

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

AGRIBUSINESS LENDING

ANZ SUBMISSION IN RESPONSE TO THE COMMISSION'S LETTER DATED 11 MAY 2018

A. INTRODUCTION AND GENERAL OBSERVATIONS

Introduction

1. By a letter dated 11 May 2018, the solicitors assisting the Commission invited ANZ to identify features of its submissions dated 29 January 2018 (**January Submission**) and 13 February 2018 (**February Submission**) that relate to certain aspects of its agribusiness lending activities and, if it wished, to add to the submissions as they relate to those activities (**Request**).
2. On 17 April 2018, ANZ made a submission to the Commission in respect of its small to medium-sized (**SME**)¹ business lending activities (**April Submission**), which addressed at a high level ANZ's lending for agribusiness purposes. For the purpose of responding to the Request, these submissions should be read together with the April Submission.

Agribusiness lending at ANZ

3. As at February 2018, ANZ had approximately 26,450 customers in the Australian agribusiness sector, with loans totalling approximately \$13.7 billion.²
4. ANZ typically lends to three groups of customers in the agribusiness sector:
 - (a) primary production operators, including farmers, and other crop growing, livestock and fisheries operations;
 - (b) suppliers of products and services (such as contract harvesting) to primary production operators; and
 - (c) commodity aggregators, processors, distributors, importers and exporters, and traders of primary products.
5. ANZ's agribusiness lending is carried out within four teams, Small Business Banking (**SBB**), Business Banking (**BB**), the agribusiness team within Specialist Distribution (**SD Agri**) and the Institutional Division (**Institutional**). Each of these teams has its own General Manager, sales and operational support teams.
6. Allocation of agribusiness customers to the SBB, BB or SD Agri team is generally determined according to loan size and complexity. Smaller and less complex loans (typically up to \$1 million) are handled by the SBB team. Mid-sized loans (typically between \$1 million and \$10 million) are handled by the BB team. Larger and more complex loans (typically between \$10 million and \$100 million), which may require bespoke solutions, are handled by the SD Agri team. The majority of agribusiness customers by number are in SBB and by value are in BB.
7. Generally, loans handled by the SBB and BB teams are administered using ANZ's CAP IT system, while loans handled by the SD Agri team are administered using ANZ's CAP or CACHE IT systems (or a combination of both across different products).

¹ The lending requirements of SME customers in the agribusiness sector typically involve amounts of up to \$50 million.

² Excluding retail loan products and asset finance held by agribusiness lending customers.

8. Institutional generally manages lending to large institutional agribusiness customers with an annual turnover of more than \$500 million, and may manage customers with a turnover of between \$300 million and \$500 million (or, in rare cases, lower amounts). Typically, this lending is administered using ANZ's CACHE IT system.
9. Consistent with ANZ's approach to the April Submission, this submission focuses on lending to SME agribusiness customers which is largely administered on the CAP IT system. This submission also primarily focuses on lending to primary production customers such as farmers as described in [4(a)] above. Lending to the agribusiness sector that is not related to primary production (ie to the customers described in [4(b)-(c)] above) is more in the nature of commercial SME lending and is addressed in the April Submission.
10. ANZ recognises that agricultural income is volatile and cyclical as a result of variable seasons and global commodity price fluctuations. ANZ seeks to take a pragmatic, long term, commercial and empathetic approach to the management of its agribusiness customers. Central to this approach is the early detection of issues and ongoing communication to enhance the customer relationship.

Approach

11. In preparing this submission, except where otherwise stated, ANZ has adhered to the approach to misconduct and community standards and expectations (**CSEs**) set out in sections 4A and 4B of the January Submission.
12. ANZ considers that CSEs in respect of small business lending, including agribusiness lending, differ from those for consumer lending, as described in the April Submission at [11]-[14]. CSEs for agribusiness lending also take into account the matters described in [10] above.

B. RELEVANT FEATURES OF THE JANUARY AND FEBRUARY SUBMISSIONS

13. The January and February Submissions identified misconduct or conduct that has fallen below CSEs in relation to lending without necessarily distinguishing between conduct relating to agribusiness lending and other types of lending. The purpose of this section is to identify the features of the January and February Submissions which relate to agribusiness lending.

System, process and human failures

14. The April Submission referred to certain system, process and human failures which affected SME lending customers.³ Some of these instances will have related to agribusiness lending.

Sales conduct

15. As described in the January Submission⁴ and noted in the April Submission,⁵ ANZ has identified instances where frontline staff engaged in inappropriate sales practices in an effort to increase incentive payments. Some of these instances likely involved agribusiness lending. ANZ does not believe that conduct of this type is systemic or widespread.

Agribusiness issues - Landmark

16. As outlined in the January Submission and referred to in the April Submission, the

³ April Submission, [16]-[20].

⁴ January Submission, [6.69].

⁵ April Submission, [22].

Landmark loan book was acquired by ANZ in March 2010.⁶ All Landmark loans acquired by ANZ involved agribusiness lending. ANZ has been asked to provide a draft witness statement in relation to Landmark and will provide further detail in that document.⁷ As such, save for the matter described in [17] below, ANZ does not propose to address Landmark further in this submission.

17. ANZ has recently become aware of a claim made by a former customer arising from its conduct in transitioning facilities acquired from Landmark to ANZ. Although the conduct took place in 2010, the claim was first raised with ANZ in late January 2018. ANZ has now identified what it anticipates may be breaches of the Australian Banking Association's (**ABA**) Code of Banking Practice and is in the process of investigating the circumstances and whether loss has been suffered as a result of its conduct. ANZ will separately provide the customer's details to the Commission.

Collections practices

18. ANZ's Commercial Collections team manages some SBB agribusiness lending customers (whose lending is typically under \$1 million⁸) who are in default of their loan obligations.⁹ In the vast majority of cases, these dealings arise from a monetary default. ANZ accepts that, in some instances, dealings between its Collections team and customers breached the Code of Banking Practice and the ASIC Debt Collection Guidelines.¹⁰ Some of these instances related to SBB agribusiness customers.
19. In its February Submission, ANZ identified concerns raised by the Financial Ombudsman Service (**FOS**) as to whether ANZ's processes were sufficiently robust to ensure that collections activity was suspended upon referral of a dispute to the FOS. Of the 35 instances of improper collections activity identified between December 2013 and June 2014, one related to agribusiness lending.¹¹

Other issues

20. The January Submission identified around 120 consumer and SME lending complaints which proceeded to the FOS in the last seven years, of which about 50 were decided against ANZ.¹² Of these, one complaint was from an agribusiness customer. That complaint was summarised in item 30 in the table of Consumer and Small Business lending FOS cases in Part 1 of ANZ's February Submission.

Timbercorp

21. ANZ referred in section 9B of the January Submission to its lending to the Timbercorp Group.¹³ These loans were provided to the ASX listed Timbercorp Limited and its subsidiaries. Loans were not provided to investors in Timbercorp managed investment schemes or Timbercorp Securities Pty Ltd, which was generally the responsible entity of those schemes. In this sense, the loans are different to the agribusiness lending otherwise described in this submission. As stated in the January Submission, ANZ has not identified any misconduct or failure to meet CSEs in relation to its lending to Timbercorp.

⁶ January Submission, [6.78]–[6.84]; April Submission, [25].

⁷ See Rubric 4-1.

⁸ Or between \$1 million and \$3 million in select cases.

⁹ The Commercial Collections team also manages consumer and other SBB SME lending customers.

¹⁰ January Submission, [6.97].

¹¹ February Submission, Part 1, item 162. The relevant customer was managed by Lending Services (see footnote 15 below).

¹² January Submission, [6.57].

¹³ January Submission, [9.6]–[9.8].

C. MATTERS OF INTEREST IDENTIFIED BY THE COMMISSION

Overview

22. The Commission's Request identified nine issues raised by submissions received from the public and in the course of the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Impairment of Customer Loans and the Australian Senate Select Committee Inquiry into Lending to Primary Production Customers. ANZ participated actively and made submissions in these inquiries. ANZ also refers to the January Submission at [6.64]–[6.67] and the April Submission at [33]–[51] in relation to these matters.
23. As set out in the April Submission at [34], ANZ considers that CSEs in relation to the identified issues have shifted significantly in recent years and continue to do so. The discussion that follows is intended to identify, at a high level, ANZ's general position in relation to the issues of interest identified by the Commission. The ABA has considered the various recommendations made in the inquiries mentioned at [22] above, which informed the industry position set out in the newly revised and renamed "Banking Code of Practice", which is due to be adopted in early 2019.

Appropriateness of current agribusiness lending regulatory regime

24. ANZ dealt in the April Submission at [11]–[14] with the regulatory regime for SME lending, including for agribusiness lending, and makes observations below in relation to the specific aspects of the regulatory environment raised in (b)–(i) of the Request. ANZ would be happy to make further submissions to the Commission in relation to any specific proposals for reform relating to agribusiness customers.

Use of personal assets as security

25. ANZ's position in respect of the use of personal assets to secure a SME loan, including an agribusiness loan, is as set out in the April Submission at [35]–[36].
26. In the case of lending to primary producers, ANZ is mindful that in many cases security is held over a farm property which is also the family home of the borrower or a related party. Further, the family may have held the land for generations and may hope to continue to do so in generations to come. For these and other reasons, farmers often have a deep emotional connection to the land. ANZ's approach to customers in financial distress, described below, is designed to acknowledge and be respectful of these features of agribusiness lending.

Non-monetary event of default clauses

27. ANZ refers to the April Submission at [37]–[39] in respect of its approach to non-monetary event of default clauses and the recent simplification of its small business terms and conditions.
28. ANZ does not typically rely on non-monetary conditions of default to take enforcement action in respect of agribusiness lending customers. In 2015, ANZ undertook an assessment of its enforcement practices for its submission to the Impairment of Customer Loans Inquiry. The assessment included 30 cases in which ANZ took possession of property held as security over loans to agribusiness customers. All 30 of those cases involved monetary default over an extended period of time.¹⁴

Period and means of communication of notice of events of default

29. ANZ refers to the April Submission at [40]–[41] in respect of the length and communication of notices it gives to defaulting agribusiness customers.

¹⁴ ANZ's submission to the Primary Production Customers Inquiry dated May 2017, [10].

Roll-over of loans on maturity

30. ANZ's position in respect of the roll-over of agribusiness loans on maturity is as set out in the April Submission at [42].

Use of unilateral variation clauses

31. The April Submission at [43]–[44] sets out the changes ANZ has made to its unilateral variation clauses in its standard terms and conditions. These changes were made to all of ANZ's small business loan contracts, including those with agribusiness lending customers.

Dealings with agribusiness lending customers in financial difficulty

32. ANZ refers to the April Submission at [45]–[46] in respect of its general approach to dealing with SME lending customers in financial difficulty, including agribusiness customers.
33. Taking possession of property is a last resort where, despite other measures, a customer has been unable to improve their business and remains unable to meet their commitments. In the three years since 31 March 2015, ANZ has enforced against the property of a primary production customer on eight occasions. In each of these cases, the appointment was made at the request of the customer who, after receiving independent legal advice, decided that this action was in their best interests.
34. ANZ has a particular focus on working with primary production customers through difficult periods, which often arise due to circumstances outside customers' control, such as poor weather conditions, natural disasters, market conditions and price fluctuations. ANZ has set up a dedicated agribusiness team in Lending Services¹⁵ with specific knowledge of, and experience in, agriculture and restructuring/insolvency. It has also introduced new guidelines requiring all enforcement decisions to be approved by a member of the Lending Services Global Leadership Team.
35. Further, as noted in the January Submission at [6.84], ANZ has enhanced its practices over time and, depending on the circumstances, may take measures to support its primary production customers in financial distress, including the following:
- (a) providing drought and other natural disaster assistance packages (which often involve granting moratoriums on new farm repossessions and interest rate or other relief);¹⁶
 - (b) increasing the frequency of customer communication and in-person farm visits by Lending Services staff in order to build and maintain rapport and trust;
 - (c) encouraging customers to obtain independent legal and financial advice and, where appropriate, contributing to the customers' legal or financial advice costs; and
 - (d) offering farm debt mediation in financial distress cases in Lending Services where appropriate, even where not required by legislation, and in most instances paying the mediator's fees in full.

¹⁵ As noted in the April Submission at [45], ANZ's Lending Services manages larger customers (typically those with lending above \$1 million) who are experiencing financial difficulty. Lending Services also manages a number of cases involving SBB primary production customers. SBB primary production cases being dealt with by the Commercial Collections team (see [18] above) are transferred to Lending Services when the distress becomes more serious and/or enforcement is contemplated.

¹⁶ For example, ANZ introduced a drought assistance package in 2014, which was extended to 2016 as a result of the worsening drought conditions, and an assistance package in 2016 to Australian dairy farmers affected by a mid-season milk price reduction.

Arrangements with third-party professionals

36. ANZ refers to the April Submission at [47]–[51] relating to its arrangements with third-party professionals, including valuers, independent accountants, and receivers and managers.
37. Specific to agribusiness lending, ANZ also notes that:
- (a) in about March 2017, Lending Services changed its Level 2 Policies and Procedures document regarding management of high-risk customers to require copies of investigative accountants' reports to be provided to customers; and
 - (b) ANZ's practice is typically to make available to agribusiness lending customers a full copy of the instructions given to a valuer and a full copy of the valuation report.

External dispute resolution schemes

38. Agribusiness lending customers in dispute with ANZ can contact the relevant ANZ manager, ANZ Internal Dispute Resolution, the ANZ Customer Advocate (who provides an independent internal review) or the FOS.
39. In all cases involving a dispute with primary production customers, ANZ seeks farm debt mediation prior to taking any action under its security documents. This approach is adopted even in jurisdictions where farm debt mediation is not compulsory or where no formal scheme is in place. ANZ recognises the importance for all farmers, regardless of where they live or do business, to have access to the same mediation process and, accordingly, supports and encourages a national approach to farm debt mediation. Primary production customers also have the right to initiate the farm debt mediation process.

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