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

SUBMISSION BY ANZ IN RESPONSE TO THE ROYAL COMMISSION'S INTERIM REPORT

I. INTRODUCTION

1. This submission responds on behalf of Australia and New Zealand Banking Group Limited and its associated entities[1] (collectively, **ANZ**) to the Interim Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

2. In its submission to the Commission dated 29 January 2018, ANZ acknowledges that there have been too many instances in which its conduct has not met community standards and expectations (**CSEs**) or has amounted to misconduct, and it identified various causes of this conduct.[2] In Volume 2 of the Interim Report, the Commission found that certain conduct of ANZ fell below CSEs and/or may have amounted to misconduct.

3. ANZ unequivocally accepts that misconduct and conduct falling below CSEs, and related financial harm and emotional stress caused to customers, is unacceptable. ANZ apologises to its customers and to the community.

4. In some cases, conduct by financial services entities examined by the Royal Commission has already precipitated legislative and regulatory reforms. The work of the Commission, however, has reinforced the need to consider further action to secure enduring cultural change within the industry, to restore the community's trust, and to maintain confidence in the Australian financial system.

5. At the time this Royal Commission was established, ANZ had already taken, and was taking, a number of steps to address the causes and consequences of its misconduct.[3]

6. Steps taken by ANZ include ongoing review of and changes to ANZ's remuneration practices; strengthening ANZ's focus on accountability, including as a result of the introduction of the Banking Executive Accountability Regime (**BEAR**); implementing structural changes to re-focus the bank on its core operations; applying additional resources to repaying customers affected by past mistakes and misconduct; and simplifying its products and systems to avoid mistakes being made.

7. ANZ acknowledges that further work is required.

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1 The associated entities of ANZ no longer include Financial Services Partners Pty Limited (**FSP**), Millenium3 Financial Services Pty Limited (**M3**) or RI Advice Group Pty Limited (**RI**). The sale of these entities referred to in ANZ's submission to the Commission dated 29 January 2018 (**ANZ's January Submission**) at [5.6] has been completed.

2 ANZ's January Submission at [4.11]–[4.16].

3 These are described in ANZ's January Submission, including at [4.17]–[4.22].

8. In building and maintaining a sustainable business, all banks face the continuing challenge of complying with the law and balancing the interests of a range of stakeholders including communities, customers, investors and depositors. This requires: complying with the law and meeting CSEs; serving the needs of customers; and generating profits, in order to attract and retain the capital needed to safeguard deposits.[4] ANZ has not always achieved the correct balance in addressing these requirements. On occasions, the balance has tilted too heavily in favour of generating profits.

9. Recognising that these requirements should be complementary over the long-term, ANZ is seeking to better achieve the correct balance through the governance and risk management processes that underpin its activities and by reinforcing a culture in which compliance is integral to the way in which business is done and staff are rewarded for doing the right thing and held accountable when things go wrong. This requires ongoing attention and calibration to achieve the appropriate balance between the short- and long-term expectations of stakeholders.

10. ANZ recognises the challenge in considering and formulating possible proposals for future public policy reform. In some respects, the existing landscape is evolving. Implementation of the BEAR reforms is an example, where the full impact and effectiveness of these changes are unlikely to be observable in the short term.

11. Also relevant is the observation in the Interim Report that any inquiry which focuses on wrongful conduct carries some risk that "the resulting picture of the industry is distorted".[5] ANZ thinks that that risk is a real one. That said, having regard to the breadth of the Commission's work, some clear themes have emerged which support a general thesis warranting consideration of further reform. Necessarily, however, potential changes must be assessed not just by reference to their ability to address conduct examined by the Commission (and its causes), but also by reference to the possibility that those changes may have other consequences.

12. In this submission, ANZ addresses the policy issues and general questions set out in Chapter 10 of Volume 1 of the Interim Report. The submission is structured under the categories of issues, causes, and responses, and within that structure, by reference to the questions posed by the Commissioner in part 8 of Chapter 10.[6]

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4 See Interim Report, vol 1, 55.

5 Interim Report, vol 1, 14.

6 ANZ has made submissions in relation to individual case studies and policy questions identified at the conclusion of relevant hearings of the Royal Commission. Having regard to those submissions, and the Commission's request that parties' responses to the Interim Report address the issues in Chapter 10 of Volume 1, this submission does not address the case studies in Volume 2 of the Interim Report.

II. ISSUES

A. ACCESS

13. The first topic identified by the Commission in part 8 of Chapter 10 of the Interim Report is Australians' access to transaction banking services. ANZ recognises the importance of providing assistance to customers who may face obstacles to accessing such services by reason of geographical remoteness or cultural, linguistic or financial literacy barriers. The Royal Commission has highlighted three groups of customers, some of whom may not have adequate and appropriate access to transaction banking services at all times: customers living in remote and regional areas, indigenous customers and customers whose principal (or sole) source of income is Centrelink benefits. Some of the challenges that may be faced by members of these groups are discussed below.

Customers living in remote and regional areas

14. A proportion of ANZ's retail customers live in areas that the Australian Bureau of Statistics classifies as regional or remote. ANZ recognises that for customers in regional and, in particular, remote Australia, the nearest branch may be a significant distance away. Improvements in phone and digital banking services mean that more Australians choose to conduct their banking without needing to visit a branch on a regular basis (subject to having phone or internet access).

15. ANZ acknowledges that it has reduced its branch network over time in metropolitan, regional and remote areas. ANZ continues to negotiate with Australia Post in relation to the future of the Bank@Post services and is also considering available alternatives.

16. Even in an era of phone and digital banking, customers still need to travel to the nearest branch in certain circumstances. For example, where a customer cannot answer security questions over the telephone, ANZ requires the customer to attend a branch to verify their identity. While ANZ's verification processes are necessary to comply with its obligations, including under the *Privacy Act 1988* (Cth), ANZ appreciates that customers sometimes forget the answers to security questions and attending a branch to verify their identity may cause difficulties for some customers in remote and regional Australia.

17. ANZ currently offers customers four ways to verify their identity via the Contact Centre (that is, without the need to attend a branch): (i) customer registration number and customer-chosen PIN; (ii) verbal security code chosen by the customer; (iii) verification via an SMS to the customer; and (iv) manual security questions based on information ANZ has about the customer. Additionally, since 2016 ANZ has offered "Talk 2 Us" technology, which automatically verifies a customer's identity (removing the need for any security questions) when a customer calls the Contact Centre from the ANZ app. In the event that a customer remains unable to verify their identity despite these options, ANZ will offer to book an appointment for the customer to attend their nearest branch.

Indigenous customers

18. Some indigenous customers may face cultural and linguistic challenges when engaging with financial institutions. Chapter 13 of the Banking Code of Practice (2019) (**BCP 2019**) imposes appropriate additional obligations on banks to assist indigenous customers to access banking products and services.

19. ANZ detailed its efforts to improve cultural awareness in relation to indigenous customers and their access to banking products and services at [80]–[91] of its Round 4 Policy Submissions. The cultural awareness training referred to at [84] of that document is now mandatory for all Australian Retail Distribution staff. Further, ANZ has committed to working with indigenous leaders to rework its security questions for customers needing to verify their identity over the phone so that the questions are more likely to elicit the correct answer from indigenous customers, particularly those who live in regional or remote areas. ANZ will generally use the reworked questions when a customer identifies him or herself as indigenous.

20. ANZ has also given further consideration to offering a telephone service staffed by employees with special training in assisting indigenous customers.[7] ANZ is willing to set up such a service, subject to consulting with indigenous community members, including members of ANZ's Indigenous Advisory Council.

Customers who receive Centrelink benefits

21. The Interim Report identified issues faced by customers whose principal (or sole) source of income is Centrelink benefits. These issues are not concerned with access to transaction banking products and services *per se*, but with access to *appropriate* products and services.

22. *Basic account promotion and placement.* The steps ANZ takes to promote its Access Basic (no fee) and Pensioner Advantage (low fee) accounts to customers are detailed at [76]–[79] of ANZ's Round 4 Policy Submissions. These include a pilot program that involves contacting customers who are incurring overdrawn fees and may be eligible for an Access Basic account. ANZ intends to incorporate this program into its regular operations to promote ongoing customer awareness of appropriate products.

23. ANZ recognises the importance of no and low fee accounts for customers whose principal (or sole) source of income is Centrelink benefits. ANZ frontline staff members are not incentivised to sell fee-based accounts over fee-free accounts. ANZ is, however, mindful of the need to respect a customer's right to choose their account type, and that customers may require assistance in determining appropriate account options. In this regard, ANZ intends to introduce changes to its A–Z Review process and related training to assist

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[7] ANZ has revised its position set out in its Round 4 Policy Submissions at [85].

frontline staff to engage in more meaningful discussions with customers whose principal (or sole) source of income is Centrelink payments.

24. *Account features and fees.* ANZ does not extend informal overdrafts to customers in certain circumstances, having regard to factors ("exclusion criteria") such as product type and customer and account attributes.[8] Since submitting its Round 4 Policy Submissions, ANZ has decided to cease providing informal overdraft facilities on transaction accounts that ANZ detects are in receipt of certain Centrelink benefits. As a result of changes that will take effect from the end of November 2018, certain Centrelink recipients (as detected by ANZ's systems) will be unable to overdraw their transaction accounts except in very limited circumstances.[9] In these cases, honour fees are not charged on Access Basic accounts. Further, ANZ has committed to cease charging such fees on Pensioner Advantage accounts in the future.

25. While ANZ considers the above restriction to be appropriate in light of the issues explored in Round 4, it acknowledges that, as with all exclusion criteria, it will necessarily mean that some affected customers who might benefit from an informal overdraft facility will be unable to access one.

26. Direct debit arrangements are a matter between a customer and a merchant, sometimes at the merchant's insistence. ANZ has, nevertheless, committed to removing dishonour fees from Pensioner Advantage accounts. Access Basic accounts do not incur such fees.

27. *The Code of Operation.* In the limited circumstances in which customers who receive prescribed payments (including prescribed Centrelink benefits) do overdraw their accounts, they will be eligible for the "90% arrangements" that ANZ has in place in response to the Code of Operation. ANZ plans to increase its efforts to promote the 90% arrangements, including by training its frontline bankers to make Access Basic and Pensioner Advantage account-holders aware of the arrangements at account opening, and updating its website to include content explaining when the arrangements are available. Collections staff will continue to promote the arrangements to overdrawn Access Basic and Pensioner Advantage account-holders. Over time and supported by necessary systems changes, collections staff will also promote the arrangements to other overdrawn account-holders who are identified as recipients of certain Centrelink benefits.

28. The measures described above will go a significant way towards removing the need to apply the 90% arrangements, while at the same time placing customers in a better position to request (and staff to recommend) the arrangements when necessary.

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[8] See, for example: ANZ's Round 4 Policy Submissions at [97]; Exhibit TCT-12 (ANZ.800.772.0089, ex 4.202.12) to the Witness Statement of Tony Tapsall dated 21 June 2018 (ANZ.999.012.0030, ex 4.202) (**Tapsall Statement**), comprising the exclusion criteria in existence as at that date.

[9] These circumstances are discussed at [25A] of the Tapsall Statement (ANZ.999.012.0030, ex 4.202). Since Mr Tapsall gave evidence before the Commission in July 2018, ANZ has introduced systems changes that further limit the circumstances in which customers may overdraw their accounts by accessing uncleared funds that do not subsequently clear.

However, the arrangements will still operate on an "opt in" basis. After investigation, ANZ believes that, while it is technically possible to automatically apply the 90% arrangements when the account of a relevant Centrelink recipient is overdrawn, this would complicate the account information presented to customers who access the 90% arrangements and would risk confusing some customers. ANZ will explore an industry-wide approach that provides practical solutions that enhance customer experience in the lead-up to the introduction of clause 181 of the BCP 2019.

B. INTERMEDIARIES

29. ANZ does not own any mortgage brokers or aggregator businesses. ANZ does employ financial advisers, however, ANZ and its associated entities no longer have authorised representatives who act as financial advisers. ANZ no longer owns aligned dealer groups.[10] ANZ understands that the questions in section 8.1.2 of Chapter 10 of Volume 1 of the Interim Report relate to intermediaries dealing with borrowers in the context of consumer lending transactions or providing personal financial product advice[11] to retail clients.[12] Those issues are addressed in [30]–[62] below in relation to mortgage brokers, aggregators, introducers and point of sale sellers of consumer loans[13] and in [63]–[70] below in relation to financial advisers and authorised representatives.[14]

Mortgage brokers, aggregators, introducers and point of sale sellers of loans

For whom do intermediaries act? For whom should they act?

30. Mortgage brokers and aggregators act for the customer.

31. Mortgage brokers and aggregators do not have the authority or capacity to create legal relations on behalf of ANZ, do not owe a duty of loyalty to ANZ, and are free to refer customers to other lenders. Whilst ANZ does not contract directly with brokers, its agreements with aggregators and its Mortgage Broker Operations Manual state that the mortgage broker is not an agent of ANZ.

32. At a practical level, mortgage brokers provide services to their customers, including gathering information from the customer regarding their financial circumstances, requirements and objectives. These services should not be regarded as performed on behalf of a particular lender because:

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10 See footnote 1 above.

11 As defined in Corporations Act s 766B(3).

12 As defined in Corporations Act ss 761G and 761GA.

13 ANZ also deals with intermediaries in conducting its SME lending business, as outlined in the Witness Statement of Kate Gibson dated 17 May 2018 (ANZ.999.009.0065, ex 3.15) (**Gibson Statement**) at [30]–[32].

14 Previously, ANZ's associated entities FSP, M3 and RI provided financial advice to consumers through authorised representatives. Since completion of the sale of FSP, M3 and RI to IOOF, ANZ now provides financial advice solely through ANZ employees.

(a) the work may be done without regard to which lender will ultimately provide the loan, and may be used to make loan applications to several different lenders; and

(b) the work is necessary for compliance with the mortgage broker's own duties owed to the customer, including under the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**) to: act efficiently, honestly and fairly; ensure that borrowers are not disadvantaged by any conflict of interest; disclose commissions received; and comply with responsible lending obligations.

33. Aggregators, as credit licensees, owe the same general obligations as mortgage brokers to borrowers under the NCCP Act.[15] These duties owed by brokers and aggregators to customers support the proposition that they act for customers.

34. Customers generally know that mortgage brokers and aggregators can recommend a range of potential lenders (and do not solely represent any particular lender). This is an essential feature of the service offering of mortgage brokers and aggregators to customers.

35. If the customer decides to apply for a loan with a particular lender, mortgage brokers facilitate and assist the customer to make the application. Customers are aware that the mortgage broker is not authorised to approve the loan application on behalf of the lender (this is apparent from the need to make a loan application and await approval from the lender). Upon receipt of the application, the lender then assesses the loan application in light of its obligations under the NCCP Act. If the lender requires further information, the broker may act as a conduit between the lender and the customer. Whilst these services provided by the mortgage broker may be done at the request of the bank, they are done for the purposes of furthering the customer's application.

36. Mortgage brokers seek to be accredited by, and have an ongoing relationship with, a number of lenders in order to provide a broad range of product options to customers to meet their needs and objectives. They facilitate and assist the customer in making loan applications to lenders. They are paid by the lender (via an aggregator) if and when a customer's loan is settled. These matters are not, however, inconsistent with mortgage brokers and aggregators continuing to act for the customer. The consideration of the dealings between mortgage brokers, customers and lenders referred to above does not support the conclusion that mortgage brokers and aggregators act for lenders, or that customers believe that they act for lenders. Indeed, in ANZ's submission, it is or should be clear that brokers do not act for lenders, as customers go to brokers to compare the market with the aim to get the right product to meet their needs regardless of which lender provides it.

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[15] However, aggregators are not required to comply with responsible lending obligations under Parts 3-1 or 3-2 of the NCCP Act.

37. ANZ considers that mortgage brokers and aggregators should continue to act for the customer and supports reforms, such as the implementation of a Mortgage Broker Industry Code and "Customer First Duty" recommended by the Combined Industry Forum (**CIF**), that make that clear.

38. The role of home loan introducers in the consumer lending market is limited. ANZ believes that it is difficult to describe introducers as acting for either lender or customer in the limited role they perform. Introducers merely refer prospective borrowers to lenders. Introducers are entitled to a fee if the application is approved and settled, which is disclosed to the customer by the lender. Introducers do not play any role in the bank's compliance assessment and settlement processes or with its responsible lending obligations under the NCCP Act.

39. Point of sale sellers are not subject to obligations under the NCCP Act. ANZ's view is that the point of sale exemption should be removed. ANZ submits that there is no policy justification not to apply the consumer lending protections in the NCCP Act to point of sale consumer lending.

If intermediaries act for the consumer of a financial service or a credit service, what duty do they now owe to the consumer and what duty should they owe?

40. Mortgage brokers and aggregators owe customers the duties referred to in [32] and [33] above.

41. ANZ considers that mortgage brokers should also owe customers a duty to the effect of the Customer First Duty. The Customer First Duty is part of a package of reforms being recommended by the CIF which is intended to add to the current regulatory requirements for mortgage brokers. The intention of the Customer First Duty is to require participants in the mortgage broking industry to put customers' interests first and match the needs of the customer with the right home loan product and lender in order to promote "good customer outcomes".

42. In accordance with the recommendations of the CIF, it is ANZ's view that a Customer First Duty should:

    (a) be fit for purpose for intermediaries operating in the home loan industry;

    (b) promote competition, and ensure that no part of the value chain is unfairly disadvantaged;

    (c) provide transparency for all participants; and

    (d) promote simple, achievable solutions.

43. ANZ considers that the Customer First Duty (or another similar duty), in conjunction with the framework of reforms proposed by the CIF and potential third party regulator

supervision, will provide further protection for customer interests (in addition to the protection provided by the duties referred to in [32] above).

44. ANZ also supports the imposition of a related duty on aggregators. As with mortgage broker duties, ANZ considers that aggregator duties ought to be codified in a similar instrument.

45. For completeness, ANZ's position is that the home loan introducer programs referred to in [38] above should be permitted to continue and are not inconsistent with responsible lending obligations.

Who is responsible for intermediaries' defaults?

46. Mortgage brokers are primarily responsible for their own defaults.

47. Aggregators and lenders can be responsible in some circumstances for the defaults of mortgage brokers. Aggregators and lenders have governance and oversight responsibility for the brokers with whom they have relationships, through accreditation and quality assurance. Aggregators are relied on to assist in the governance and oversight of mortgage brokers. The approach of aggregators to the governance and oversight of brokers may vary depending on whether the broker operates as a credit representative of the aggregator or as a credit licensee in its own right. ANZ would support a requirement that aggregators adopt a consistent approach to the governance and oversight of mortgage brokers regardless of their credit licensing status.

48. Mortgage brokers and lenders have parallel responsible lending obligations. If a mortgage broker fails to do its part to ensure lending is responsible, both the broker and the lender may be responsible pursuant to Parts 3-1 or 3-2 of the NCCP Act respectively. If ANZ identified or suspected misconduct on the part of a mortgage broker, the broker would be liable to be disaccredited by ANZ.

49. Responsibility for the defaults of home loan introducers is also parallel. The home loan introducer has direct responsibility to ensure that the *National Consumer Credit Protection Regulations 2010* (Cth) are not breached during the referral process. Lenders must have appropriate oversight and monitoring practices in place as well as discharging their responsible lending and Code of Banking Practice (2013) (**CBP 2013**) duties as part of the fulfilment of a home loan application. If lenders identify or suspect misconduct on the part of a home loan introducer, the introducer should be disaccredited.

Who should be responsible for intermediaries' defaults?

50. As stated above, ANZ supports the reforms recommended by the CIF such as the development of a "Mortgage Broking Industry Code", which should assist in providing clarity as to the responsibility for defaults of mortgage brokers.

51. In addition, ANZ believes that lenders' systems to detect and prevent breaches of responsible lending obligations by mortgage brokers could be improved on an industry-wide basis as follows:

(a) centralising and standardising mortgage broker responsible lending training by consolidating the training that lenders require brokers to undertake and have it provided and administered by a third party such as the Mortgage and Finance Association of Australia or Finance Brokers Association of Australia with approval from lenders. This should also include centralised annual broker responsible lending re-accreditation;

(b) an industry-wide move towards the use of personalised transaction data to assist in identifying and verifying customers' expenses. The proper implementation of this in a consistent and operationally feasible manner will require greater availability of customers' transaction data on an industry-wide basis; and

(c) improved aggregator agreements which require aggregators to monitor broker compliance and act on broker "red flags" identified by them or lenders (eg an over-reliance by a broker on the Household Expenditure Measure (**HEM**)) by means of broker disaccreditation or additional training.

52. ANZ has implemented a number of improvements to its processes for monitoring and taking steps to deal with mortgage broker defaults, such as enhanced monitoring of mortgage broker performance data to identify triggers for qualitative file reviews. In addition, a number of other improvements are underway, such as implementing standardised aggregator agreements which impose obligations on aggregators to monitor broker performance.

53. Customers should be contacted where an intermediary or an employee has been disaccredited or terminated (respectively) due to fraud or serious misconduct in circumstances where those customers can be identified as having suffered financial harm or detriment. Where fraud or serious misconduct is suspected but not yet established there may need to be limitations on customer contact to mitigate defamation concerns or disclosures which could prejudice internal, regulatory or criminal investigations. In these circumstances there are other mechanisms which help protect customers at risk of detriment. For example, "ring-fencing" potentially affected loans and withholding collections activity pending the conclusion of investigations.[16]

54. With respect to fraud by mortgage brokers, ANZ would support a requirement that aggregators report the disaccreditation of brokers for fraud or misconduct to lenders with whom the broker is accredited. This would enable the broker's customers with loans from

[16] If ANZ identifies that an employee or intermediary has engaged in suspected fraud, a review of relevant customer files is initiated, save for when the fraud is evidently not systemic or when the fraud relates to the intermediary or employees' own loan application and there is no evidence customers have suffered financial harm or detriment.

other lenders to be notified when appropriate in light of the matters referred to above. When a broker is terminated by an aggregator, the broker should be disaccredited across all lenders for which the broker was accredited through that aggregator.

How should intermediaries be remunerated?

55. ANZ supports the views of the CIF that, on an industry wide basis, in relation to mortgage brokers and aggregators:

(a) remuneration should continue to be paid by upfront and trail commissions rather than by other remuneration models;

(b) volume-based bonus payments and campaign-based commissions should not be used;

(c) value-based commissions should relate to the funds drawn down by the customer net of offset, rather than the amount approved by the lender;[17] and

(d) soft-dollar benefits[18] should be limited in value and access should be controlled depending largely upon criteria aligned to "good customer outcomes".

56. ANZ considers that the arrangements described in [55(b)]–[55(d)] above, coupled with the CIF proposals to increase governance and disclosure and implement a Customer First Duty, will minimise the risk of misconduct and poor customer outcomes.

57. ANZ supports the continued use of trail commissions for mortgage brokers. Trail commissions promote better customer outcomes by giving brokers an incentive to recommend loans that will be suitable to the customer for the life of the loan, and assist the industry to attract and retain quality brokers.

58. ANZ supports the removal of volume-based bonus payments and campaign-based commissions as they may encourage a mortgage broker to recommend one lender over another based upon the commission being offered by the lender (known as lender choice conflict). ANZ has implemented this change for mortgage brokers.

59. Value-based commissions may increase the risk of mortgage brokers recommending larger loans than required. This risk may be mitigated by the implementation of the CIF proposal that value-based commissions be calculated based on the funds drawn down by the customer net of offset rather than the amount approved.[19] ANZ has committed to implementing this proposal by the end of 2018.

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17 ANZ considers that this CIF proposal should not apply to lines of credit or construction loan products.

18 Soft-dollar benefits include entertainment, membership of broker clubs and invitations to conferences and professional development events.

19 ANZ considers that this CIF proposal should not apply to lines of credit or construction loan products.

60. ANZ acknowledges that the use of soft-dollar benefits may have contributed to brokers preferring one lender over another, possibly resulting in poor customer outcomes. ANZ currently offers a premium broker tiered service and has committed to implementing a balanced assessment approach to determine eligibility for the service by the end of 2018. ANZ is supportive of an industry-wide limited and controlled use of soft-dollar benefits.

61. ANZ currently makes value-based payments to home loan introducers. Given the limited role performed and services provided by home loan introducers, ANZ is not opposed to an industry-wide move away from value-based remuneration of home loan introducers toward a flat fee arrangement.

62. ANZ supports the recommendations made by the CIF that participants in the industry including mortgage brokers, lenders and aggregators, clearly disclose their ownership structures and other circumstances that enable them to influence others; and that a new public reporting regime of customer outcomes and competition in the home loan market be established. The new public reporting regime would require, among other things: aggregators to report on the percentage of business being written by each lender on their panel and the average commission rate earned; lenders to report annually on the average pricing of home loans across their different distribution channels; and brokers to report on the lenders available to the customer via the broker's aggregator and the top six lenders used. These proposals may assist customers to make fully informed decisions when applying for or entering into a loan using the services of an intermediary.

Financial advisers employed or authorised by financial services licensees

For whom do intermediaries act? For whom should they act?

63. Financial advisers who provide personal financial advice to customers in their capacity as employees or authorised representatives of financial services licensees act for those customers. Although the adviser acts on behalf of their employer or the licensee by whom they are authorised in providing the advice,[20] the adviser acts for the customer in the sense that the adviser owes the customer the duties referred to below.

If intermediaries act for the consumer of a financial service, what duty do they now owe to the consumer and what duty should they owe?

64. The principal duties owed by financial advisers to customers to whom they provide personal advice are to act in the best interests of the customer in relation to the advice,[21] to warn the customer to consider the appropriateness of the advice to their circumstances before acting on it (if it is reasonably apparent to the adviser that the advice is based on incomplete or inaccurate information about the customer's objectives, financial situation

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[20] In relation to employees, the advice is provided in their capacity as a "representative" of their employer: see Corporations Act ss 910A and 961. In relation to authorised representatives: see Corporations Act s 961A.

[21] Corporations Act ss 961B and 961G.

and needs),[22] and to give priority to the interests of the customer when giving advice in circumstances where the adviser knows (or ought reasonably to know) that there is a conflict between the interests of the customer and the interests of the adviser or the financial services licensee by which the adviser is employed or authorised or certain other interests.[23]

65. The conduct examined by the Commission does not warrant any change to the principal duties that financial advisers owe to customers to whom they provide personal advice. Financial advisers may owe additional duties to customers under contract or at general law depending on all the circumstances of the particular relationship.

Who is responsible for intermediaries' defaults?

66. Financial services licensees are responsible for taking reasonable steps to ensure that their employed financial advisers and authorised representatives comply with the principal duties referred to above.[24] A licensee which fails to take those steps may be exposed to civil penalties[25] and/or compensation orders.[26] Licensees are also directly responsible for contraventions of those principal duties by their employed financial advisers, in that this constitutes a contravention of the *Corporations Act 2001* (Cth) (**Corporations Act**) by the licensee which may attract a civil penalty[27] and/or a compensation order.[28] Whilst compensation orders may also be imposed on licensees for contraventions of those principal duties by their authorised representatives, it is the authorised representatives themselves who are exposed to civil penalties.[29] Civil penalties cannot be imposed on employed financial advisers who are not authorised representatives, but they can be the subject of a banning order.[30]

67. In addition, Part 7.6, Division 6 of the Corporations Act provides for a financial services licensee to be responsible, as between the licensee and the client, for conduct of that licensee's employed and authorised financial advisers that relates to the provision of a financial service, on which the client could reasonably be expected to rely and in fact relied in good faith. For defaults that fall within the scope of that Division, the responsibility of the financial services licensee extends so as to make the licensee liable to the client in respect of any loss or damage suffered by the client as a result of the

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22 Corporations Act s 961H.

23 Corporations Act s 961J.

24 Corporations Act ss 912A(1)(ca) and 961L.

25 Corporations Act ss 961L and 1317E.

26 Corporations Act s 961M.

27 Corporations Act s 961K. Provided that the licensee is the "responsible licensee": see ss 961K(2) and 961P.

28 Corporations Act s 961M.

29 Corporations Act ss 961K, 961M, 961Q and 1317E.

30 Corporations Act s 920A(1)(e)–(h).

adviser's conduct.[31] If the default constitutes a breach of a duty owed by the adviser to the client at general law, the adviser may also be personally responsible, and liable to the client, for the default.

Who should be responsible for intermediaries' defaults?

68. The responsibilities outlined above are appropriate for the protection of clients and reflect the greater degree of control that a licensee is able to exercise over the conduct of its employed financial advisers compared to authorised representatives.

69. Where a financial adviser is terminated for fraud or other misconduct, and the licensee that employed or authorised the adviser identifies customers who have suffered loss as a result of the adviser's conduct, the licensee should contact those customers and advise them of that fact. However, licensees should be given protection from the risk of defamation proceedings. ANZ already has a process to write to customers of advisers who have been banned by the Australian Securities and Investments Commission (**ASIC**) informing them of the banning order.

How should intermediaries be remunerated?

70. It is appropriate for employed financial advisers to be remunerated by receiving a fixed salary, supplemented by a variable component. Incentives are one mechanism by which licensees can foster legally compliant financial advice that prioritises the needs of customers. Advisers' eligibility for variable remuneration should not be too closely connected to revenue and should instead reward performance by reference to customer satisfaction, values and risk and compliance standards and should involve a qualitative assessment. ANZ has removed revenue generation from its balanced scorecard which determines whether variable remuneration is paid to its employed financial advisers, and continues to review and revise its balanced scorecards to ensure there is sufficient focus on customer satisfaction, values and risk and compliance standards.[32] ANZ's employed financial advisers do not receive any commissions generated by the financial advice that they provide to ANZ customers.[33] ANZ supports legislative change to remove the grandfathered commissions exception[34] to the ban on financial advisers receiving conflicted remuneration.[35] This is addressed further at [175] below.

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31 Corporations Act s 917E. Where the financial adviser is a representative of two or more financial services licensees, s 917C stipulates which licensee or licensees are responsible for the adviser's conduct.

32 The balanced scorecard for financial advisers was revised in April 2018 (see ANZ.800.523.0031, ex 2.151) and again in October 2018.

33 Witness Statement of Kylie Rixon dated 9 April 2018 (ANZ.999.003.0001, ex 2.152) (**Rixon Statement**) at [38]–[40].

34 Corporations Act s 1528(1).

35 Corporations Act Part 7.7A, Division 4.

External dispute resolution mechanisms

Are external dispute resolution mechanisms satisfactory?

71. ANZ has supported the establishment of a single External Dispute Resolution scheme. As an alternative to the Courts, it is important that the Australian Financial Complaints Authority (**AFCA**) can approach dispute resolution flexibly, including through the design of its processes and systems, to ensure that it operates in an accessible and user-friendly manner.

72. ANZ has confidence that the AFCA model will improve customer access via its increased jurisdiction, deliver fair and reasonable outcomes, and prove a suitable mechanism for the resolution of unresolved customer complaints.

73. ANZ maintains its support for the general approach taken by the Financial Ombudsman Service (**FOS**) in cases involving maladministration, including that the borrower remain liable for the residual principal of the loan which represents the funds expended for the borrower's benefit.[36] ANZ supports the repayment of this principal over the term of the loan contract, rather than requiring it to be repaid sooner. In addition, FOS (and now AFCA) already have an ability to award compensation for non-financial loss or harm.[37]

74. ANZ notes its previous observations concerning the ways in which external dispute resolution mechanisms could be improved.[38] For example, there may be benefit in AFCA taking a more active approach to assist the parties to restructure residual debt (particularly where the customer is in hardship).

Should there be a mechanism for compensation of last resort?

75. ANZ supports the introduction of a last resort compensation scheme that may pay compensation to retail customers who have suffered loss because of inappropriate advice or poor conduct from a financial adviser. The award of compensation should be capped, and be available only when other compensation arrangements have been exhausted. The compensation scheme should be funded by contributions made by all Australian financial services licensees which provide personal financial advice to retail clients. The provision of such funding ought to be a condition of obtaining a licence. Such a scheme should apply only prospectively, to avoid a circumstance where current subscribers are required to contribute to historical instances of poor advice. ANZ does not support a scheme that goes beyond these parameters. ANZ's concern is that an industry-funded last resort compensation scheme that has a broader base than losses arising from financial advisers

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[36] ANZ Round 3 Policy Submissions at [37]–[39].

[37] Up to $3,000 for each claim at FOS: "The FOS Approach to non-financial loss claims" (Version 1, July 2015). This is increased to $5,000 for each claim at AFCA: AFCA Fact Sheet, "Non-financial loss claims".

[38] ANZ Round 3 Policy Submissions at [39].

risks mutualising losses through the financial system which, if systemic failures were to occur, could undermine the soundness of otherwise viable institutions.

C. RESPONSIBLE LENDING

Should the test to be applied by the lender remain "not unsuitable"?

76. ANZ supports the retention of the current test to be applied by the lender: that the product is "not unsuitable". The concept of unsuitability is intended to ensure that consumers do not enter into credit arrangements that either do not meet their requirements and objectives, or that they are not able to service without suffering substantial hardship. Adherence to the "not unsuitable" test represents an alignment of the interests of the lender and the borrower when assessing a loan: namely, that it is in both parties' interests that the loan is not unsuitable.

How should the lender assess suitability?

77. The responsible lending provisions of the NCCP Act require credit providers to make reasonable inquiries about a customer's requirements, objectives and financial situation, take reasonable steps to verify the customer's financial situation and then make an unsuitability assessment. A credit provider must make such efforts to verify the information as would normally be undertaken by a reasonable and prudent lender in the circumstances. It is not expected to take action going beyond prudent business practice.[39] Below, ANZ describes its approach to two specific components of this assessment: income and expense verification.

Income verification

78. Having received customer-stated income in support of an application, ANZ takes steps to verify this information. ANZ has policies and processes requiring documentary evidence or ANZ account data to verify an applicant's stated income. Where documentary evidence is required, it must be sighted by ANZ staff, and applications are sampled on a regular basis to ensure staff members comply with this requirement.

79. ANZ is also enhancing its income verification processes,[40] including by:

(a) requiring PAYG income verification by way of account data or bank statements (rather than relying on an applicant's payslips alone) as follows:

(i) for customers whose PAYG income is paid into an ANZ account, reviewing 3 months' salary history via ANZ transaction account data;

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[39] National Consumer Credit Protection Bill 2009, Explanatory Memorandum at paragraph 3.147; ASIC Regulatory Guide 209 (November 2014) Table 4, Note 3 (**RG 209**).

[40] The enhanced verification is scheduled to be implemented by the end of 2018 for home loans and by February 2019 for personal loans and credit cards.

(ii) for other applicants, reviewing either 3 months' salary history from other financial institution (**OFI**) bank statements plus the customer's most recent payslip or 6 months' salary history from OFI bank statements; and

(b) enhancing current processes to identify variable income such as bonuses, commissions or overtime, or from casual, temporary or short-term contract employment, so that an accurate measure of regular income is used for the purposes of assessment.

80. ANZ's income verification processes will continue to evolve as customers' account data becomes more readily available. The effective use of account data requires a digital solution, around which capabilities are still developing. While these capabilities are developing and until industry-wide sharing of data is available, ANZ will continue to rely on customer provided documents, such as OFI bank statements for non-ANZ customers.

Expense verification

81. The process of seeking to verify a customer's expenses can be difficult. In ANZ's experience, customers themselves can have difficulty identifying their own expenses and estimating what their expenses might be in the future, noting living expenses can also change following the draw-down of a loan.

82. Presently, for a financial institution to seek to identify expenses requires the review of a significant volume of data, and will still require a customer to correctly identify and classify some expenses and identify which expenses will be ongoing. Some discretionary expenses (such as dining out, holidays or a new television) can fluctuate and can depend on a customer's available disposable income at the time. Living expenses can be paid out of multiple accounts, and some customers may use cash to pay for some expenses. A review of transactional information (such as credit card statements) may not, therefore, provide the full picture of current expenses. An additional challenge is identifying a sole applicant's living expenses by reviewing transactions which may be through a joint bank account.

83. ANZ introduced an enhanced itemised breakdown of living expense fields (**BOLE**) at the end of 2017 for home loans in proprietary channels. ANZ also provided instructions to brokers in late 2017 requiring them to collect living expenses at a similar level of detail for ANZ loans. BOLE is designed to assist customers to estimate their ongoing living expenses and therefore enhance the quality of lender enquiries regarding expenses. Ongoing training in BOLE is provided to lenders. BOLE will next be implemented for credit cards and personal loans (expected to occur in February 2019).

84. ANZ is also enhancing its practices to further investigate and otherwise act on identified significant discrepancies between customer-stated expenses and information held by ANZ which is used in the assessment of the customer's loan.

85. What constitutes the taking of reasonable steps to verify a customer's expenses is affected by a range of factors, including regulatory guidance, community expectations, impact on customers, cost and available data and technology. The substance of the requirement is therefore capable of changing over time.[41]

86. In combination with enquiries, the use of benchmarks has been identified by ASIC as a method for verifying customers' living expenses, and by APRA as an acceptable part of a serviceability assessment.[42] ANZ uses the HEM benchmark in considering customers' stated expenses. Since 2016, ANZ has adopted the industry practice of applying differential benchmark tiers based on the income and dependants of an applicant.

87. In assessing a customer's request for credit, ANZ's fundamental obligation pursuant to the NCCP Act is to assess a loan for unsuitability – this naturally involves an assessment of a customer's anticipated future expenses. "Verification" of some future expenses (as distinct from more predictable ongoing financial liabilities, such as mortgage repayments) can be particularly difficult, given a customer's freedom of choice about the range and magnitude of their future spending and available income at the time.

88. ANZ is moving towards using personalised transaction data to assist in identifying and verifying customers' expenses. Along with other initiatives, this is expected to reduce the use of HEM. To properly implement this in a consistent and operationally feasible manner for existing ANZ customers and non-ANZ customers will require greater availability of customers' transaction data on an industry-wide basis. In that regard, ANZ is supportive of the implementation of the consumer data right with respect to banking (**Open Banking**).

89. Even with the development of advanced digital solutions to analyse a customer's past expenses, a benchmark of some kind is likely to remain a part of future expense verification.

Should there be some different rule for some home loans?

90. Lenders are already required to take into account the personal circumstances of the loan applicant in determining whether a loan is "not unsuitable", which allows for consideration of the type of loan or loan product for which the customer is applying (amongst other things).

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41 As noted in ANZ's Round 1 Submissions at [2.23].

42 See RG 209.49 and RG.209.104; *ASIC Report 516: Review of Mortgage Broker Remuneration* (March 2017) [59]–[64], [865]–[885]; *ASIC Report 580: Credit Card Lending in Australia* (July 2018) [208]–[209]; APRA Prudential Practice Guide APG 223 – Residential Mortgage Lending (February 2017) [44]. ASIC and APRA have, however, expressed concern about the prevalence of use, and potential misuse, of HEM.

Should the NCCP Act apply to any business lending?

91. ANZ considers the existing legal framework governing Small and Medium Enterprise (**SME**) lending to be adequate and appropriate, particularly having regard to the recent reforms that have been implemented to enhance regulatory safeguards. These include implementation of the unfair contract terms provisions, additional protections afforded to SME customers under the BCP 2019,[43] and the establishment of AFCA. Together with the existing legal framework, these reforms are sufficient to address the matters raised in the Royal Commission, including for the reasons ANZ has previously advanced.[44]

92. ANZ does not consider that further obligations under the NCCP Act should be extended to apply to business lending in respect of SMEs, agricultural businesses, or some guarantors of some business loans. With respect to the application of the NCCP Act to SMEs, ANZ refers to its Round 3 Policy Submissions.[45] Chapter 17 of the BCP 2019 will require banks to, among other things, consider information reasonably known to them about an applicant's financial position or account conduct when assessing a new loan or increasing a loan limit. These amendments clarify the commitment made to SME customers, but avoid the potentially negative effect that an expansion of the NCCP Act obligations would have in the context of small business loans. For example,[46] SME lending often requires consideration of projected income (which, by definition cannot be verified) in addition to, or in the absence of, past income. Moreover, small businesses are less likely to have audited accounts, and lending to them involves greater discretionary judgment than lending to consumers.

93. For agricultural businesses, it may be impractical to apply the "substantial hardship" presumption with respect to the sale of a consumer's principal place of residence to agricultural customers. This is because, in many cases, farmers also live on the land on which they operate the agricultural business. ANZ considers that application of such a provision to agricultural lending would restrict the common practice of farmers providing such land as security for a business loan, which may restrict such customers' ability to obtain credit.

94. Similarly, ANZ submits that the NCCP Act should not apply to guarantors of business loans or corporate borrowers. The approach under the NCCP Act is principally focused on consumer borrowers, and the suitability of credit for their needs and objectives. The extension to business loan guarantors would apply tests that are not designed for the kinds of issues that arise with business guarantors. For example, the kinds of discretionary investment or future growth potential is entirely different in a business

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43 BCP 2019, Chapters 20–24.

44 ANZ Round 3 Policy Submissions at [16]–[22].

45 ANZ Round 3 Policy Submissions at [16]–[22].

46 A more complete outline of the differences between SME and consumer lending is set out in the ANZ Round 3 Policy Submissions at [21].

environment, and these matters are not adequately reflected in the NCCP Act which was drafted to protect a different kind of customer.

95. Third party guarantors stand in a slightly different category as they are not a director, shareholder or partner, and as such they do not necessarily stand to financially benefit from a business enterprise. ANZ submits that the interests of these guarantors are appropriately protected under the BCP 2019, which, among other things, extends the consideration period from one to three days for guarantors who have not received legal advice, and provides that updated information is provided to guarantors if the borrower is in financial difficulty.[47]

Banking Code of Practice

96. ANZ supports the current construct of the duty to act as a diligent and prudent banker. ANZ outlined the inquiries that it considers a diligent and prudent banker should make, and how it extends to considering cash flow business plans, in its Round 3 Policy Submissions.[48] ANZ considers that this test is appropriate and adapted to the diverse nature of small business needs and circumstances.

97. In addition, clause 51 of the BCP 2019 calls for the bank to form an opinion about the customer's ability to repay the loan. This analysis will involve consideration of a customer's financial position or account conduct, guided by and subject to the obligation to be a diligent and prudent banker. ANZ will continue to develop technology solutions for the effective analysis of data. For existing customers, if the account conduct known to the bank from the customer's transaction data contradicts information provided by the customer, further inquiries should be made to meet the diligent and prudent test. For new-to-bank customers or start-ups, reliance on customer provided information will be necessary until industry-wide sharing of transaction data is available.

98. ANZ considers that these tests provide appropriate flexibility for the variety of discretionary credit decisions that arise in SME lending. It submits that any attempt to codify the content of these standards could contribute to complexity in the law and a reduction in the availability and affordability of credit given the diverse nature of how SMEs are structured and operate.

To what business lending should the Banking Code of Practice apply? Is the definition of "small business" satisfactory?

99. ANZ considers that the definition of "small business" for SME lending under the BCP 2019 is appropriate and satisfactory. It covers 98% of ANZ business customers. ASIC has

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47 See clause 101 of the BCP 2019.

48 ANZ Round 3 Policy Submissions at [3]–[15].

approved the BCP 2019, subject to an independent review of the definition of small business within 18 months of the Code's commencement.

100. The current definition of "small business" involves three separate "components". First, that the business has an annual turnover of less than $10 million in the previous financial year; second, the business has fewer than 100 full time equivalent employees; and third, the business has less than $3 million in total debt to all credit providers. Taken together, ANZ considers this definition ensures that the protections afforded to "small business" are targeted at an appropriate segment of the market. In ANZ's experience, organisations that exceed any one of these three components are larger and more sophisticated with more complicated lending needs, arrangements and obligations, where additional protections are not required, or may affect the availability of credit to those organisations.

Should lenders adopt different practices or procedures with respect to agricultural lending?

101. There are aspects of agricultural lending that are unique: for example, the generational nature of farming assets and their exposure to external events which cannot always be anticipated or completely mitigated by either borrower or lender (addressed further below). Agribusiness customers (unlike other borrowers) are also often the subject of specific government assistance programs.

102. Distinct policy questions have been posed and arise in relation to dealing with external events, charging of default interest, valuation practices, farm debt mediation, customer management, external administrators and regulatory change. ANZ considers that it is appropriate for lenders to adopt different practices or procedures in respect of agricultural lending in relation to dealing with external events, charging of default interest, farm debt mediation and customer management, each of which is addressed below. Ultimately however, as with any business which faces a challenging event or period, ANZ's focus is on the rehabilitation of the business wherever possible, as this is likely to be in the best interests of both lender and borrower.

External events

103. The essence of farming is that it is weather-dependent. Prudent planning and financing is central to the sustainable business of farming. Naturally, the magnitude and timing of some external events are uncontrollable and/or unforeseeable. Depending on the type of external event in question, the consequences for borrowers and lenders may vary. This makes it difficult to create a standard protocol for responding to such events, for either borrowers or lenders.

104. Where an external event causes a borrower to suffer financial distress, it is essential for borrowers and lenders to engage at an early stage about the changed circumstances. This allows for the formulation and implementation of a plan to maximise the prospect of the business continuing. In such circumstances, the interests of the customer and the

lender are aligned, in the sense that both borrower and lender want the business to be viable and sustainable.

105. In such circumstances, a lender may offer to restructure the lending in an attempt to reduce the borrower's financial distress. This may include varying the conditions of the loan (for example, repayment dates). The primary objective for a lender ought to be to work with the customer to achieve rehabilitation of the loan and maximise the viability of the business, where possible.

106. Other measures that lenders may offer to customers who are suffering financial distress due to the effect of external events include:

(a) commitments not to increase interest rate margins in respect of distressed loans;

(b) temporary suspension of loan repayments;

(c) interest rate relief in cases of extreme financial distress;

(d) the waiver of restructuring fees; and

(e) providing early access to term deposits without the need for payment of associated fees.

107. In relation to certain agribusiness customers (being family and smaller farming enterprises), in addition to the measures detailed in the paragraph above, lenders may offer:

(a) support packages for farmers choosing to relocate off the land;

(b) increased funding for rural counselling focused on towns hardest hit by the event; and

(c) discounted loans to support farmers through the next season.

108. In addition to these general support measures that may be offered, further and more tailored/targeted assistance may be available to individual borrowers, for example, under ANZ's Financial Hardship Policy.

109. ANZ notes, however, that there will be some cases in which a borrower is unable to demonstrate the long-term viability of their business. In this regard, ANZ notes that external events are often not the sole reason that a borrower experiences financial distress – rather, the business may already be experiencing financial distress which is then exacerbated by an external event to the point where the business is no longer viable. In such cases, the extension of further short-term relief may be inappropriate, as it fails to address the underlying issue of a borrower's unsustainable debt. Such cases may require asset sales or some other form of debt reduction measures to be undertaken by

the borrower; failing which, alternative options will need to be considered. As a last resort, this may include enforcement (see further below).

Default interest

110. ANZ supports a moratorium on the charging of default interest[49] to agribusiness borrowers affected by natural disasters and drought.[50]

111. ANZ notes that there is presently no "standard" definition of, or guidance about, what constitutes a "natural disaster", or "drought-declared area". To ensure consistency of treatment for borrowers, ANZ submits that it would be desirable for a consistent definition of events that trigger a moratorium on the charging of default interest to be employed across all States and Territories. The moratorium could be made contingent on a government declaration that an event sufficient to trigger the moratorium has occurred. The use of a consistent definition in this way would ensure that all customers obtain the benefit of an applicable moratorium, regardless of the identity of their lender.

112. However, ANZ considers that once such an event is triggered, the implementation of a moratorium offered by a lender should be governed by that lenders' policies, and not by legislation or industry code. This will allow lenders appropriate flexibility to respond to specific external events, which typically have variable consequences, for example, some lenders may offer support and concessions in addition to a moratorium on the charging of default interest.

113. It is relevant to note that decisions regarding the management of financially distressed loans[51] are not made primarily by reference to the cost of carrying a loan. ANZ's focus is on the rehabilitation of distressed loans wherever possible, as this is likely to be in the best interests of both lender and borrower. The total cost of carrying an impaired loan will almost always exceed the amount of any increased interest charged by ANZ.[52] ANZ does not consider that its Agribusiness Lending Services Managers require more information to make informed commercial decisions about management of distressed agricultural loans.

114. Further, ANZ is mindful that the charging of default interest[53] may constitute an additional source of financial and other stress for customers. ANZ takes these matters into account when determining whether to impose default interest charges, but notes that there are

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49 Being an increase in the interest rate margin charged on a facility where a borrower has defaulted under the terms and conditions governing the facility.

50 ANZ's Round 4 Policy Submission at [32]–[36].

51 Loans where ANZ carries an impairment provision (also called an individual provision) calculated in accordance with Australian Accounting Standards.

52 Response to question 10 in ANZ's Round 4 Policy Submissions.

53 Being an increase in the interest rate margin charged on a facility where a customer has defaulted on the terms and conditions governing that facility.

legitimate commercial reasons for the charging of default interest in certain cases, that are consistent with a purpose of rehabilitating the loan. These may include:

(a) where customers have immediate capacity to pay, encouraging customers to meet their repayment obligations on time;

(b) where customers do not have immediate capacity to pay on time, encouraging them to take early steps and to work with the lender to resolve their arrears;

(c) to account for the increased cost of capital incurred by a lender (and increased risk borne by a lender) in respect of distressed loans;[54] and

(d) where a business may potentially have strong future cash-flows sufficient to service higher interest ANZ can support the customer through its temporary lack of liquidity.

Valuations

115. One issue raised in the Round 4 hearings was the desirability of valuations of security property being independent from (for example) a lender's loan origination functions. Over 98% of ANZ's internal property appraisals are already approved independently of loan origination.[55] If Prudential Standard APS 220 were to be amended in the manner suggested by the Commission, ANZ considers that a period of one to three months ought to be sufficient for ANZ to make any necessary changes to its processes and systems.

116. On the subject of valuations more generally, ANZ considers that market value is an appropriate basis upon which to assess the value of property offered as security by agricultural businesses (as distinct from the value of the businesses themselves to which different valuation principles or processes may apply). The best test for value is recent sales of similar nearby properties. There are no other readily available and appropriate comparisons to use.

117. At loan origination, ANZ's primary consideration is its assessment of the agricultural business's ability to service and repay the proposed debt. To this end, ANZ assesses the serviceability of a loan based upon average income and expenses over a number of seasons or years, preferably up to 10 years if such historical data is available for that business. This assessment allows ANZ to consider the agricultural business's average cash-flow generation capacity, which will ideally include data in respect of both good and bad years, prior to deciding whether to approve a loan.

118. A secondary consideration in this assessment is the value of the property offered as security. When assessing the value of property as security, factors such as the likelihood

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[54] See response to question 10 in ANZ's Round 4 Policy Submissions.

[55] See ANZ's response to questions 4 and 5 in its Round 4 Policy Submissions.

of external shocks and the time required to realise security are taken into account by ANZ through the use of an "extended value discount" that is applied to market value assessments of security property.

119. Further, when assessing an agricultural business loan, ANZ also specifically considers whether the location of the business renders it particularly susceptible to drought (based upon the average rainfall and volatility of the rainfall in the relevant area). In areas with low rainfall and/or high volatility, ANZ will require the business to have higher levels of equity to ensure the loan can be continuously serviced based upon the business's historical income and expenses.

120. Finally, ANZ considers that fixing the loan-to-value ratio (**LVR**) (which is one component of the loan origination assessment) will not sufficiently protect against the possibility of external shocks. Such a measure may unintentionally have the opposite effect: fixing the LVR in those circumstances may limit ANZ's ability to provide further financial assistance to agribusinesses upon the occurrence of external shocks (for example, to ensure that they can continue operating, by funding the planting of crops for next season or maintenance of animal welfare).

Customer management

121. ANZ considers that there should be a specialist and dedicated team managing distressed agricultural loans that ought to include bankers with diverse experience, including in agriculture and restructuring. However, ANZ does not consider that the team ought to (or, practically speaking, could) be exclusively comprised of "experienced agricultural bankers", whether that be determined by reference to skill, education or experience (or some combination thereof).

Farm debt mediation

122. ANZ considers that there should be a national system for farm debt mediation, and that in this regard, the New South Wales model ought to be followed. It would be preferable to make this a national scheme rather than uniform legislation enacted by each State and Territory, to ensure consistency of administrative and operational matters (such as the required levels of accreditation of rural financial counsellors and mediators appointed pursuant to the scheme, and greater certainty of funding).

123. Further, ANZ supports a requirement that lenders offer farm debt mediation earlier than the pre-enforcement stage of the management of distressed loans (as is presently the case under existing farm debt mediation schemes). Such a requirement ought ordinarily to be in addition to the requirement to offer pre-enforcement mediation. As for the timing of such an offer, ANZ considers that impairment (in the sense of a loan being more than 90 days past due) may be too late to be an effective "triggering event" (if the aim of this proposal is to ensure substantive engagement between lender and customer about possible restructuring options at an early stage). Instead, the triggering event could be

the transfer of a loan into a lender's asset management unit (or equivalent). A mediation at or around that time, if conducted, might facilitate greater and more proactive engagement between lender and borrower.

External administration

124. In practice, in the agribusiness context, ANZ treats the appointment of an external administrator as an enforcement measure of last resort. This option is considered only after other options have first been explored with the customer (for example, the provision of additional time in which to make repayments, or the extensions of further credit, where appropriate). Further, where a farm debt mediation regime applies, enforcement action may only be taken after participation in the mediation process. These measures and practices are intended to maximise the chances of the agribusiness (or as much of it as possible) continuing in existence.

125. In ANZ's experience, in most cases in which enforcement action is taken in respect of agribusiness customers, there is limited customer equity (if any) remaining in the property. At the time that such action is taken, its primary purpose is realisation. By contrast, the measures taken prior to enforcement action have a primarily rehabilitative, or restructuring, purpose.

126. The decision to appoint an external administrator will ultimately be one that turns on the facts of the particular case. It is neither possible nor desirable to prescribe all the circumstances in which such an appointment may or ought to be made. ANZ submits that no regulatory or legislative change is required in respect of this issue – the current corporations and insolvency regime is sufficient. Rather, as a matter of commercial reality and operational effectiveness, it ought to be a matter for the lender to determine when the point of "last resort" has been reached, having regard to their obligations under existing laws, including clauses 3.2 and 28 of the CBP 2013.

Regulatory change?

127. Other than in the context of farm debt mediation, no further regulatory or legislative change is required to be made to protect agribusiness customers. In particular, ANZ considers that the BCP 2019 provides adequate protection for such customers.

Are there classes of persons from whom lenders should not take guarantees, or should not take guarantees unless the person is given particular information or meets certain conditions?

128. Protections for persons who are in a position of special disadvantage exist under equitable principles, and the statutory prohibitions on unconscionable conduct under ss 12CA and 12CB of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), as well under the *Contracts Review Act 1980* (NSW).

129. The concepts underlying this regime have been developed over a substantial period of time, taking into account the variety of reasons that individuals might need protection beyond the ordinary customer.

130. These protections are reflected in ANZ's lending policies[56] which identify "unacceptable guarantors" where there is reason to believe that the potential guarantor would not be appropriate for one of a range of reasons, broadly reflecting the "special disadvantage" categories recognised in equity.

131. Separately, all potential guarantors are advised to seek independent advice. This includes where there is a financial, emotional or contractual relationship between the guarantor and borrower that makes independent advice appropriate.

132. In addition, the obligations in the BCP 2019 provide additional protections for guarantors.[57] The information required to be provided under the BCP 2019 is sufficient to ensure potential guarantors are adequately informed, with guarantors who do not receive legal advice now provided a period of three days rather than one day to consider that information before signing the guarantee.

133. ANZ considers that this framework is effective, providing both customer and lender with flexibility and appropriate protections.[58] It reflects a balancing between ensuring that loans are appropriately secured, with the need to ensure that funding is available at an affordable rate. This is particularly important in the small business context, where matters of discretion and judgment as to the credit risk are likely to be involved. In those circumstances, credit is unlikely to be available (or available at an affordable rate) for some customers if entire categories of guarantors are precluded from providing security.

134. ANZ's experience suggests that a broad exclusion of particular classes of potential guarantors could be unduly prescriptive, such that the capacity to respond appropriately to customer requirements would be undermined.

How should lenders manage exit from a loan at the end of the loan's term or if the borrower is in default?

135. At present, when a loan is brought to an end upon expiry or default, any r**e**sultant issues are to be resolved by reference not just to the terms of the agreement between the parties, but also any applicable legislative and regulatory requirements. In particular, the BCP 2019 will introduce two new requirements, designed to give borrowers more time and information in these circumstances:

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[56] See, for example, Exhibit KGG-13 (ANZ.800.515.0458, ex 3.15.13) to the Gibson Statement (ANZ.999.009.0065, ex 3.15), being ANZ's Small Business Credit Requirements, at page 94 (ANZ.800.515.0551).

[57] See chapters 25–29 of the BCP 2019.

[58] See ANZ's Round 3 Policy Submissions at [24]–[35].

(a) (time) clause 86 provides for three months' notice to be given to a small business of a lender's decision not to extend/renew a loan, and of their requirement to repay their loan in full, where the small business is not in default; and

(b) (information) clause 74 provides that if a lender decides not to approve/renew a loan to a small business they will, if appropriate, provide the small business with general reasons why this is the case.

136. Managing the exit from a loan if the borrower is in default will depend upon the nature of the default and the circumstances of the borrower. If the business cannot be rehabilitated or enforcement is required, then ANZ provides customers with at least the minimum notice period requiring payment before any enforcement action is taken. Enforcement action is generally a last resort and preceded by a period of discussion or negotiation with the borrower.

137. In the circumstances, there is no cause to introduce additional rules to govern the circumstances in which a lender may decide not to renew a loan, decide to bring a loan to an end, or seek to enforce repayment.

D. REGULATION AND REGULATORS

138. The Australian financial system requires strong and independent regulators, which provide effective supervision and oversight of regulated entities. The interests of those who use, and participate in the financial system, are advanced when misconduct is identified early, responded to swiftly, and addressed appropriately (having regard to its nature and effect, and the need to deter its recurrence). ASIC plays a vital role in conduct regulation, while the Australian Prudential Regulation Authority (**APRA**) safeguards the stability of the Australian financial system.

Entities' responses to the conduct identified and criticised in the Interim Report

139. ANZ's responses to the specific conduct referred to in the Interim Report are set out in its January and February Submissions, as well as its submissions filed at the conclusion of each hearing round.

140. In a number of instances, ANZ's response occurred or commenced prior to the commencement of the Royal Commission. ANZ's review and remediation of Landmark customers (who were the subject of a number of the case studies) is one example.

141. At a more general level, ANZ's response has been focused on implementing measures to effect systemic and cultural change within the organisation. These responses include: (i) the appointment of a Customer Fairness Advisor; (ii) better resourcing of remediation activities; (iii) adoption of the Australian Banking Association's Conduct Background Check

Protocol;[59] (iv) amendments to ANZ's balanced scorecards and the removal of direct links between sales targets and incentives for frontline staff;[60] (v) accountability reforms including the preparation of accountability statements and maps for senior executives following the introduction of BEAR; (vi) simplifying ANZ's business by reducing the areas in which it is involved and the products it offers, a purpose of which was reducing risks to ANZ and its customers; and (vii) the decision by ANZ Financial Planning that it will no longer retain grandfathered commissions from investment and superannuation platforms.

ASIC's response to misconduct

142. It is appropriate that ASIC relies on a variety of regulatory techniques in monitoring and responding to misconduct or possible misconduct. The choice of regulatory response in a given situation will depend on a range of considerations.

143. Conduct involving ANZ which is referred to in the Interim Report has involved ASIC oversight and review, including enforcement action, in a number of areas. ANZ has, for example, been the subject of a civil penalty proceeding brought by ASIC in the Federal Court;[61] it has received infringement notices;[62] it has provided enforceable undertakings;[63] it has reported significant breaches or likely significant breaches of section 912A of the Corporations Act; ASIC has banned former financial advisers; and ANZ has provided and continues to provide ASIC with data and information.[64]

144. One theme which has emerged from the Commission's work concerns the approach to enforcement by ASIC: the Commission has identified that ASIC almost always seeks to negotiate outcomes and very often focuses on customer remediation.[65] ANZ agrees that enforcement action involving curial proceedings is a step which, if taken in appropriate cases, may assist in creating a stronger regulatory environment in which participants take appropriate steps to ensure that they adhere to their obligations. Relevant considerations in deciding whether legal proceedings should be instituted include:

(a) the nature and effect of the conduct in question, whether it was deliberate and the contravening entity's response to it;

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59 Australian Bankers' Association Inc, "Banking Industry Conduct Background Check Protocol" (Protocol, ABA, Version 1, 2017) <https://www.betterbanking.net.au/wp-content/uploads/2017/06/ABA_Conduct_Background_Check_Protocol_and_Consent_final_120517.pdf>.

60 See [70] above.

61 Such as *ASIC v Australia and New Zealand Banking Group Limited* [2018] FCA 155. See Interim Report, vol 2, 95.

62 For example, ANZ received five infringement notices in relation to the pre-approved ANZ Assured overdraft facility. See Interim Report, vol 2, 71.

63 Such as the enforceable undertaking ANZ entered into with ASIC in relation to Prime Access customers affected between 2006 and 2013. See Interim Report, vol 1, 110.

64 For example, ANZ has provided data in connection with ASIC's review of selected financial services groups' compliance with the breach reporting obligation in s 912D of the Corporations Act.

65 Interim Report, vol 1, 271.

(b) the effectiveness of other available approaches and approaches already taken (both in the particular case, and across the industry);

(c) the need for specific and general deterrence;

(d) the need to signal the community's denunciation of the conduct; and

(e) the extent and effect of uncertainty in the law.

145. The issue of what enforcement steps should be taken by ASIC in response to self-reported breaches involves consideration of the same questions. These considerations, rather than the automatic application of legal sanctions, can inform an appropriate and proportionate regulatory response to self-reported breaches.

146. To fulfil its mandate efficiently and effectively, ANZ supports ASIC being well-resourced, with appropriately experienced and specialist staff who have clear responsibilities. The amendments to the *Public Service Act 1999* (Cth), which are due to take effect next year, will assist in these respects.

147. The implementation of the ASIC Enforcement Review recommendations, along with ASIC obtaining and reviewing increased volumes of data from financial services entities, the introduction of the design and distribution obligations and product intervention powers, and the proposal to embed ASIC officers within banks such as ANZ, will substantially enhance ASIC's regulatory tools. This latter step may assist in the monitoring of conduct and compliance risks by ASIC, may provide ASIC with increased knowledge and understanding of the operations of banks and may contribute to a strong compliance and conduct risk culture within them.

148. Enforceable undertakings, in their present form, are an important regulatory tool. They enable ASIC to obtain outcomes quickly, including establishing forward-looking compliance programs, creating customer remediation programs (including making payments to customers more quickly than might otherwise occur), using knowledge and information obtained to educate and review the conduct of other entities, and providing for substantial community benefit payments, all of which can be overseen by ASIC. Enforceable undertakings can be time and cost efficient for regulators, while still having reputational consequences for the entity and acting as a deterrent to the financial services industry. ANZ does not support the acknowledgement of specific wrongs as a necessary component of an enforceable undertaking. The question whether such an acknowledgement will be provided by an entity should inform whether ASIC should accept an undertaking, or take other measures such as commencing proceedings.

149. ANZ also notes that Parliament may pass legislation to empower the Commonwealth Director of Public Prosecutions to enter into deferred prosecution agreements with contravening corporations. These are provided for in the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2017 (Cth). If the Bill is passed by the Parliament, it

will provide further procedures for responding to certain offences under the Corporations Act (as well as other statutes).

APRA's response to misconduct

150. APRA has a different focus than ASIC, as referred to in the Interim Report.[66] APRA's chief focus is on the stability of Australia's financial system and the protection of depositors' interests. ANZ agrees that it is necessary to view APRA's response to the conduct described in the Interim Report in that light.[67] Consideration needs to be given to whether increased enforcement might dilute APRA's effectiveness as a supervisory prudential regulator.

151. As part of APRA's pre-emptive and risk-based supervision of entities including ANZ, the annual Prudential Standard CPS 220 attestation process requires organisations to assess their risk management policies and processes generally (including as regards conduct risk) and attest to their adequacy, appropriateness and effectiveness on an annual basis. Where such policies and processes are found to be less than adequate, appropriate or effective, this must be identified. The attestation process is undertaken by ANZ annually, and reviewed by an external independent third party every three years.

152. In addition, APRA is empowered to, and does, request information in relation to specific issues around governance and risk culture, and calls on financial institutions to provide an assessment of their risk and governance frameworks. By way of example, following APRA's prudential inquiry into the Commonwealth Bank of Australia and that bank's giving of an enforceable undertaking, APRA has now also sought written assessments from entities including ANZ, on whether similar issues might exist in them. The process of responding to that request and preparing the assessment is currently underway.

E. ADD-ON INSURANCE

153. ANZ recognises that where add-on insurance overlaps with some other protections or insurances it may not offer strong value propositions for customers. However, ANZ does not consider that insurance of debt repayment obligations (consumer credit insurance) is, by its nature (ie necessarily), a poor value proposition for customers.

154. In particular, ANZ is aware of many examples in which mortgage protection insurance (**MPI**) has provided valuable protection to customers.

155. In contrast to certain other forms of add-on insurance, MPI relates to transactions of a very substantial nature; a mortgage often represents the single largest financial commitment a customer will make. And, for most home loan borrowers in Australia, the risk against which MPI protects is a material one (ie the risk that if a borrower dies or is

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66 Interim Report, vol 1, 270 and 297.

67 Interim Report, vol 1, 297.

otherwise unable to meet loan repayment obligations the mortgaged property may have to be sold). Therefore, it may in some circumstances be prudent for customers to obtain MPI.

III. CAUSES

What have been the causes of the conduct identified and criticised in the Interim Report?

156. The Commission has identified a number of causes for the conduct of entities criticised in the Interim Report. These include issues relating to culture, governance, remuneration, conflicts of interest and duty, and insufficient investment in remediation programs and technology. As acknowledged in ANZ's January 2018 submission, in some cases involving ANZ there were other contributing causes.

157. As a generalisation, it can be said that, over a number of years and due to various events, the financial services industry developed a culture that became overly focused on revenue and sales.[68] As identified in the Interim Report, the roots of the financial advice industry are in sales[69] and that industry is moving towards becoming a profession.[70]

158. ANZ accepts that, in cases where its conduct fell below CSEs or may have amounted to misconduct, a focus on achieving certain objectives in the short-term – including, but not limited to, financial performance – too often came at the expense of longer term results, including customer outcomes and the reputation of the bank. Although this approach did not always lead to poor customer outcomes or unacceptable behaviour, there were too many cases where poor outcomes and unacceptable behaviour occurred.

159. ANZ accepts that performance and remuneration plans influence behaviour, and when wrongly calibrated can contribute to conduct which does not sufficiently prioritise good customer outcomes. Past practices which have over-emphasised sales have contributed to a disproportionate focus on short term financial results.

160. Remuneration plans can be designed to motivate and reward good behaviour and performance. ANZ sees a continuing role for variable remuneration, within which financial targets are just one of a number of considerations in assessing performance, but not a dominant consideration. In addition to continuing to implement and embed the recommendations of the Retail Banking Remuneration Review conducted by Stephen Sedgwick AO (**Sedgwick Review**), including the removal of direct links between financial/sales targets and incentives for frontline staff, ANZ has removed revenue components from scorecards for financial advisers, and is currently undertaking a pilot

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68 Retail Remuneration Review Issues Paper (17 January 2017), 52 [6.4]; Retail Banking Remuneration Review (19 April 2017), 21 [5.1].

69 Interim Report, vol 1, 74.

70 Interim Report, vol 1, 149–151.

program across 25% of the Australian Branch Network and Contact Centre where individual financial targets have been replaced with a team financial target in staff scorecards.

161. Where customers or clients have been affected by misconduct or conduct below CSEs, ANZ's responses have, in some cases, been inadequate. Case studies examined by the Commission raised questions about the level of resources devoted to a number of remediation programs and that money was not returned to customers as soon as it should have been. Considered more broadly, ANZ sometimes failed to quickly recognise systemic issues and elevate them to senior management for action; there were sometimes insufficiently clear lines of responsibility; and some employees, including senior executives, were either not held to account for poor conduct or mistakes or, when held to account, the process and outcomes were not appropriately documented.

162. A contributing cause in certain failures involving ANZ was the complexity resulting from the systems and processes applied to deliver banking and financial services, and the design, number and breadth of products offered by ANZ.

163. While not an excuse, complexity and risk were introduced over time due in part to:

(a) the pace of technological, market and regulatory developments;

(b) changes made to the number and type of product offerings;

(c) responding to the expectations of customers;

(d) the technological and other systems and processes required to deliver banking and financial services;

(e) the impact of staff changes on continuity and day-to-day management of operations; and

(f) changes to ANZ's organisational structure.

164. It is apparent with the benefit of hindsight that, in some cases, products or systems were not well designed from the outset, which compounded these difficulties.

165. In recent years, ANZ has taken significant steps to respond to these concerns. A primary focus of ANZ has been to simplify the bank.[71] This process is intended to deliver better customer outcomes, including by reducing and making it easier to identify and fix failures.

166. The Commissioner has also questioned whether the regulatory response to misconduct or conduct falling below CSEs has contributed to the occurrence of misconduct or conduct

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[71] See paragraphs [4.22], [5.6], [5.71], [6.33] and [6.100] of ANZ's January Submission and paragraphs [1.13]–[1.25] of Part II of ANZ's submission to the Commission dated 13 February 2018 (**ANZ's February Submission**).

falling below CSEs. ANZ agrees that there is an important role for ASIC and APRA. The interests of the banking and financial services industry are advanced by the presence of strong, effective, and well-resourced regulators.

167. While ANZ recognises that regulation plays a role in organisational culture, and that steps taken by regulators (including enforcement action) can influence culture, ANZ does not regard ASIC or APRA as having contributed to the conduct for which ANZ has been criticised in the Interim Report.

IV. RESPONSES

What responses should be made to the conduct identified and criticised in this report? Are changes in law necessary?

The BEAR

168. The Commission has questioned whether the BEAR reforms should be altered, including by potentially extending their application.

169. The BEAR has been implemented to strengthen the responsibility and accountability framework of ADIs. Part of the theory behind the BEAR is that it will force greater accountability for (and therefore focus on) adherence to the law and the prudent management of ADIs. Because BEAR makes senior executives accountable for activities that occur under them, they are demanding a focus on these issues through all levels within their bank.

170. ANZ considers the BEAR provides a robust framework to ensure accountability for conduct within the bank.

171. ANZ considers that it is premature to contemplate a review of its operation, given the regime only commenced in July 2018. ANZ notes that section 37KC of the *Banking Act 1959* (Cth) requires that the Minister review the BEAR three years after its commencement. This will provide an opportunity to identify what is, and is not, working with the regime and whether reform of it may be appropriate. It is possible that the BEAR may evolve in time, including on the initiative of banks themselves, to more directly make executives accountable for non-prudential conduct issues.

Should the financial services law be simplified?

172. Questions have been posed by the Commissioner about whether financial services laws are too complex, whether they impede effective conduct risk management and regulatory enforcement, and whether such laws should be radically simplified. ANZ considers that there is scope for removing regulatory overlap and clarifying aspects of financial services law, particularly where this will make compliance simpler and remove barriers to competition.

173. There are examples where existing legislation can be clarified to assist both entities subject to those laws and regulators responsible for enforcing them. Section 912D of the Corporations Act is one example. In this respect, ANZ agrees with the recommendation arising from the ASIC Enforcement Review to clarify the language of the provision.

174. The Commission has identified six ideas that should inform the conduct of financial services entities.[72] ANZ agrees that each of these ideas provides an important touchstone for guiding the conduct of financial services entities. ANZ also agrees that these precepts may be lost if laws are overlapping, over-structured, ambiguous, or subject to frequent change, and supports a general move towards greater simplification. Nonetheless, ANZ does not consider that radical simplification of the law is required, or that a principles-based approach (starting with the six ideas just referred to) would produce greater certainty or, importantly, contribute to improved compliance with the law. Necessarily, subordinate laws or prescriptive guidance providing detail on interpretation of those principles and their application in particular contexts would be required.

Should carve outs and exemptions be reduced or eliminated?

Grandfathered commissions

175. Consistent with its Round 5 Policy Submissions,[73] ANZ supports legislative change to remove the grandfathered commissions exception[74] to the ban on financial advisers receiving conflicted remuneration.[75] Commissions are paid by ANZ's product manufacturers under binding agreements that entitle the financial adviser, or the licensee that employs or authorises the adviser, to payment of the commission from the product manufacturer. As noted in ANZ's Round 5 Policy Submissions, it will be important for the proposed legislative change to make it clear that the payments are prohibited and that product manufacturers can have no liability to financial advisers or licensees (in contract or otherwise) for not paying the commissions. ANZ submits that the proposed legislation should stipulate a sunset date by which payment of grandfathered commissions must cease, and that Parliament will need to consider an appropriate timeframe to allow licensees and product manufacturers to make the necessary system and process changes to stop the payments. There are other issues that would require careful consideration in the drafting of the legislation. In the meantime, ANZ has taken some steps to remove grandfathered commissions in that ANZ Financial Planning has decided that it will no

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72 Obey the law, do not mislead or deceive, be fair, provide services that are fit for purpose, deliver services with reasonable care and skill, and when acting for another act in the best interests of that other (Interim Report, vol 1, 290).

73 ANZ's Round 5 Policy Submissions at [40]–[42].

74 Corporations Act s 1528(1).

75 Corporations Act Part 7.7A, Division 4, Subdivision C.

longer retain such commissions paid to it from investment and superannuation platforms.[76]

176. In relation to the life risk exceptions to the conflicted remuneration provisions, ANZ refers to its response to question 9 in its Round 6 Policy Submissions.[77]

Should point of sale exemptions to the NCCP Act be reduced or eliminated?

177. As stated in [39] above, ANZ supports the removal of point of sale exemptions from the NCCP Act.

Should funeral insurance exceptions be reduced or eliminated?

178. ANZ offers one funeral insurance product, "ANZ 50+ Life Cover", to eligible customers aged 50 to 70. Such policies are a valuable and suitable product for some customers.

179. ANZ considers that funeral insurance policies warrant the same level of attention as other financial products and, therefore, should be subject to a consistent prudential and regulatory regime and should not have differential treatment under that regime.

180. ANZ submits that funeral insurance and funeral expenses insurance should be financial products for the purposes of the consumer protection provisions in Chapter 7 of the Corporations Act. There is no apparent reason that a distinction should be drawn between funeral life policies and funeral expenses policies such as is drawn in Chapter 7 of the Corporations Act. ANZ also submits that funeral insurance and funeral expenses insurance should be covered by Part 2, Division 2 of the ASIC Act.

181. ANZ notes and agrees with the Government's intention to extend the application of ASIC's product intervention power that would be introduced by the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 (Cth) to funeral expenses insurance.[78]

182. ANZ considers that these amendments to the regulatory framework could assist in minimising the risk of inappropriate sales practices and sales of unsuitable funeral insurance products to vulnerable people.

Managing conduct and compliance risks

183. This section addresses the questions of how ANZ does and should manage conduct and compliance risks. Set out below is an overview of ANZ's process and systems for the

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76 Interim Report, vol 1, 96–97; Letter from ANZ to the Solicitors Assisting dated 20 August 2018.

77 ANZ's Round 6 Policy Submissions at [33]–[34].

78 Explanatory Memorandum Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018, [2.25].

management of these risks, including steps currently being taken in this context addressed under the heading "continuous improvement".

184. ANZ understands "compliance risk" to concern the risk presented to an organisation (such as ANZ) arising from breaches of laws, codes of practice or other standards. "Conduct risk", which is treated by ANZ as a subset of operational risk, involves the risk of inappropriate, unethical or unlawful behaviour on the part of an organisation's management or employees.[79]

185. ANZ manages compliance and conduct risk under its Operational Risk Measurement and Management Framework (**ORMMF**),[80] which is reviewed by APRA. The ORMMF consists of policies and guidance for the identification, assessment, response, monitoring and reporting of risks and controls relating to operational risk and compliance management.

Identification of the components of compliance and conduct risk

186. The first step in managing ANZ's compliance risk is the identification of ANZ's obligations under legislation, codes of practice or other standards. Under the ORMMF, each business unit (in conjunction with embedded compliance teams) is responsible for identifying, assessing and documenting the particular regulatory obligations that apply to it. The business unit is responsible for documenting what ANZ must do to meet the relevant requirements. This can take the form of policies, procedures, and/or systems.

187. While most conduct events that give rise to conduct risk will involve a breach of regulatory obligations or other standards, other inappropriate or unethical behaviour also gives rise to conduct risk (for example, non-compliance with an internal expense policy). To assist the management of these risks, ANZ has developed a Code of Conduct (**the Code**) to provide employees and directors with a practical set of guiding principles to help them make fair, balanced and ethical decisions in their day to day work and provide clear boundaries on compliance. ANZ's Talent and Culture team is responsible for administering and reviewing the Code.

Training

188. An important aspect of managing compliance and conduct risk is ensuring that ANZ's employees are aware of the conduct ANZ expects of them. All employees are required to undertake (at a minimum): (1) mandatory annual training on the Code; and (2) an annual attestation that they have complied with the Code. ANZ also provides employees with various compliance specific training. By way of example:

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79 See "The Human Factor: Is Conduct Risk on Your Radar?", a speech by Greg Medcraft, then Chairman of ASIC, delivered to the Institute of Internal Auditors Australia International Conference (Sydney, Australia) 25 July 2017, page 2.

80 See paragraph 27 of ANZ's submission to the Commission dated 27 February 2018.

(a) "Responsible Lending at ANZ" training is mandatory for all ANZ proprietary home lenders and new retail brokers, as well as credit assessment staff and frontline business and private bank staff in Australia.

(b) ANZ applies minimum education and training for financial advisers in addition to their required professional accreditation. Since May 2018, ANZ has required all new financial advisers to hold a relevant bachelor's degree (for example, accounting, financial planning, law or economics) and to have a relevant professional certification (for example, CFP, FchFP, CA, CPA, CFA).[81] In addition, all existing advisers are required to commence a pathway by 1 January 2019 to attain such a degree and professional certification by 1 January 2023.[82]

Identifying compliance and conduct failures

189. At ANZ, conduct and compliance failures are identified through a combination of line management oversight, risk management oversight, external complaints, whistleblowing, data analysis, quality assurance and control processes, internal and external audits, and promoting a "speak up" culture through training and awareness (which includes self-reporting and identification by staff). As technology develops, data analysis is an increasingly important aspect of risk identification. Examples of data analytics used by ANZ to identify misconduct include:

(a) The development of detailed monitoring in consumer lending, which tracks sales practices of home lenders via key conduct and risk metrics, owner-occupier interest-only rates, attrition rates, loan to value ratio at or above 80%, uncommitted monthly income and living expenses. This information is used to generate a score, which is then used to identify whether further analysis of a lender's files is necessary. Monitoring using the same principles, and with metrics relevant to business banking, will be launched in business banking by the end of the year.

(b) ANZ has also recently developed and piloted monitoring to identify performance outliers, which may be indicative of misconduct, for products such as transaction savings accounts, credit cards and personal loans. By way of example, a sudden increase in the number of products sold by a particular employee may trigger further investigation.

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[81] As noted in the Interim Report (vol 1, 104–105) and the Commission's Background Paper 6 (Part B) at pages 8–12, legislative changes have been introduced including minimum education requirements, supervision for new advisers, a code of ethics, an industry exam and ongoing annual professional development obligations.

[82] ANZ Round 2 Policy Submissions at [68]–[69].

(c) ANZ uses data held by it to identify whether the conduct of financial advisers may present an unacceptable level of risk which warrants action such as a targeted review of the adviser's client files.[83]

190. In addition, ANZ has developed a smart data platform to assist in the prevention and detection of inappropriate advice and misconduct by financial advisers (for example, by identifying gearing recommendations that are inconsistent with a client's risk profile, or unusual trends within the client cohort of a particular adviser).[84] The platform was launched in September 2018 within the ANZ Financial Planning business for two risk indicators, with further indicators to be rolled out progressively.

191. ANZ is continuing to invest in data analytics to detect conduct risk issues and to design systems and processes to improve its ability to prevent poor conduct.

192. ANZ also has a number of quality assurance and control processes designed in part to identify and minimise conduct and compliance risk. These include:

(a) the advice assurance process and targeted reviews for financial advisers[85] with clear consequences for advisers who fail those processes;[86]

(b) central monitoring of the advice and services provided by advisers;[87]

(c) monthly qualitative file reviews undertaken by senior frontline leaders of a sample of lending files across all distribution channels to test compliance with ANZ policies; and

(d) review and quality control checks undertaken by the Credit Control team on a sample of loan files in the Home Loans, Small Business Banking, Personal Loans and Consumer Cards, and Asset Finance business units, with clear consequences for employees where non-compliance is identified. This process tests both whether the loan assessment and associated documentation complies with ANZ's lending policies and procedures and the quality of the lending decision against ANZ's risk appetite.

193. Once compliance and/or conduct failures are identified, ANZ has systems, policies and processes for the recording, investigation and, where appropriate, escalation and

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83 Rixon Statement (ANZ.999.003.0001, ex 2.152) at [134]–[138].

84 Rixon Statement (ANZ.999.003.0001, ex 2.152) at [90]–[93].

85 Rixon Statement (ANZ.999.003.0001, ex 2.152) at [69(g)], [107] and [141]–[151]; Witness Statement of Darren Williams dated 13 April 2018 (ANZ.999.007.0001, ex 2.92) (**Williams Statement**) at [259] and [261].

86 Interim Report, vol 1, 142.

87 Rixon Statement (ANZ.999.003.0001, ex 2.152) at [94]–[96]; Williams Statement (ANZ.999.007.0001, ex 2.92) at [258].

reporting of those events.[88] Where certain tolerances or thresholds are breached, failures must be escalated for oversight to specialist teams or committees (including to the divisional Risk Committees, Group Operational Risk & Compliance,[89] the Operational Risk Executive Committee and the Board Risk Committee as applicable). Other matters may also be escalated where appropriate.

Consequence management

194. Another important aspect of managing compliance and conduct risk is the imposition of consequences for compliance and conduct failures. ANZ's Performance Improvement and Unacceptable Behaviour Policy sets out the principles ANZ will apply in determining whether its standards of performance, behaviour and compliance are met by employees and, where there is a breach, how to determine the appropriate consequence. A breach of the Code or compliance obligation will be managed in a manner proportional to the nature of the conduct and severity of the breach. Resulting formal disciplinary actions impact on performance and remuneration outcomes and potentially ongoing employment. ANZ is in the process of making improvements to its consequence management framework, as set out in [197] below.

Continuous improvement

195. As mentioned in ANZ's submissions dated 29 January 2018 and 13 February 2018, ANZ acknowledges that continuous improvement is required in the supervision, and associated processes, necessary to ensure an appropriate, organisation-wide focus on reducing compliance and conduct risk.[90]

196. ANZ recognises the role culture plays in the management of conduct risk. To this end, an Accountability and Governance model for culture has recently been designed with clear articulation of the expectations of the Board, ExCo, Risk, Talent and Culture and Internal Audit. A working group with senior executive representatives from Talent and Culture, Group Risk and Internal Audit will be responsible for implementing the model, overseen by the Enterprise Culture Steering Group, which provides oversight and challenge of the actions taken and progress made to deliver cultural change within ANZ. This group has recently been repurposed, and will now be Chaired by the CEO and includes as members the Chief Risk Officer and Group Executive, Talent and Culture.

197. ANZ's Talent and Culture and Group Operational Risk and Compliance teams have also commenced work on developing an organisation-wide accountability and consequence

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88 See paragraphs [8.4]–[8.10] of ANZ's January Submission and paragraphs [1.30]–[1.39] of Part II of ANZ's February Submission.

89 The Group Operational Risk and Compliance team is a central team responsible for the maintenance of the ORMMF framework and for the reporting of compliance and conduct failures (where certain tolerances or thresholds are breached) to the Operational Risk Executive Committee and the Board Risk Committee.

90 See paragraph [4.13] of ANZ's January Submission and [1.11]–[1.12] of Part II of ANZ's February Submission.

management framework overseen by the Consequence Review Group[91] that will be implemented in FY19 and will include:

(a) improving the quality of risk and compliance information provided to better support decision making;

(b) improving consistency in the application of consequences, including impacts to annual performance and remuneration outcomes and also to deferred remuneration;

(c) providing clearer guidance to line managers on consequences when staff breach ANZ's Code of Conduct or are considered accountable for material risk and/or compliance failures;

(d) creating a robust repository for recording and storing information on outcomes; and

(e) raising organisational awareness for all staff on appropriate conduct and consequences for when standards are not met.

198. This, in conjunction with the Accountability and Governance model, assists to both prevent (or reduce the likelihood of) and manage conduct and compliance risk issues.

Conduct and compliance risk in connection with remuneration structures and practices

199. The Commission's Interim Report identifies the implications for conduct and compliance risk management when employee remuneration and incentive payments are too closely connected to sales targets and revenue, and not balanced sufficiently by other performance measures.

200. ANZ recognises that there are a number of components involved in creating and maintaining a culture which promotes and rewards the right behaviours. ANZ considers that fostering a purpose and values led culture is critically important. That is a culture which encourages individuals to follow a set of guidelines and principles and use their judgement when making decisions to "always do the right thing". Fostering a "speak up culture" at the team level is also an important part of this and there is ongoing work to create a trusting environment in which this can occur. This includes the "New Ways of Leading" initiative which incorporates upward feedback directly from teams to their managers. It is also important that staff feel part of a broader team and a wider purpose that recognises employee contribution. These are important elements of a successful workplace where ANZ's purpose, values and culture are front and centre for employees,

[91] The Consequence Review Group (formerly known as the Clawback Review Group) is a committee which was established in August 2013 and is now chaired by Shayne Elliott which makes decisions regarding downward adjustment and further deferral of remuneration for more junior executives and staff. The Consequence Review Group is also overseeing the development of an organisation-wide accountability and consequence management framework.

and conduct and compliance risks are managed. ANZ's performance and remuneration frameworks are integral to supporting this approach to workplace culture.

201. *Sedgwick Review.* ANZ supports the findings and recommendations of the Sedgwick Review, including that: (a) incentives should not be paid to frontline staff based directly or solely on sales performance and instead; (b) eligibility to receive any personal incentive payments should be based on an assessment of that individual's contribution across a range of measures of which sales is not the dominant component. ANZ is implementing all of the Sedgwick Review recommendations within its control (ie all recommendations except numbers 15 and 19). ANZ is ahead of the implementation deadline (2020). Acknowledging ANZ has completed a number of the key recommendations to date, it supports the current timeframe for implementation to work through the balance of the recommendations, some of which involve complexity in finding the right solution to reflect the recommendation or require time to allow real behavioural and cultural changes to take effect.[92] ANZ also supports initiatives to assess the effectiveness of the changes resulting from the Sedgwick Review, including an independent review of the industry's progress.

202. *Variable Remuneration.* ANZ sees a role for variable remuneration as a component of total remuneration, within an appropriately designed and governed performance and remuneration structure which addresses cultural change. Variable remuneration can play a role to:

(a) motivate and reward good behaviour, values (including risk and compliance standards), and performance;

(b) attract and retain the right employees in a domestically and globally competitive market – including beyond financial services;

(c) help focus staff on their performance objectives and how they go about delivering those objectives;

(d) support the delivery of a balanced set of appropriate business outcomes across Customer, Financial (includes sales), Risk and People dimensions (ie business outcomes do not focus solely on financial outcomes); and

(e) align the interests of employees with ANZ's purpose, culture and objectives. As noted in [8] above, those objectives include meeting the needs of customers, complying with applicable laws and regulations, and generating profits to attract and retain capital needed to safeguard deposits.

203. Variable remuneration must be capable of being reduced or withheld if behaviour (inclusive of risk and compliance) and/or performance does not meet expected standards.

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[92] See, for example, recommendations 9–11 of the Sedgwick Review.

Consistent with this approach, ANZ should be in a position to adjust variable remuneration based on Group and individual performance (inclusive of risk outcomes).

204. *Customer Key Result Areas.* ANZ acknowledges the observations in the Interim Report regarding its balanced scorecard for branch staff and the risk that Customer Key Result Areas may act to conceal financial metrics. A challenge, acknowledged by the Sedgwick Review, lies in meaningfully measuring a bank's assistance to customers beyond the net promoter score (an index that measures customer satisfaction). This is likely to be an industry-wide challenge and, if so, the industry may benefit from collaborative efforts to develop credible industry customer measures. In relation to the balanced scorecard for financial advisers, ANZ refers to [70] above.

205. *Management and senior executive variable remuneration.* ANZ recognises that even if remuneration structures for frontline staff change (eg to remove individual financial metrics), managers and senior executives are accountable for setting the tone required to deliver cultural change. Performance and remuneration structures for managers and senior executives are, and should be, designed in light of this. As for other employees, manager and senior executive remuneration is based on overall performance, taking into account "what" is achieved and "how" results are achieved. Performance ratings for all senior executives take into account values, risk and compliance behaviours. This creates a direct link between the expectation that managers and senior executives demonstrate and role model ANZ's values and their variable remuneration outcomes. ANZ regularly reviews its remuneration structures for senior executives, and in recent years has continued development of the balanced scorecard, deferral and downwards adjustment provisions, increased deferral periods, and strengthened governance practices for senior executives.

206. If calibrated correctly, ANZ considers that variable reward (in conjunction with other forms of recognition and incentives such as promotion, and development opportunities) can be a powerful tool to support the achievement of good outcomes for customers, regulators, staff and shareholders. In respect of managers and senior executives:

    (a) Deferred remuneration can help managers and more senior executives focus on achieving good long term outcomes. Deferred remuneration remains at-risk over a period of time and it is subject to the application of further deferral and downwards adjustment throughout the vesting period. When an executive is judged accountable for material risk, compliance or conduct events that require disciplinary action, a downward adjustment may be applied, including to zero. Deferred variable remuneration can provide a strong incentive for an executive to lead his or her business in the right way and allows time to assess performance, including risk and compliance outcomes. Implementation of the BEAR reinforces this for ANZ's most senior executives.

(b) Managers and senior executives have greater ability to drive performance, behaviours and business success through other mechanisms such as coaching and performance management and development of staff. This distinguishes managers and senior executives from individual frontline staff.

207. *Regulatory intervention.* The Commissioner has questioned whether regulatory intervention in remuneration is possible and necessary. ANZ notes that if the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2017 (Cth) is passed by Parliament, ASIC will be able to make rules under the product intervention power related to remuneration that are conditional on the achievement of objectives directly related to a financial or credit product (where there is actual or potential significant customer harm). Beyond this, ANZ considers that designing appropriate performance and remuneration frameworks is the responsibility of organisations and their boards, and that broad regulatory intervention is not required. ANZ remains willing to consider any further proposals for reform of remuneration practices as it has in implementing the Sedgwick Review recommendations and the BEAR.

208. *Ongoing review.* ANZ continues to make improvements to its balanced scorecard metrics so that an appropriate balance is achieved, including through implementation of the Sedgwick Review recommendations. ANZ is also considering different methods for assessing and rewarding staff performance. The methods under consideration include de-emphasising individual performance and increasing the emphasis on rewarding team, business and overall group performance. ANZ is also currently undertaking a pilot program across 25% of the Australian Branch Network and Customer Contact Centre where individual financial targets have been replaced with a team financial target. ANZ will evaluate the results of this pilot.

How should ASIC and APRA respond to conduct and compliance risk?

209. ASIC has an appropriate role to play in identifying and responding to misconduct as a way of incentivising regulated entities to adhere to the law. Part of this role is releasing clear regulatory guidance so that entities can understand ASIC's conduct and compliance expectations. ASIC is also starting to use the analysis of data to provide tailored feedback to its regulated institutions. This analysis allows ASIC to identify potential conduct or compliance issues as they are emerging and engage with institutions to make appropriate changes.

210. Supervision is a core element of APRA's regulatory practices. APRA's approach is fundamentally focused on pre-emptive, risk-based supervision wherever possible, rather than after the fact enforcement, and involves regular engagement with institutions. As a regulator tasked with prudential supervision, promoting stability and maintaining the robustness of the Australian financial system, it is appropriate that APRA's role be forward looking – in the education and supervision of the entities it regulates. APRA's practice in that regard is consistent with the role of prudential supervisors around the world.

Does the conduct identified and criticised in this report call for reconsideration of APRA's prudential standards on governance?

211. ANZ considers that APRA's prudential standard on governance, CPS 510, has been and continues to be effective in improving governance practices across the industry. BEAR has also been implemented to further strengthen the responsibility and accountability framework of ADIs.

212. Given that BEAR was only recently introduced, ANZ considers it is premature to contemplate a reconsideration of APRA's prudential standards on governance. In addition, another iteration of CPS 510 at this stage may serve to unnecessarily increase complexity.

Should the regulatory architecture change? Are some tasks better detached from ASIC/APRA?

213. ANZ continues to support the "twin peaks" regulatory model, and also acknowledges the value of a specialist financial services conduct regulator. It is generally supportive of any measures which would reduce overlap, enhance focus, increase co-ordination, and improve consistency between regulators and provide regulators with better resources and expertise. Such measures may include:

(a) expectation statements that set performance targets for regulators, coupled with reviews against those statements; and

(b) regular reviews of financial services laws and their effectiveness.

214. Beyond this, a framework for the supervision by Parliament and particular ministers of the regulation (including enforcement activities) of the financial services industry currently exists in the following form:

(a) reporting to and oversight by ministers and parliament: section 243 of the ASIC Act, sections 19 and 46 of the *Public Governance Performance and Accountability Act 2013* (Cth) and Parliamentary committees (including the House of Representatives Standing Committee on Economics and conduct reviews of the activities of regulators, including of their annual reports);[93] and

(b) directive powers of Ministers: section 12 of the ASIC Act and section 12 of the *Australian Prudential Regulation Authority Act 1998* (Cth).

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[93] Where such supervision occurs, it ought to be consistent (by reason of Australia's membership of the Financial Stability Board and its subscription to its Charter) with principle 2 of the Basel Committee on Banking Supervision's Core Principles for Effective Banking Supervision and principle 2 of the International Organisation of Securities Commissions' Objectives and Principles of Securities Regulation.

What is the proper place for industry codes of conduct? Should the 2019 Banking Code of Practice be given legislative recognition and application?

215. ANZ is supportive of industry codes (in particular the BCP 2019) applying to all industry participants, as recommended by the ASIC Enforcement Review.[94] This would provide greater coverage for all customers, and promote consistency across the sector.

216. ANZ also supports the current practice of ASIC being involved in identifying areas for reform and reviewing amendments to the BCP 2019, and endorsing changes made, without ASIC ultimately being responsible for the enforcement of the BCP 2019. The BCP 2019 benefits from being a voluntary, industry-driven set of standards that go beyond what the law currently requires. Its terms are contractually enforceable by consumers and AFCA takes the BCP 2019 into account when deciding on complaints by customers about bank conduct. Potential non-adherence to the BCP 2019 can also be investigated by the Code Compliance Monitoring Committee (**CCMC**) (to be known as the Banking Code Compliance Committee from 1 July 2019). Systemic issues relating to compliance with the BCP 2019 can also be identified and reported to ASIC by CCMC and AFCA. In these senses, the Code is already legally binding and capable of effective enforcement against signatory banks, and the introduction of AFCA and changes to the CCMC will further enhance the effectiveness of these enforcement mechanisms.

217. The reforms concerning the CCMC and AFCA will contribute to the effective enforcement of the BCP 2019 obligations. Industry codes should not be given legislative recognition and be directly enforceable by regulators for the reasons set out above. In this respect, ANZ supports the conclusion reached by the ASIC Enforcement Review Taskforce.

Should an intermediary be permitted to recommend to a consumer, provide personal financial advice to a consumer about or sell to a consumer any financial product manufactured by an entity (or a related party of the entity) of which the intermediary is an employee or authorised representative?

218. Where a financial adviser is an employee or authorised representative of a licensee that manufactures financial products, ANZ accepts that the licensee will have a commercial interest in maximising sales of that product.[95] However, this will not be the sole interest of the licensee. The licensee will also have an interest in the conduct of its financial advice business in a manner that complies with the law, including the statutory duties owed by its employed or authorised financial advisers to their clients,[96] and protects the licensee's reputation (including by having advisers known for providing quality advice such that customers will wish to engage them). The same applies in circumstances where the product manufacturer is a related entity of that licensee, although the extent of the

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94 ASIC Enforcement Review Taskforce, *Final Report* (December 2017), pages 31–36.

95 Cf Interim Report, vol 1, 89.

96 See [63] above.

licensee's interest in maximising sales of its related entity's product will depend on the nature of the relationship.

219. The approach to remuneration referred to in [70] above removes the conflict from the adviser's point-of-view by incentivising the adviser to give priority to the client's interests, and therefore to the lawful conduct of the licensee's financial advice business. Further, by excluding revenue generation from the criteria that determine whether a financial adviser receives variable remuneration and moving to a more qualitative assessment, an adviser's interest in furthering his or her career and maximising financial reward[97] is served by complying with his or her duties, including recommending products that are manufactured by other entities where appropriate.

220. Further, ANZ submits that the following measures also serve to manage the conflict and prioritise the interests of the customer:

(a) educational and training requirements that increase adviser competency and emphasise the importance of professionalism in the industry and of providing sound advice and acting in the best interests of clients;[98]

(b) ensuring that approved product lists prepared for use by a licensee's employed financial advisers and authorised representatives are constructed on the basis of thorough research and providing an efficient process for advisers to recommend products that are not included on the relevant approved product lists where that is in the best interests of the customer;[99]

(c) the development of technology that supports the delivery of appropriate advice through the provision of "guiderails" and automating administrative tasks such as record keeping – such as in ANZ's Grow for Advice platform;[100]

(d) licensee professional standards requiring advisers to act in their clients' best interests and to disclose the conflict to customers where their advice includes a recommendation of a product that is manufactured by the licensee that employs or has authorised the adviser (or a related entity of that licensee);[101] and

(e) the work of new monitoring bodies to be established under the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* (Cth) in

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97 Cf Interim Report, vol 1, 89.

98 See [188] above. As noted in the Interim Report (vol 1, 104–105) and the Commission's Background Paper 6 (Part B) at pages 8–12, legislative changes have been introduced including minimum education requirements, supervision for new advisers, a code of ethics, an industry exam and ongoing annual professional development obligations.

99 See ANZ's Round 2 Policy Submissions at [13]–[14], and the evidence referred to concerning ANZ's practices in this regard.

100 Rixon Statement (ANZ.999.003.0001, ex 2.152) at [71]–[89].

101 The standards applied by ANZ are described in the Witness Statement of Donald Sillar dated 11 April 2018 (ANZ.999.005.0001, ex 2.3) at [72]–[74].

administering compliance schemes and monitoring adherence to a Code of Ethics, and (if implemented in response to the ASIC Enforcement Review Taskforce recommendations) a co-regulatory model for industry codes.[102] The financial advice industry would also benefit from a single, central professional/regulatory body with legislative authority to carry out a role similar to that of other professional bodies such as those responsible for accountants and lawyers.

221. If the law were changed so as to prohibit a financial adviser from recommending or providing personal financial advice to a customer about a financial product solely because that product is manufactured by the licensee that employs or has appointed the adviser as an authorised representative (or by a related entity of that licensee), this would require financial advisers to decline to advise customers in cases where the adviser had (or if allowed to consider the product, may have) formed the view that the product was in the customer's best interests. It would be very difficult for an adviser to act in the best interests of a customer in those circumstances.

222. In addition, ANZ considers that the provision of financial advice by vertically integrated financial licensees also provides some benefits to customers as referred to in its submissions to the Commission dated 7 May 2018.[103]

Is structural change in the industry necessary?

223. For the reasons addressed in [218]–[222] above, structural change prohibiting related entities from providing financial advice and being involved in the manufacture of financial products is not necessary.

26 October 2018

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102 ANZ's Round 2 Policy Submissions at [71]–[74].

103 ANZ's Round 2 Policy Submissions at [16]–[18].