission.

6.82 Subject to what follows, ANZ has not identified any systemic issues relating to the allegations in (a) and (c) about its conduct. ANZ accepts and has accepted that, in certain respects, its management of some former Landmark customers and their accounts at the time of and immediately following the Landmark acquisition fell below CSEs. In a small number of cases, its conduct either may have or more than likely did, also constitute a breach of the obligation in the CBP to act fairly and reasonably towards its customers. ANZ acknowledges that it should have been more responsive and empathetic to some customers, particularly given their difficult financial circumstances, and recognises that its failure to do so caused distress in some cases.[55]

6.83 With the cooperation of the customers affected, ANZ has taken steps to reach a settlement of the issues it has identified with each of the customers concerned. A small number of cases remain unresolved.

6.84 To prevent recurrence of the issues identified, since 2014, ANZ has continued to refine and improve its processes and procedures for managing high risk and defaulting agribusiness accounts. It now has dedicated agribusiness teams and has made the following changes to its management of all agribusiness accounts (not just those relating to former Landmark customers):

(a) ANZ aims for increased engagement with and understanding of agribusiness customers and their needs through more frequent face-to-face farm visits.

(b) any enforcement decisions must now be approved by a member of the Lending Services leadership team.

(c) ANZ encourages customers to obtain independent legal and financial advice where appropriate, and will often provide financial assistance to facilitate this.

(d) ANZ offers farm debt mediation in all disputed cases, even if not required, and in most instances pays the mediator's fees in full.

(e) ANZ provides customers with copies of property valuations, and obtains customer input into the valuation process wherever appropriate.

(f) in 2014, ANZ implemented a moratorium on new farm repossessions and a freeze on increasing interest rates for farmers impacted by drought, which was extended to 2016 as a result of the worsening drought conditions. This initiative is now part of ANZ's broader practice for natural disasters.

(g) Lending Services has undergone cultural change and has formulated its own "Purpose Statement", which is to "manage the bank's high risk customers to achieve the best outcome for ANZ and our customer". Training has also been provided to members of the Lending Services team, with a focus on empathy when dealing with difficult and distressing customer situations.

6.85 **Summary**: **1** Yes, in a small number of cases [6.82]. and **2** Yes, in some respects [6.82]. **3(a)** Yes, as described in [6.79]. **3 (b)–(d)** ANZ does not attribute this to any specific practice. **3(e)(i)** ANZ has taken the steps described in [6.83]. **3(e)(ii)** ANZ has taken the steps described in [6.84].

Committee Hansard, 4 April 2016, pp. 18-19 and 24-25; Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into the Impairment of Customer Loans*, May 2016, pp. 145-147.

55 Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into the Impairment of Customer Loans*, Official Committee Hansard, 13 November 2015, p. 64.

H. Insurance distribution

Tyre and Rim

6.86 In 2012, ASIC conducted an industry-wide review of whether the financing of tyre and rim insurance premiums was being conducted in compliance with the NCC. Esanda identified that its financing of these premiums had, in some instances, not been compliant with the NCC, in that premiums were financed on terms longer than one year. ASIC found that several other car financing companies had engaged in similar conduct. As a result, $5,308,000 of finance provided to pay tyre and rim insurance was refunded to 9,829 Esanda customers by September 2013 in consultation with ASIC. The other car financing companies involved undertook similar remediation exercises. Esanda ceased financing tyre and rim premiums in June 2012. In November 2016, ANZ also limited its financing of motor vehicle add-on insurance products (through its direct, online and broker channels) to comprehensive motor vehicle or motorcycle insurance and loan protection insurance. The net amount of insurance premiums which ANZ will finance has been reduced to 15%.

Consumer credit insurance

6.87 In 2009, ASIC made enquiries regarding ANZ's credit card consumer credit insurance (**CCI**) product and associated sales practices. In 2010, ASIC commenced an industry-wide review which resulted in its Report 256*, Consumer credit insurance: A review of sales practices by authorised deposit taking institutions,* which makes recommendations in relation to the sale of CCI.

6.88 ANZ accepts that, in some respects, its practices relating to the sale of credit card CCI around the time of ASIC's report did not meet the standards identified in ASIC's Report and did not meet CSEs. ANZ introduced a new version of its credit card CCI in 2012 and from 2014 implemented further steps, including amending its sales scripts, updating its training, enhancing its monitoring to target the identification of credit card CCI issues and ceasing sales of CCI through call centres (from October 2016).

6.89 In 2017, ANZ committed to a further range of measures relating to credit card CCI, which will be incorporated into the revised CBP. These measures include a deferred sales model, where consumers cannot be sold a credit card CCI policy until at least four days after they have applied for their credit card, as well as new consent and disclosure processes.

6.90 Further to a request by ASIC, ANZ's Internal Audit division is currently undertaking a review to ensure the 10 recommendations made in ASIC Report 256 have been implemented effectively and to address ASIC's ongoing concerns about CCI sales practices in the industry. ANZ is required to report back to ASIC by May 2018.

6.91 **Summary 1** Yes, as described in [6.86]. **2** Yes, as described in [6.86] and [6.88]. **3(a)** Yes, see [6.86], [6.87] and [6.89] and [6.90]. **3(b)-(d)** ANZ does not attribute this to any particular practice but notes that these were industry-wide issues, as described in [6.86] and [6.87]. **3(e)(i)** See [6.86] in relation to tyre and rim insurance. **3(e)(ii)** ANZ has taken the steps described in [6.86], [6.88], [6.89] and [6.90].

I. Collections Practices

6.92 ANZ's Collections team (**Collections**) deals with consumer and small business customers who are in default of their loan obligations. Collections seeks the prudent minimisation of losses while balancing the customer's present and future needs, having regard to their financial position. Much of Collections' work involves communicating with customers in relation to the payment of overdue amounts. Within Collections there is a Hardship team (**Hardship**), which assesses applications for, and administers the provision of, hardship relief.

6.93 If a customer's account remains delinquent despite follow-up, recovery or enforcement action may commence. However, this will not happen where the customer has: (a) made a complaint against ANZ which is unresolved; (b) entered into, and is observing, a payment arrangement with ANZ; or (c) applied for or been granted hardship relief.[56]

6.94 During the relevant period, a number of complaints were made by customers about the work of Collections and Hardship to ANZ, ASIC, the FOS, the media and/or the Code Compliance Monitoring Committee. ANZ acknowledges that customers with whom Collections engage are often in stressful situations, and attempts to respond to all complaints sensitively.

6.95 Some complaints about Collections result from the nature of the customer's situation, rather than from bank error or misconduct. Complaints that have been the subject of correspondence with ASIC and the FOS during the relevant period concerned, among other matters, the process for placing collections activities on hold when customer complaints are made to the FOS; the frequency and timing of contact with customers; account combining (combining the balance of two or more accounts where one is overdrawn or in debit and the other is in credit) occurring in error; use by ANZ staff of a Facebook account to gather customer data; the reasonableness of enforcement costs;[57] the appropriateness of legal demands made by ANZ; the adequacy of ANZ's default notices (content, timing of service and compliance); and the adequacy of systems to respond to customer requests for credit documentation.

6.96 Further, ANZ has identified instances in 2013 where it failed to send hardship notices (about agreed hardship arrangements and new payment dates) to 520 customers to whom they ought to have been sent, and instances in 2015 when ANZ failed to treat as delinquent a number of consumer credit card accounts with balances over their credit limits (such that enforcement action was delayed, and in some cases, the balance owing increased over time due to fees imposed, which exceeded customers' monthly minimum repayments).

6.97 ANZ acknowledges that, in some instances in these areas, it has breached the CBP and the ASIC Debt Collection Guidelines. However, in other instances involving ASIC or the FOS, ANZ's explanation was ultimately accepted and there was no need for further action.

6.98 These complaints and other incidents have caused ANZ to review, and where appropriate, make changes to its systems, policies and procedures and to remediate any customer loss, resolve any customer complaint and/or pursue staff disciplinary action. Action taken by ANZ in this regard includes remediation of overcharged enforcement costs, overlimit balance adjustments where appropriate, improved employee training, greater oversight of customer contact and account combining decisions, and increasing the time between issuing default notices and commencing collections activity. ANZ is also presently finalising a new workflow system for the Collections team, which is intended to improve file management overall.

6.99 **Summary: 1 and 2** Yes, as described in [6.96]-[6.97]. **3(a)** Yes, see [6.94] and footnote 57. **3(b)-(d)** ANZ principally attributes the failures to staff members failing to follow policies and procedures, and systems, policies and procedures that required improvement. **3(e)(i) and (ii)** ANZ has taken, and is taking, the steps described in [6.98].

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56 Hardship relief is provided in accordance with the CBP and the NCC to customers experiencing a period of financial hardship (such as a result of serious illness or job loss).

57 In *ANZ v Pollard (No 2)* [2012] SASC 133, the court considered the reasonableness of enforcement expenses relating to a default notice served by ANZ in the context of s 55A of the *Law of Property Act 1936* (SA). In that limited context, it found that the enforcement costs charged were excessive.

J. Question 3(e)(ii)

6.100 In the sections above, ANZ has provided specific answers to question 3(e)(ii) in the context of each identified case or class of case. In addition, Australia division has taken more overarching steps to improve culture and conduct across the division which it considers will reduce the likelihood of the recurrence of the matters set out above as well as other types of misconduct or conduct falling below CSEs. Many of those measures are linked to the group-wide steps referred to in [4.17]-[4.22]. Key measures include:

(a) An increased focus on customer needs and outcomes in the division's culture. This is reflected in initiatives such as (i) the establishment in 2014 of a monthly Customer Experience Forum to focus senior leaders on resolving customer issues and replicating positive customer experiences; and (ii) the introduction in 2017 of a Net Promoter System (**NPS**) which enables ANZ to collect customer feedback and then take action to improve the customer experience. The NPS will be piloted in contact centres and rolled out to the rest of the division from 2018.

(b) The establishment of a new Responsible Banking team, commencing in 2018, focused on ensuring that, where ANZ has made mistakes that have resulted in significant customer impact, it remedies them, working with all relevant business units to deal with their underlying causes, and shares the lessons learnt to reduce the risk of similar system, product or process mistakes occurring.

(c) Introducing a balanced scorecard for Retail frontline (Branch and Call Centre) incentives in 2017.

(d) Strengthening training and processes to reinforce a customer focus, including training on values and expectations for frontline staff and weekly team sessions with branch and contact centre staff.

(e) Investment in technology to reduce complexity and the risk of error caused by manual intervention. For example, ANZ has invested in tools to allow proactive monitoring and reporting of issues; updated platforms to allow data to be better captured; and changes to technology architecture to simplify systems and ensure that they are more responsive, fit for purpose and adaptable.

(f) Further to [4.21], in 2016 ANZ commenced a product simplification program, intended to reduce operating risk and complexity of sales processes, as well as to improve product suitability and customer experience. For example, 97 products were decommissioned in 2017.

7. QUESTIONS 1 TO 3: INSTITUTIONAL DIVISION

7.1 ANZ's Institutional division provides services to customers in Australia and overseas in three areas: Transaction Banking, Loans and Specialised Finance, and Markets (including trading). It operates in 23 countries and currently has 3,414 Institutional Australia customers, of which 2,226 are headquartered in Australia.

7.2 In the 2017 financial year, the division in Australia had net loans and advances of $65.2 billion and customer deposits of $79.2 billion.

7.3 The issues arising in the Institutional division are of a relevantly different character from issues in other divisions. They do not generally involve the type of customer detriment that is the focus of this submission. Nonetheless, ANZ acknowledges that issues in its Institutional division, and in particular the Markets business, during the relevant period are sufficiently significant to warrant inclusion.

A. Regulatory investigations

7.4 In recent years, a range of market conduct, including within ANZ, has been the subject of investigation and prosecution by regulators, as detailed below.

BBSW

7.5 On 10 dates between September 2010 and February 2012, in the course of trading on the bank bill market, ANZ traders attempted to engage in unconscionable conduct with respect to the setting of the bank bill swap reference rate (**BBSW**) in contravention of ss 12CB or 12CC of the ASIC Act (as applicable). Further, on the same dates, ANZ contravened ss 912A(1)(a) and (f) of the Corporations Act by, among other things, failing to have in place adequate supervision, monitoring and training. This conduct was the subject of civil penalty proceedings brought by ASIC in March 2016 in the Federal Court. In November 2017, the Court by consent made declarations of actual and attempted contraventions and ordered, among other things, payment of a pecuniary penalty.[58] Also in November 2017, ANZ and ASIC entered into an enforceable undertaking (**BBSW EU**).

7.6 Prior to the proceedings, ANZ had investigated the conduct of individual employees in respect of the BBSW misconduct allegations. Seven employees were suspended in November 2014 as part of this process, four of whom returned to work (in May or June 2016 respectively) at the end of the investigation and received counselling as a result of either or both of the BBSW allegations and compliance with ANZ's Code of Conduct.[59]

Malaysian Ringgit

7.7 In November 2016, the ACCC brought proceedings by consent against ANZ in the Federal Court, in which ANZ admitted that on 10 occasions in 2011, three Singapore-based employees had unsuccessfully attempted to influence the setting of benchmark rates used to settle non-deliverable forward contracts for the Malaysian Ringgit (**MYR**).[60] The three traders left ANZ prior to the institution of the proceedings. As part of an agreed resolution with the ACCC, which was the subject of the consent proceedings, ANZ admitted that the conduct constituted attempted contravention of s 44ZZRJ of the Competition and Consumer Act. On 14 December 2016, the Court, by consent, made declarations concerning the attempted contraventions and ordered that ANZ pay a pecuniary penalty.[61]

7.8 ANZ accepts that the conduct underlying each of the BBSW and MYR matters described above was serious and concerning. In particular, it acknowledges the observations of Jagot J at [115] of the judgment in the BBSW proceedings, and of Wigney J at [107]-[110] of the judgment in the MYR proceedings.

7.9 These instances highlighted shortcomings in ANZ's conduct risk and compliance management frameworks. The prosecution of other institutions in relation to BBSW[62] and

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58 *ASIC v National Australia Bank Limited* [2017] FCA 1338.

59 The other three employees had their employment terminated for Code of Conduct breaches that were discovered in the course of ANZ's review of trader communications for the BBSW matter. As part of that Code of Conduct review, ANZ identified that a number of employees in its Markets business and Group Treasury function had engaged in inappropriate electronic communications. The communications breached ANZ's policies and Code of Conduct including ANZ's Use of Systems, Equipment and Information Policy. Following the Code of Conduct review, of the Australian-based employees, three had their employment terminated, 12 were issued with warnings, and a further 14 received informal counselling.

60 These proceedings followed a separate investigation by the Monetary Authority of Singapore in relation to various Singapore benchmark rate submissions.

61 *ACCC v Australia and New Zealand Banking Group Limited* [2016] FCA 1516.

62 ASIC also brought civil penalty proceedings against National Australia Bank and Westpac. Like ANZ, National Australia Bank made admissions of attempted unconscionable conduct, was ordered to pay a pecuniary penalty, and entered into an enforceable undertaking with ASIC. Westpac defended the ASIC proceedings and the case

in the MYR matter[63] suggests that the matters investigated by ASIC and the ACCC respectively were issues in the industry more generally.

7.10 ANZ has taken steps to reduce the risk of recurrence of this type of activity. These initiatives are discussed further in [7.14]-[7.15].

FX trading

7.11 ASIC conducted an investigation into a suspected failure by ANZ to comply with its obligations under s 912A of the Corporations Act in respect of trading in foreign exchange (**FX**) in the period from January 2008 to June 2013. On 15 March 2017, ANZ and ASIC entered into an enforceable undertaking (**FX EU**) in relation to some of the matters the subject of ASIC's investigation.

7.12 ANZ has acknowledged that ASIC's concerns with respect to systems and controls in its FX business were reasonably held. Limitations in ANZ systems and controls meant that the conduct the subject of the FX EU was not detected or prevented at the time. Again, ASIC's investigation of other market participants on similar grounds suggests that the problem of inadequate systems and controls applies in the industry more broadly.[64]

7.13 ANZ has taken steps to enhance processes and procedures within its Markets business. These initiatives are discussed further in paragraphs [7.14]-[7.15].

B. Conduct risk, compliance and surveillance initiatives within Markets

Conduct risk initiatives

7.14 Since 2013, ANZ has implemented improved systems and frameworks to manage conduct risk and foster a consistent risk culture across its Markets business, including:

(a) ANZ's ongoing Risk Culture Program, to improve risk culture and risk processes through clear communication of the risk strategy and the need to pursue revenue building activities within a robust risk framework. Consistent with these efforts, in 2016 ANZ appointed a new Managing Director, Markets. The new Managing Director has particular expertise in Markets risk management, having been promoted from the role of Group General Manager for Markets Risk.

(b) Moving to a balanced scorecard approach to incentives for Markets staff from 2016.

(c) ANZ's Conduct Risk Project, features of which include:

(i) Enhanced governance structures (such as the Conduct Risk Forum), implemented to keep senior leadership abreast of legal, regulatory and operational changes, and to ensure staff are aware of their obligations, including through policies, practices and training delivery.

(ii) The development of policies and practices that implement legal and regulatory requirements, and further embed ANZ's values and its commitment to good practice principles, such as those contained in the FX Global Code of Conduct. In addition to its Code of Conduct and Business Instruction Manual, ANZ has developed policy and practice documents to

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went to trial in late 2017. ASIC has also accepted enforceable undertakings relating to BBSW from UBS-AG, BNP Paribas and the Royal Bank of Scotland.

63 The Federal Court also made declarations and imposed a pecuniary penalty on Macquarie Bank in consent proceedings brought by the ACCC. The prior investigation by the Monetary Authority of Singapore found deficiencies in internal systems relevant to benchmark rate submissions on the part of 20 international banks.

64 ASIC also investigated, and ultimately accepted enforceable undertakings from, National Australia Bank, the Commonwealth Bank, Westpac and Macquarie Bank.

promote appropriate conduct in benchmark rate-setting activities, FX Spot trading and electronic communications.[65]

(iii) Regular training on conduct risk matters, such as market manipulation and insider dealing; ANZ's market integrity imperative and "zero tolerance" approach to conduct contrary to orderly market operation; appropriate instant messaging and conflicts of interest; personal account dealing, sales and trading practices and information flow; and the ASX Guidelines for trading in the Bank Bill Market.

(iv) In July 2017, the introduction of a Front Office Supervision framework for the management, oversight and governance of Front Office Markets staff.[66] The Front Office Supervision Manual enables supervisors to assist staff to comply with laws and policies, and describes procedures to follow in circumstances of possible non-compliance.[67] Supervisors are required to identify "red flag" behaviours that might indicate non-compliance.

Enhanced compliance and surveillance initiatives

7.15 ANZ accepts that it cannot exclude the possibility of non-compliance. As part of the Conduct Risk Project, ANZ has invested significantly in surveillance technology and activities. This includes the expansion of: (a) the Markets Surveillance team, which monitors daily chats, emails and voice communications, as well as trading activity, to identify (and, if required, escalate) potential non-compliance; and (b) the Markets Compliance and the Markets Assurance and Governance teams. The former provides a "review and challenge" function in relation to conduct risk management. The latter implements procedures for compliance with the conduct risk policy framework, conducts training and works with supervisors to manage operational and conduct risk.

C. Other conduct

Opes Prime and Primebroker

7.16 Following the collapse of the Opes Prime group in March 2008, ANZ commissioned a review into its involvement in securities lending and the development and management of its equity finance activities. The results were provided to ASIC and APRA on 22 August 2008. The review identified remediation actions, including the orderly withdrawal by ANZ from certain equity finance businesses. The review's findings led to disciplinary outcomes in respect of certain ANZ employees, including the departure of senior personnel.

7.17 Also in 2008, ASIC investigated ANZ's involvement in possible contraventions of the Corporations Act by Opes Prime and its directors and whether ANZ benefited from transactions between it and Opes Prime to the detriment of other creditors. On 6 March 2009, the relevant parties agreed to settle existing and potential claims, and ASIC released ANZ from any potential claims. ANZ agreed to an enforceable undertaking (**Opes Prime EU**), which required it to improve operational procedures in its Custodian Services business. ANZ complied with the Opes Prime EU.

7.18 ANZ sold its Custodian Services business in 2009 (although it continues to provide limited custodian services to a small number of customers). Nevertheless ANZ acknowledges its admission in the Opes Prime EU that the matters referred to in that undertaking may, in aggregate, have resulted in ANZ's failure to satisfy obligations under the Corporations Act.

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65 These include the Financial Benchmark Procedure – Australia, Global Procedures for Financial Benchmarks, Trading and Sales Practices Guidelines, Information Flow Guidelines, and Instant Messaging & Chatroom Guidelines.

66 Specifically, Markets staff in Sales, Trading, Capital Markets, Balance Sheet and Structuring roles.

67 Further guidance on incident-management is provided in the Incident Management Framework.

In view of those matters, ANZ identifies its conduct as having, at least, failed to meet CSEs.

System, process and human failures

7.19 The Institutional division uses a range of technical systems and processes to perform its everyday operations. System, process and human failures occasionally occur, which has led to ANZ incorrectly charging fees and interest. Where a failure causes customer detriment, ANZ remediates the customer by, for example, reimbursing the customer (if the detriment is financial), and takes steps to identify and remedy the underlying cause.

7.20 **Summary: 1** Yes, as described at [7.5] and [7.7]. **2** Yes, as described in [7.5]-[7.8], [7.11]-[7.12] and [7.18]-[7.19]. **3(a)** The matters identified in response to questions 1 and 2 have been the subject of consideration or investigation by ASIC, another regulator and/or litigation: see [7.5], [7.7]-[7.8], [7.11]-[7.12] and [7.16]-[7.17]. **3(b)-(d)** ANZ considers that the conduct identified in [7.5]-[7.8] and [7.11] may have been attributable to shortcomings in relevant frameworks, systems and controls within ANZ and in the industry more broadly: see [7.9] and [7.12]. **3(e)(i)** The nature of the identified issues in the Institutional division have not generally involved customer detriment ([7.3]), but see [7.19]. **3(e)(ii)** ANZ has taken steps including those at [7.6], [7.10] and [7.13]-[7.16].

8. GROUP WIDE MATTERS

A. ASIC breach reporting

8.1 Section 912D of the Corporations Act requires AFS Licensees to report in writing to ASIC any "significant" breach (or likely significant breach) of their obligations under ss 912A or 912B of the Corporations Act as soon as practicable and in any case, within 10 business days after "becoming aware" of the significant breach or likely significant breach.

8.2 The Corporations Act does not define "significant breach". Section 912D requires an AFSL-holder to "self-assess" the significance of breaches based on statutory criteria.

8.3 A number of ANZ entities hold AFS licences. ANZ regularly reports matters to ASIC under or by reference to s 912D. For example, in respect of the AFS Licensees covered by the ASIC Breach Reporting Project, there were 55 reports over 2014-2016. Some matters are reported to ASIC even though ANZ has not determined that a significant breach has occurred (for example, because investigations are ongoing). ANZ also typically informs ASIC of other matters which have a significant effect on customers or relate to key ASIC priorities (eg financial adviser conduct), irrespective of whether they are reportable under s 912D.

8.4 To comply with its s 912D breach reporting and other like obligations, ANZ has in place systems, policies and procedures that facilitate the identification, recording, investigation and, where appropriate, escalation and reporting of compliance events. Relevant business units are responsible for carrying out these investigations, with support from assurance, compliance and other areas of the bank as required.

8.5 ANZ has considered its incident management processes as part of its response to the ASIC Breach Reporting Project. ANZ is concerned that the time it takes to investigate matters in order to determine whether they are significant breaches for the purpose of its s 912D reporting obligations may, in some circumstances, have fallen below CSEs. While some matters over the period were reported to ASIC less than a month after the potential conduct or issue was first identified, others have taken much longer. For example: (a) in one Wealth matter relating to a particular financial adviser whose conduct fell within the description at [5.19], almost two years passed between the first identification of the potential conduct and its reporting to ASIC; and (b) in one Australia division matter relating to the calculation of break costs on asset finance contracts (discussed at [6.16] to [6.19]), more than 10 months passed between the identification of the potential issue and its reporting to ASIC. In each case, over the period investigations were undertaken to consider whether there was a breach and understand its nature, extent and significance.

8.6 As the ASIC Enforcement Review Taskforce acknowledges, AFS Licensees may "need a relatively high degree of information and well developed understanding of the circumstances giving rise to the breach to satisfy the criteria for reporting".[68] Depending on an AFS Licensee's circumstances – including where, when and by whom the incident is identified – and the scale, nature and complexity of the business, this can take time.

8.7 Historically, ANZ's practice has been to investigate matters thoroughly to inform its decisions on breach reporting (among other things). While this helps to facilitate accurate reporting, ANZ is considering whether its practice requires modification so that ASIC is informed of matters at an earlier stage.

8.8 ANZ is presently considering changes to its event identification, recording and reporting systems and processes that might be made to facilitate the more efficient investigation and handling of events. The scope of the changes being considered encompasses, but is broader than, ANZ's breach reporting obligations under s 912D. The focus is on the management of events that occur within ANZ, not just significant breaches.

8.9 Changes are being considered both at a "whole of organisation" level and at individual divisional levels. For example, ANZ is considering changes that might be made to its Compliance and Operational Risk (**COR**) system, which is used by the bank to record information about operational risk incidents.

8.10 In addition, ANZ is considering what changes might be made in order to clarify the requirements for internally reporting compliance breaches, and to improve the timeliness of recording events in the COR system. In conjunction with this, ANZ is pursuing an internal communications strategy to refresh employees' understanding of their responsibilities in relation to the identification and management of events (including the importance of raising identified issues quickly, and recording, investigating and escalating them appropriately), and to promote a "speak up" culture within the bank. Whilst ANZ regularly communicates with its employees about these matters, this strategy aims to reinforce these messages in different ways for maximum impact.

8.11 Further, ANZ expects to continue to engage with ASIC as part of its Breach Reporting Project. In parallel, the ASIC Enforcement Review has consulted on changes to the legal framework for breach reporting. It is one of a number of inquiries and reports that have considered breach reporting in recent years.[69]

8.12 **Summary: 1** No. **2** Yes: see [8.5]. **3(a)** This is the subject of ASIC's Breach Reporting Project and the ASIC Enforcement Review, and has been discussed in other inquiries: see [8.3], [8.6] and [8.11]. **3(b)-(d)** See [8.7]. **3(e)(i) and (ii)** ANZ is taking the steps described in [8.8]-[8.11].

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68 ASIC Enforcement Review, *Position and Consultation Paper 1, Self-reporting of contraventions by financial services and credit licensees*, 11 April 2017, p. 16, [40].

69 Four Major Banks Review; Senate Economics References Committee, *Consumer Protection in the Banking, Insurance and Financial Sector*; Productivity Commission, *Inquiry into Superannuation*, Stage 2 Final Report and Stage 3 (Assessing Competitiveness and Efficiency) report; Further supplementary final report of the Department of Treasury's *Review into Dispute Resolution and Complaints Framework*; Joint Parliamentary Committee on Corporations and Financial Services, *Inquiry into the Life Insurance Industry*, Final Report; Parliamentary Joint Committee on Corporations and Financial Services, *Oversight of ASIC, the Takeovers Panel and the Corporations Legislation*, Final Report.

B. Privacy and data

8.13 In the course of providing banking and financial services, ANZ receives private and confidential information relating to customers. ANZ takes seriously its obligations relating to the collection, use and management of data under the Privacy Act and related legislation. Protecting privacy and confidentiality is a core component of ANZ's Code of Conduct and mandatory training for employees.

8.14 During the relevant period, ANZ's internal policies have explained employees' obligations in respect of privacy and confidentiality, and the applicable procedures in the event of an incident involving customer information. ANZ's privacy policy has also been publicly available to customers. The policy explains (amongst other things) customers' privacy rights in respect of personal information collected and held by ANZ.

8.15 Since 2015, ANZ has created dedicated roles (first in the Australia division and, more recently, at Group level) to address privacy and data matters, including the escalation of actual or potential privacy breaches within the bank or externally, eg to the Office of the Australian Information Commissioner (**OAIC**).

8.16 ANZ has identified the following instances during the relevant period where, regrettably, it has not kept private and confidential information secure.

8.17 First, in December 2011, ANZ voluntarily notified the OAIC of a privacy breach caused by an error in ANZ's internet banking system, which left customers' online statements accessible by subsequent users of the same computer on which internet banking had been viewed. Upon identifying the error, ANZ disabled electronic statement functionality in its internet banking system (offering all customers paper statements during this period) while it investigated and implemented a permanent fix. ANZ concluded that the error was caused by inadequate testing of an aspect of the internet banking system before release. After online statements were reactivated on 6 January 2012, there was a separate privacy breach which was addressed in the same way, and ANZ contacted affected customers and responded to specific customer concerns.

8.18 Second, as described at [5.51], the breach reported in relation to ANZ Smart Choice Superannuation also involved the inadvertent disclosure of customer information. ANZ remediated customers' loss arising from this breach.

8.19 Third, on some occasions, ANZ staff have improperly accessed customer information, typically resulting in termination of employment.

8.20 ANZ is presently considering a number of changes to its privacy and data-handling processes and procedures. Such changes are, in part, responsive to the impending commencement of the Notifiable Data Breaches scheme in February 2018, which introduces notification obligations in respect of data breaches.

8.21 **Summary: 1** and **2** Yes, as described in [8.16]-[8.19]. **3(a)** No, although the OAIC, ASIC and APRA have been informed of privacy breaches: see [8.17] and [5.51]. **3(b)-(d)** ANZ attributes the failures to systems or process errors, inadequate testing of system changes and non-adherence to policies and processes by ANZ staff. **3(e)(i)** Where customers have suffered loss as a result of a privacy breach, ANZ has generally remediated that loss. **3(e)(ii)** ANZ has taken steps, including those in [8.17] and [8.20].

C. Other regulatory matters

8.22 ANZ acknowledges that there have been compliance failures, amounting to misconduct, which are not referred to in detail in this submission and which have not had any, or any material, adverse financial impact on customers but which ANZ nevertheless takes seriously. These include the following matters.

8.23 First, there have been failures to provide or provide correct Statements of Advice, Financial Services Guides, PDSs, policy schedules, offer documentation, account statements, statutory notices and other documents to customers, or to make appropriate oral disclosures (for example, due to errors in call scripts or failures by staff to follow them). Where appropriate, ANZ has reported these matters to ASIC. ANZ generally remediates them by providing correct documents/disclosures and, where appropriate, making enhancements to its systems and processes to reduce the risk of recurrence.

8.24 Second, though ANZ has a process for the review of advertising materials by the product, assurance and legal teams, from time to time it makes errors in relation to statutory requirements dealing with the content of advertising. One example is that on 15 November 2010, ASIC notified ANZ that an advertisement promoting ANZ's fixed rate home loan on 11 November 2010 did not contain a comparison rate as required by s 160 of the NCC. In response, ANZ took immediate steps to withdraw existing and planned advertisements from various media. When advertising issues are identified, ANZ takes steps to minimise the risk of recurrence, including withdrawing or correcting advertisements and marketing materials.

8.25 Third, as explained in [4.2], this submission has set out instances of misconduct or conduct that failed to meet CSEs. This will not include reviews and audits conducted by ANZ under the supervision of APRA that seek to identify and mitigate risk across its business. ANZ acknowledges that from time to time these audits and reviews have raised concerns about or suggested improvements in relation to specific risk management and related practices, and does not seek to diminish the importance of those findings by omitting them from this submission.

8.26 Fourth, ANZ is mindful of the important role which AUSTRAC plays in the banking and financial services sector generally and of ANZ's obligations to support AUSTRAC accordingly. In a small number of cases, system, process or human failures have led to delays or omissions in ANZ's reporting of certain information to AUSTRAC. For example, in late 2010, ANZ became aware that it was lodging incorrect International Funds Transfer Instruction reports, because ANZ's automated system was incorrectly coded to populate those reports with the name of the customer rather than that of the payer. ANZ engages with AUSTRAC on matters of this kind and remediates its systems and processes to AUSTRAC's satisfaction (by, for example, changing its automated system in the case mentioned above). ANZ does not consider that these matters are attributable to any broader cultural, governance or other practice within ANZ. There is a governance process for addressing AML/CTF issues which is reviewed from time to time as part of continuous improvement processes.

8.27 Finally, there are occasionally delays in submitting financial statements, auditor reports, compliance plans and like documentation to ASIC and APRA.

D. Other staff conduct

8.28 ANZ takes disciplinary action against its employees for workplace behaviours in breach of ANZ's Code of Conduct and which are contrary to CSEs, up to and including termination of employment. ANZ has dismissed Australian-based employees for reasons that included conduct that had, or risked having, an adverse customer impact, and a number of other employees resigned during the course of investigations.

8.29 ANZ's Code of Conduct sets the clear expectation that staff will comply with the law at all times. Regrettably, in a small number of instances, ANZ staff engage in criminal conduct directed against customers, for example by attempting to or actually transferring money from a customer's account, removing cash before it is entered in the bank's systems or abusing the trust of customers who are ill or elderly.[70] ANZ takes these cases seriously, including by engaging with law enforcement agencies and taking disciplinary action against ANZ employees. ANZ seeks to ensure that customers do not bear any losses arising from such conduct.

8.30 ANZ has systems to investigate issues of concern; promote a positive culture and values and attract and retain staff who share those values. ANZ periodically reviews and strengthens those systems.

8.31 **Summary 1** Yes, as described in [8.29]. **2** Yes, as described in [8.28]-[8.29] **3(a)** Matters are reported to enforcement agencies where appropriate: [8.29]. **3(b)-(d)** ANZ does not attribute this conduct to any particular practice. **3(e)(i)** See [8.28]-[8.29]. **3(e)(ii)** See [8.30].

9. PUBLIC INTEREST MATTERS

9.1 ANZ wishes to acknowledge certain matters about which the public or regulators have expressed concerns in respect of which ANZ has not identified misconduct or conduct or practices falling below CSEs, but which ANZ brings to the attention of the Commission in order to assist it with its work. ANZ does not, by this list, seek to diminish the importance of other matters of regulatory or public concern.

A. Wealth

9.2 First, since 2012, Smart Choice Super accounts have been opened for some customers (with their permission) after those customers were given scripted general advice following an in-branch "A-Z Review". ASIC has indicated that it has concerns that the advice provided was personal rather than general in nature. While ANZ considers it has fully complied with its obligations under the Corporations Act and has not otherwise failed to meet CSEs, it is cooperating with ASIC's investigation.

9.3 Second, concerns have been raised across the insurance industry as to certain terms being defined differently in various life insurance policies, or terms relating to medical definitions/diagnostics not remaining current. ANZ has a system of controls and processes, including an annual product review, to ensure that medical definitions remain current as medical advancements in diagnostic techniques continue to evolve. ANZ has made enhancements to a number of its policies and has instituted a project to consider and harmonise any unintentional inconsistencies in terms and conditions across its life insurance policies across the different product channels, which it aims to complete by September 2018.

9.4 In addition, OPL has established an OPL Board claims review committee to oversee OPL's claims policies, processes, philosophy and culture, with a view to ensuring that they support fair, ethical, transparent and robust claims outcomes for policyholders. OPL has also agreed to be bound by the Financial Services Council's new Life Insurance Code of Practice from 30 June 2017, which includes minimum standard medical definitions for cancer, heart attack and stroke.

9.5 Third, on 24 January 2018, ASIC issued a report entitled, *Financial advice: Vertically integrated institutions and conflicts of interest*. ASIC reviewed the approved product lists of the five biggest vertically integrated financial institutions and looked at the extent to which: (a) the lists comprised in-house as opposed to external products; and (b) clients invested funds in each. ASIC also reviewed the quality of personal advice provided. This is an emerging issue which ANZ will further consider. In the meantime, ANZ has

[70] One of the cases involving financial advisers at [5.21(a)] was of this kind. For completeness, we note that there are instances of criminal offending in the workplace which is not directed at customers and therefore not dealt with in this submission.

cooperated, and will continue to cooperate, with ASIC to fully understand the issues and take all necessary steps to address any customer detriment.

B. Timbercorp

9.6 ANZ was one of a number of lenders that provided funding to the Timbercorp Group, which was the responsible entity for 33 registered agribusiness MIS (**Timbercorp**). Timbercorp was placed into liquidation in June 2009. The funding provided by ANZ totalled around $500 million, and included facilities secured over Timbercorp's loans to growers.

9.7 Following Timbercorp's collapse, there were a number of public inquiries into its causes, which included an investigation into ANZ's involvement.[71] In these forums, various allegations have been made about ANZ's involvement with Timbercorp including that: (a) ANZ lent money to Timbercorp in 2008 when it is alleged that ANZ ought to have known of Timbercorp's financial difficulties; (b) ANZ had an ethical responsibility to growers despite not being directly involved in arranging loans between growers and Timbercorp; and (c) the hardship program put in place by the liquidators of Timbercorp to manage recovery of loans owing to Timbercorp was not run optimally.[72]

9.8 ANZ does not accept these allegations, and does not consider that its conduct in respect of Timbercorp either amounted to misconduct or fell below CSEs. As these matters have been considered extensively by various inquiries and in civil proceedings, ANZ refers the Commission to the submissions and findings in these inquiries and, in particular, to the findings by the Supreme Court of Victoria in the *Woodcroft-Brown* litigation both at first instance and on appeal.[73]

10. QUESTION 4

A. Question 4(a)

10.1 There are three RSE Licensees associated with ANZ currently operating a total of four RSEs. They fall into two categories: (a) RSEs available to the general public (**Public Funds**), namely the OnePath MasterFund and the Retirement Portfolio Service (RSE licensee: OPC), and the Oasis Superannuation Master Trust (RSE licensee: OAFM); and (b) the Staff Fund. There are a number of products available within these RSEs.

10.2 In a substantive sense, all member funds that are not invested in or applied to the payment of member benefits are applied in the administration of the RSE. There are, however, some ancillary uses to which members' funds are applied to which ANZ draws the Commissioner's attention:

(a) insurance premiums and associated costs for life, disablement and/or income protection insurance made available to members as part of the superannuation product they acquired;[74]

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71 Four Major Banks Review, *Second Report*, 20 April 2017; Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into the Impairment of Customer Loans*, 4 May 2016; Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into Aspects of Agribusiness Managed Investment Schemes*, September 2009; Senate Economics References Committee, *Inquiry into Agribusiness Managed Investment Schemes*, 11 March 2016.

72 There have also been allegations made that financial advice provided to investors by authorised representatives of ANZ was inappropriate, in relation to which see paragraph [5.21(d)].

73 *Woodcroft-Brown v Timbercorp Securities Ltd (in liq)* [2011] VSC 427; *Woodcroft-Brown v Timbercorp Securities Ltd (in liq)* [2013] VSCA 284.

74 For the Staff Fund, up to and including 2014 insurance premiums related only to income protection cover. Since 2015, premiums have also related to life and disablement cover.

(b) adviser fees which the RSE Licensee facilitates the payment of, being fees paid pursuant to an agreement between the member and the adviser, or for legacy employer superannuation products, the employer on behalf of the member and the adviser; and

(c) income tax collected in respect of the RSE or its members (excluding the early payment of tax deduction benefits to eligible members, which is treated as the payment of a member benefit).[75]

10.3 The amounts (in thousands of dollars) applied to those uses for each of the four RSEs referred to above in each financial year (ended 30 June for the Public Funds and 31 December for the Staff Fund[76]) from 2008 to 2017 are set out in the table below:

	2008	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**
	OnePath MasterFund									
Insurance	117,113	141,284	162,617	197,065	225,880	244,275	260,821	289,595	319,840	352,256
Adviser	26,142	26,512	34,455	44,943	56,283	65,897	78,067	84,857	82,129	78,959
Tax	247,112	244,591	213,241	223,985	225,841	215,967	207,296	226,570	220,089	212,581
	Retirement Portfolio Service									
Insurance	61	93	125	138	167	173	191	187	174	305
Adviser	2,821	2,394	3,066	3,584	3,870	4,048	4,146	3,926	3,615	5,322
Tax	(5,160)	(7,464)	(1,419)	(4,337)	(6,008)	(2,087)	(6,162)	(6,074)	(6,711)	(4,715)
	Oasis Superannuation Master Trust									
Insurance	7,061	7,896	9,193	10,620	13,463	15,274	20,742	15,968	16,366	15,801
Adviser	14,933	12,813	14,874	18,558	23,380	26,849	31,442	34,054	33,946	33,183
Tax	(7,566)	18,908	3,815	5,454	5,536	(16,385)	(24,721)	(15,182)	(24,415)	35,984
	Staff Fund									
Insurance	69	82	97	130	165	169	176	10,059	12,608	13,006
Adviser	n/a	15	63	69	172	131	125	134	102	93
Tax	(24,806)	36,573	45,931	23,119	58,598	70,822	51,247	37,602	45,377	TBD

10.4 In addition, apart from the OnePath MasterFund, member funds were maintained (and put aside, but not spent) in respect of the Operational Risk Financial Requirement referred to in APRA Prudential Standard 114.

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75 In the table below, the amounts stated in respect of tax are based on the RSE's audited financial statements rather than year-end tax calculations from income tax returns. In some years, there were tax benefits received (which are reflected in the table as bracketed amounts).

76 The Staff Fund's financial statements for the year ended 31 December 2017 are currently being prepared. The figures provided are unaudited. Tax expenses are not currently available.

B. Question 4(b)

10.5 ANZ considers that the application of funds referred to in [10.2] was in the best interests of members:

(a) insurance was a feature of the relevant superannuation products, as permitted by section 62 of the Superannuation Industry (Supervision) Act and, in respect of MySuper members, required by section 68AA of that Act;

(b) members received services from advisers,[77] and fees were paid pursuant to agreements; and

(c) tax was paid in accordance with legal obligations.

C. Question 4(c)

10.6 For the Public Funds, costs applied to members' funds attributed to administration fall into two categories:

(a) specific fees and charges referred to in PDSs, in particular: (i) an ongoing fee based on a percentage of funds, which varies by product; (ii) (for some funds) a periodic fixed fee; (iii) a buy-sell spread which applies when members transact in units (eg when switching within a fund, to cover costs such as brokerage); (iv) contribution and exit fees; and (v) other transaction fees such as failed processing and dishonour fees; and

(b) expenses which are paid directly or for which the trustee is reimbursed (ie expense recovery).

10.7 In broad terms, all costs of the administration of the Public Funds, including costs of service providers such as fund administrators, clearing houses, custodians and managers, are paid out of money raised by the specific fees and charges referred to in [10.6(a)]. The only administration-related costs which are the subject of "expense recovery" for the Public Funds are:

(a) costs of implementing regulatory changes, such as those associated with the Federal Government's "Stronger Super" reforms (eg SuperStream, MySuper and APRA Reporting);[78]

(b) the annual APRA levy;

(c) for the Oasis Superannuation Master Trust, up to December 2016, a quarterly expense recovery in respect of trustee-related expenses such as compliance, audit and legal costs; and

(d) during the financial years ended June 2009 to 2013, in the case of certain members in legacy products in the OnePath MasterFund, a Member Protection expense recovery fee designed to spread across the entire fund fees not recovered from members with balances of less than $1,000 (pursuant to member benefit protection laws).

10.8 The Staff Fund is run for the benefit of staff and is not-for-profit. Members pay an ongoing fee based on a percentage of funds, which is used to pay administration expenses

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77 As acknowledged in section 5, there have been instances where fees were charged but services not provided.

78 In addition to transferring policies of "default" members to Smart Choice Employer products as required by the MySuper Legislation, at the same time non-default (or "choice") members of one legacy product were also transferred as that was considered to be in their best interests due to the relative costs of the products, and a levy was also imposed on those members to contribute towards the costs of that transfer.

such as fees for the outsourced fund administrator, plus the costs of ANZ's personnel who are responsible for matters such as governance, risk management, compliance, accounting, managing relationships with the fund administrator and other service providers, and managing member communication and education.

10.9 Certain costs are also paid directly from the Staff Fund. These costs fall into the following categories: (a) investment related expenses (including fees and performance fees for the outsourced investment managers, investment consultant, custodian and auditor, and transaction fees); and (b) a small number of other general expenses (including trustee indemnity insurance premiums and trustee expenses, such as costs associated with trustee training and holding board meetings).

11. KEY CONTACTS

11.1 If you wish to talk to ANZ about any aspect of its submission, in the first instance please contact ANZ's Group General Counsel:

Bob Santamaria: [redacted].

11.2 If you wish to speak to ANZ's lawyers please contact Ashurst:

Mark Bradley: 03 9679 3363, Mark.Bradley@ashurst.com

Angus Ross: 03 9679 3735, Angus.Ross@ashurst.com

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29 JANUARY 2018

APPENDIX 1 – DEFINED TERMS

Advice means FSP; RI; M3 and ANZFP.

AML/CTF means Anti-Money Laundering and Counter-Terrorism Financing.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cth)

Corporations Act means the *Corporations Act 2001* (Cth).

Direct means a business unit within Wealth operating under the ANZBGL AFSL that offers scripted general financial advice and factual information over the phone.

ExCo means ANZ's Group Executive Committee comprising its most senior executives.

FOS means Financial Ombudsman Services.

FSP means Financial Services Partners Pty Limited, AFSL 237590.

ING means ING Bank (Australia) Limited.

IOOF means IOOF Holdings Limited.

M3 means Millennium3 Financial Services Pty Ltd, AFSL 244252.

NCC means the National Credit Code, being Schedule 1 to the *National Consumer Credit Protection Act 2009* (Cth).

NCCP Act means the *National Consumer Credit Protection Act 2009* (Cth).

OAFM means Oasis Fund Management Limited.

OPC means OnePath Custodians Pty Limited, AFSL 238346.

OPFM means OnePath Funds Management Limited, AFSL 238342.

OPGI means OnePath General Insurance Pty Ltd, AFSL 288160.

OPL means OnePath Life Limited, AFSL 238341.

Pensions and Investments (P&I) means the business units of Wealth supporting, and operating under, OnePath Funds Management Limited AFSL 238342; Oasis Fund Management Limited AFSL 274331; and OnePath Custodians Pty Limited AFSL 238346.

Privacy Act means the *Privacy Act 1998* (Cth).

RI means RI Advice Group Pty Ltd, AFSL 238429.

Superannuation Industry (Supervision) Act means the *Superannuation Industry Supervision Act 1993* (Cth).

Zurich means Zurich Financial Services Australia Ltd.