

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

SUBMISSIONS BY ANZ IN RESPECT OF GENERAL QUESTIONS - ROUND 2 HEARINGS

1. This submission responds on behalf of Australia and New Zealand Banking Group Ltd (**ANZBGL**) and its associated entities (collectively, **ANZ**) to the general questions and issues raised in Counsel Assisting's closing address. The associated entities of ANZ include ANZ Financial Planning (**ANZFP**) (a business unit of ANZBGL) and the aligned dealer groups (or **ADGs**) - Millennium3 Financial Services Pty Ltd (**M3**), RI Advice Group Pty Ltd (**RI**) and Financial Services Partners Pty Ltd (**FSP**). Where it is appropriate to distinguish between ANZ's associated entities, this submission refers to the relevant entity or entities.

Question 1: Do clients receive any meaningful benefit from ongoing service arrangements? [T1948: 11-12]

2. While ANZ acknowledges that at times it has failed to meet expectations by not providing ongoing services as promised, and ANZ recognises the importance of controls directed to ensuring that clients receive the services, it considers that ongoing service arrangements do provide meaningful benefit to clients. In particular:
 - (a) As the Commission has touched on, financial advisers play an important role in helping people define their financial needs and goals and setting a plan to fulfil them.¹ This includes helping clients decide what insurance they need to protect themselves and their families and helping them set a savings plan for their retirement.
 - (b) An ongoing relationship with a financial adviser is a good way to help people stay on track to achieve their financial goals. In ANZ's experience, often people have a tendency towards short term (and often discretionary) spending; ANZ considers that ongoing advice services can help a client maintain focus on the importance of their longer term financial goals and the steps required to achieve them, such as paying down debt.
 - (c) Clients' needs and circumstances change over time, as do the financial products and strategies that are available to clients. By providing clients with a regular opportunity to review their financial position, ANZ considers ongoing service arrangements can help ensure a client's financial strategy remains appropriate to their circumstances and in their best interests, over time and not just at a particular point in time. This can avoid clients being exposed to inappropriate investment risk or being either over or under insured.
 - (d) Given the complexity of and frequent changes to financial products and strategies (especially transition to retirement strategies) and the legal and regulatory landscape, ANZ's experience is that many clients find it difficult to navigate these matters themselves. The consequences of clients making mistakes in attempting to manage their finances without advice – or in failing to take steps to deal with them at all – can be costly.

¹ The Commission's Background Paper 6 (Part A), at section 2, notes that "Financial planners or advisers seek to play an important role in helping individuals and households in Australia make the most of their finances and achieve their financial goals. They seek to do this by advising and helping retail investors understand and evaluate, among other matters, the right financial products and services for their needs."

3. The types of ongoing service arrangements currently provided by ANZ are identified in the statement of Darren Williams.² Ongoing service clients of ANZFP and the ADGs have selected and signed up to an ongoing service arrangement.³ In addition, for all post-FOFA ongoing service arrangements offered by ANZ, clients are sent 'opt-in' notices at least every two years.⁴

Question 2: To what extent does the continued legislative condoning of grandfathered commissions shape and influence the culture and attitudes of financial advice licensees so as to create a disconnect between community expectations as to the charging of fees, and the tolerance of licensees for the charging of fees for no or little service? [T1948:12-16]

Question 3: Should grandfathered commissions cease? [T1948:16]

4. ANZ addresses questions 2 and 3 together.
5. The policy intention behind grandfathering of pre-FOFA commissions was explained in the Explanatory Memorandum to the Corporations Amendment (Future of Financial Advice) Bill 2011 (Cth) (**FOFA Explanatory Memorandum**) at [3.79]–[3.83]. Among other things:
 - (a) grandfathering was intended to allow for the changes to the financial advice industry effected by the FOFA reforms to be made gradually and to occur over time;
 - (b) there was an expectation that some financial advisers would leave the industry and that there would be consolidation of smaller advice firms into larger dealer groups;
 - (c) research indicated that it would take time for advisers to develop viable businesses following the reforms; and
 - (d) other reforms such as the introduction of a best interests duty were intended to ensure that advice provided by advisers met consumer expectations.
6. In relation to ANZ, there is evidence before the Commission of a shift in sources of revenue from commission-based to fee-based arrangements.⁵
7. ANZ submits that the evidence before the Commission does not establish whether (or the extent to which) grandfathered commissions may be a cause of particular cultures or attitudes of financial advice licensees. ANZ also notes ASIC has not reviewed or investigated these matters to date.⁶ ANZ submits that evidence of these matters would need to be adduced and considered in formulating any change to grandfathered commissions.
8. In addition, any proposed change would also need to take into account that grandfathered commissions are permissible to the extent that they are payable pursuant to arrangements entered into prior to the commencement of the relevant FOFA provisions. Legislation terminating the grandfathering arrangements may encounter constitutional difficulties. In particular, legislation extinguishing contractual rights to ongoing

² Statement of Darren Williams dated 13 April 2018 (**Williams Statement**) (Ex. 2.92) at [71]–[93] (ANZ.999.007.0001 at 0014-0016).

³ Williams Statement (Ex. 2.92) at [59] and [62] (ANZ.999.007.0001 at 0012).

⁴ Williams Statement (Ex. 2.92) at [60] and [63] (ANZ.999.007.0001 at 0012-0013).

⁵ Statement of Kylie Rixon dated 9 April 2018 (**First Rixon Statement**) (Ex. 2.152) at [38]–[46] (ANZ.999.003.0001 at 0038-0046).

⁶ T1402:18-36.

commissions under pre-FOFA contracts may involve an acquisition of property on other than just terms.

Question 4: Does vertical integration of platform operators with advice licensees serve the interests of clients? If so, how? [T1953:27-29]

Question 27: Can financial advisers effectively manage the conflicts of interest associated with providing advice as a representative of an institution that also manufactures financial products? Is it necessary to enforce the separation of products and advice? [T1986:22-25]

9. ANZ addresses questions 4 and 27 together.
10. ANZ notes that as part of its strategy to create a simpler, better balanced bank, it has agreed to sell its aligned dealer group financial advice businesses, its OnePath Pensions & Investments business and its life insurance business.⁷
11. In any event, ANZ submits that vertical integration of platform operators with advice licensees can serve the interests of clients, if the conflict between the interest of the platform operator associated with the advice licensee, and the interest of the client to whom the employee or authorised representative of the advice licensee is providing financial advice, is appropriately managed.
12. ANZ acknowledges this conflict and the risk that it may adversely affect financial advice given to clients (notwithstanding that the choice of platform does not necessarily dictate the choice of underlying investment). This risk can be addressed by managing the conflict through appropriate disclosure and control measures. The steps that ANZ takes are detailed below.
13. ANZ's professional standards require the conflict to be managed by: (a) disclosing the conflict to the client, (b) including products not affiliated with ANZ on approved product lists (**APLs**) and ensuring that APLs are constructed on the basis of thorough and independent advice research, (c) providing an efficient process for advisers to recommend products that are not on the APL where this is in a client's best interests, and (d) ensuring through advice assurance reviews that the conflict disclosure has been made to the client and that advice given is in the best interests of the client.⁸
14. In relation to APLs, ANZ notes that:
 - (a) the majority of products on the Wealth entities' APLs are not ANZ-related products;⁹
 - (b) where an ANZ-related product is being considered (for instance for inclusion on an APL), research is conducted by an external provider;¹⁰ and

⁷ See also the evidence of Kylie Rixon at T1569:1-23; after acknowledging that she was not a party to executive committee discussions on why the businesses were sold, Ms Rixon referred to her understanding that the sales were part of ANZ's strategy to return to its core business of banking, and to improve its capital efficiency.

⁸ First Rixon Statement (Ex. 2.152) at [114] (ANZ.999.003.0001 at 0061-0062), and KR-20 (ANZ.800.173.8782, especially at 8793-8794) and KR-22 (ANZ.800.386.2581); Statement of Donald Sillar dated 11 April 2018 (**Sillar Statement**) (Ex. 2.3) at [14]-[77] (ANZ.999.005.0001 at 0005-0019) and documents there referred to including DS-21 (ANZ.800.424.0383, especially at 0388 and 0392-0393) and DS-22 (ANZ.800.425.0001, especially at 0006-0008).

⁹ Sillar Statement (Ex. 2.3) at [66] (ANZ.999.005.0001 at 0016).

¹⁰ See for example the Sillar Statement (Ex. 2.3) at DS-19 (ANZ.800.426.0150, especially at 0163).

(c) the APL exception/waiver process is relatively straightforward¹¹ and ought not present a barrier to advisers recommending non-APL products should they consider that to be in their clients' best interests.

15. ANZ does not agree with the suggestion in Background Paper 7 at p 10 that the authors of Treasury's Corporate Law Economic Reform Program Paper No 6 (**CLERP 6**) assumed that 'financial intermediaries' would have no association with product manufactures. Within Pt 9 of CLERP 6, referred to in Background Paper 7 at p 10 fn 34, the Paper recommended (p 102):

'The disclosure of benefits received by an intermediary and any conflicts of interest assists clients in assessing the merits of a product recommendation and reduces the opportunity for advisers to act in self interest to the disadvantage of the client. It is proposed that all financial market intermediaries must disclose the details of any benefit, advantage or interest they may receive as a result of making a recommendation about the purchase of a financial product, including fees or other commissions.'

ANZ submits that its approach to managing the conflict of interest associated with vertical integration is consistent with the intention underlying these proposals.

16. ANZ further submits that vertical integration not only creates risks which require control and management, but also creates benefits. ASIC has recognised the benefits that clients enjoy when they choose to obtain financial advice from a large, vertically integrated institution.¹² In particular, ASIC has acknowledged that:

'They [clients] may be attracted to the convenience of a relationship with a single financial institution. They may also value the perceived safety of dealing with a large institution, and have trust and confidence in the ability of the institution to both deliver the services and compensate them appropriately if required.'

17. In relation to the ability of large institutions to deliver services, ANZ refers to its substantial investments in technological preventative controls to improve the quality of financial advice delivered to clients.¹³

18. In relation to the ability of large institutions to compensate clients appropriately if required, ASIC has also noted in Report 562 that:

'The Financial Ombudsman Service Australia (FOS) reported in its Annual review 2016-17 (at page 31) that '[a]s at 30 June 2017, consumers were owed more than \$14.1 million (excluding interest) in unpaid FOS determinations. A total of 218 consumers were affected by 39 FSPs [financial services providers] unwilling or unable to comply with 154 determinations. Of these FSPs, half (51%) were financial planners and advisors.' Unpaid determinations are concentrated in the small-to-medium advisory services sector. AFS licensees of larger institutions are more likely to be able to ensure compensation (through self-insurance) for their customers.'

¹¹ Sillar Statement (Ex. 2.3) at [50]-[56] and the exhibits there referred (ANZ.999.005.0001 at 0011-0014).

¹² ASIC Report 562 at [56]-[57].

¹³ First Rixon Statement (Ex. 2.152) especially at [71]-[97] and [163] (ANZ.999.003.0001 at 0056-0060, 0067-0068); T1584:14-20, 1585:29-1588:30.

Question 5: Why should a platform operator continue to receive a fee or rebate from a fund manager calculated by reference to the value of client funds invested in the fund if that fee or rebate is not wholly passed on to the clients whose funds are the basis for the fee or rebate? [T1953:29-32]

19. The intent of the prohibition in s 964A of the *Corporations Act* is to prevent receipt of volume-based benefits by platform operators to the extent that such incentives are 'merely a means of product issuers or funds managers 'purchasing' shelf space or preferential positions on administrative platforms': Revised Explanatory Memorandum to the Corporations Amendment (Further Future of Financial Advice Measures) Bill at [2.61]. That issue may not be present in all circumstances in which a platform operator may receive a fee or rebate of the kind referred to in question 5.
20. In addition, the question whether there should be any alteration to provisions concerning grandfathered volume-based shelf-space fees raises similar issues to those canvassed in answer to questions 2 and 3.

Question 6: If platform operators continue to automatically deduct advice fees from clients' investments, why should the platform operator not be required to have controls in place to ensure that subdivision B of Division 3 of Part 7.7A of the Corporations Act has been complied with? Put another way, why should platform operators not be expected to ascertain that there is a lawful entitlement on the part of fee recipients to the moneys that the operators automatically pay to the fee recipients at the expense of clients? [T1953:34-40]

21. ANZ has controls directed to ensuring that advisers comply with subdivision B of Division 3 of Part 7.7A of the *Corporations Act*. In particular:¹⁴
 - (a) ANZ obtains annual attestations from AFSL holders that they have in place adequate controls to ensure compliance with the FOFA opt-in requirement and that those controls are operating effectively; and
 - (b) ANZ monitors adviser service fee cancellation requests to detect abnormally low rates and makes inquiries if that is identified.
22. ANZ accepts that additional controls may provide a greater level of assurance. The design and implementation of such controls and their precise ambit requires further detailed consideration, including consultation with financial advice firms to ensure their practicability and effective operation. This may incorporate, for example, ascertaining how controls may be designed to ensure that they operate effectively by capturing relevant opt-in data from financial advice firms' systems. It has not been possible to sufficiently consider these matters in the time available to prepare these submissions.

Question 7: Do remuneration and incentive policies that reward financial advisers for revenue generated for a licensee or employer create an unacceptable risk that financial advisers will prioritise the generation of revenue over the licensee's obligation to provide financial services in a manner that is efficient, fair and honest, over their own obligation to act in the best interests of the customer, and over their own obligation to prioritise the interests of the customer above their own interests and the interests of the licensee? [T1959:19-25]

23. ANZ considers that remuneration and incentive policies that reward financial advisers for revenue generated for a licensee or employer do not, in and of themselves, create an unacceptable risk of the kind referred to, although the risk may increase if incentives are connected too closely to revenue generation.

¹⁴ Statement of Mark Pankhurst dated 13 April 2018 (Ex. 2.95) at [53]–[65] (ANZ.999.008.0001 at 0014-0016).

24. ANZ considers that the approach to remuneration and incentives for its employed ANZFP financial advisers under the Balanced Scorecard approach¹⁵ reduces the risk of financial advisers prioritising the generation of revenue over compliance with the obligations referred to above. This risk is reduced in the following ways.
25. First, for a financial adviser to be considered for an incentive under the Balanced Scorecard they have to achieve preliminary targets.¹⁶ These targets include passing of audits, the delivery of 100% of annual reviews for ongoing service, meeting ANZ values and behaviours, and completing mandatory compliance training.¹⁷ Each of these targets endeavour to ensure that financial advisers provide financial services in a manner that is efficient, fair and honest, and in the best interests of the client. For example, the audit process tests the appropriateness of advice and compliance with the Corporations Act and Regulatory Guidelines.¹⁸
26. Secondly, and assuming that the financial adviser has met the preliminary targets, the Balanced Scorecard for a financial adviser sets out measures that further enhance ANZ's approach in that the Balanced Scorecard:
- (a) does not have a measure of revenue growth following a recent amendment in April 2018. The amendments removed the two revenue measures that previously made up 15% of the scorecard¹⁹ and redistributed that percentage to other parts of the scorecard.²⁰ Prior to April 2018, those revenue measures applied only after the financial adviser had achieved the targets referred to in [25] above. However, the Balanced Scorecard now measures only objectives that are not related to revenue growth;²¹
 - (b) includes measures that take into account the provision of quality advice, such as audit ratings;²²
 - (c) rewards financial advisers for qualified referrals, including circumstances where a financial adviser advises a client not to change anything at all if that is considered to be the best advice to the client;²³ and
 - (d) includes a 'net promoter score' (or NPS) component.²⁴ The net promoter score is a common industry standard measure of client advocacy where surveys are completed by clients who are asked questions that go to whether the client feels that they would recommend that experience and that adviser to somebody else.²⁵ This measure allows for clients to have a very direct impact upon an adviser's incentives.

¹⁵ T1559:32-40; First Rixon Statement (Ex. 2.152) at [128]-[131] (ANZ.999.003.0001 at 0063-0064) and KR-27 (ANZ.800.233.8645).

¹⁶ T1559:32-40; First Rixon Statement (Ex. 2.152) at [131] (ANZ.999.003.0001 at 0063-0064) and KR-27 (ANZ.800.233.8645).

¹⁷ T1559:32-40.

¹⁸ First Rixon Statement (Ex. 2.152) (ANZ.999.003.0001 at 0027).

¹⁹ Those revenue measures were not linked to the sale of particular products: First Rixon Statement (Ex. 2.152) at [131] (ANZ.999.003.0001 at 0063-0064) and KR-27 (ANZ.800.233.8645).

²⁰ T1556:28-34; 2018 Performance Assessment Framework ANZ Financial Planning dated 12 April 2018 (**2018 Balanced Scorecard**) (Ex. 2.151) at (ANZ.800.523.0031 at 0035).

²¹ 2018 Balanced Scorecard (Ex. 2.151) (ANZ.800.523.0031 at 0035-0037).

²² T1563:25, First Rixon Statement (Ex. 2.152) at KR-27 (ANZ.800.233.8645 at 8654).

²³ T1563:24-35; First Rixon Statement (Ex. 2.152) at KR-27 (ANZ.800.233.8645 at 8654); 2018 Balanced Scorecard (Ex. 2.151) at (ANZ.800.523.0031 at 0037).

²⁴ First Rixon Statement (Ex. 2.152) at KR-27 (ANZ.800.233.8645 at 8654, 8659); 2018 Balanced Scorecard (Ex. 2.151) (ANZ.800.523.0031 at 0037).

²⁵ T1563:24-35; First Rixon Statement (Ex. 2.152) at KR-27 (ANZ.800.233.8645).

27. Thirdly, a financial adviser's share of the bonus pool is determined by whether the adviser achieves a rating in any particular measure of 'target' or 'outperformance'. In this way, advisers are encouraged to not only achieve eligibility to an incentive but also obtain a greater share of the bonus pool by achieving 'outperformance' ratings, such as in audit scores or net promoter scores. This further strengthens an adviser's motivation to act in the best interests of the client and rewards good behaviour.
28. Revenue is only taken into account in determining incentives for employed ANZFP financial advisers through the pool of funds from which they are paid. This pool reflects the financial performance of ANZFP. That, in turn, reflects that ANZFP is a business in a competitive market and revenue is a measure of the financial health of the business.²⁶ However, employed financial advisers do not benefit from that revenue in the form of increased remuneration or incentives unless they achieve or outperform the targets under the Balanced Scorecard referred to above. In this way, employed ANZFP financial advisers are incentivised to contribute to the revenue of ANZFP only by working in a manner that is consistent with their obligations to act in the best interests of their clients and to provide advice that is appropriate for their clients.

Question 8: How can financial services licensees best incentivise the provision of good quality financial advice, including in situations where the best advice for a customer is not to change anything at all? [T1959:27-29]

29. ANZ's position in respect of this question is addressed in response to question 7 above. In particular, ANZ draws attention to the matters set out in [26(c)] and [26(d)] above.

Question 9: How can financial services licensees best ensure that the results of routine compliance measures, such as compliance audits, are appropriately escalated so that potential risks to customers are identified and managed in a timely manner? [T1959:29-32]

30. The appropriateness of escalation will vary depending on the particular circumstances involved. Those circumstances include considerations such as:
- (a) the nature of any breach or failure of a routine compliance measure; and
 - (b) the extent of any breach or failure of a routine compliance measure, including whether that breach or failure is, or may be, systemic.²⁷
31. In the case of advice assurance audits completed by an advice assurance officer, ANZ's Advice Assurance Process Manual²⁸ sets out the process for the escalation, identification and management of potential risks to clients. That process includes:
- (a) copies of the advice assurance report being provided to the adviser's supervisor;²⁹
 - (b) at any stage of the advice process where issues or development needs are identified, the advice assurance officer developing an Adviser Improvement Plan.³⁰ This includes:

²⁶ 2018 Balanced Scorecard (Ex. 2.151) (ANZ.800.523.0031 at 0034).

²⁷ In 2018, ANZ currently has approximately 277 employed advisers within ANZFP and 602 authorised representatives across the ADGs – see First Rixon Statement (Ex. 2.152) (ANZ.999.003.0001 at 0006).

²⁸ First Rixon Statement (Ex. 2.152) at KR-30 (ANZ.800.369.1899).

²⁹ First Rixon Statement (Ex. 2.152) at KR-30 (ANZ.800.369.1899 at 1933).

³⁰ First Rixon Statement (Ex. 2.152) at KR-30 (ANZ.800.369.1899 at 1930).

- (i) conducting a root cause analysis to determine why issues have arisen, which is generally done in conjunction with the adviser to make it a collaborative learning process;³¹ and
- (ii) determining how the root cause of the issue is to be addressed. This can include, among other things:³² placing the adviser on vetting, requiring the adviser to receive coaching³³ or referring the adviser to conduct further training;³⁴
- (c) where an adviser receives an advice quality rating of 2 or more then the matter is escalated to the adviser's supervisor who is to confirm and send a signed Remedial Action Plan Declaration confirming completion of the remediation activities by the due date (generally 5 weeks from the review);³⁵
- (d) where an adviser receives an advice quality rating of 2 or 3 then the advice assurance officer will validate the completion of the remedial actions (as confirmed by the supervisor through the Remedial Action Plan) at the next compliance review;³⁶ and
- (e) where an adviser receives an advice quality rating of 4 or 5 then:
 - (i) this is sent to ANZ's Advice Risk team, logged within ANZ's central incident reporting database (known as COR) and reviewed at an Event Working Group³⁷ and/or at a Risk & Event Forum;³⁸
 - (ii) in addition, the advice assurance officer will validate the completion of the remedial action prior to the due date noted in the review report (generally 5 weeks from the review);³⁹
 - (iii) the advice assurance officer must also determine whether the adviser should be placed on mandatory vetting, and where mandatory vetting is not used, an additional action plan item is included to notify the advice assurance team and for the adviser to be reviewed within 6 months (rather than the usual 12 months);⁴⁰ and
 - (iv) the adviser must be referred to the Consequence Management Forum to consider further consequences or disciplinary action against an adviser.⁴¹

32. During the review referred to in [31(e)(i)] it may also be determined to escalate the matter depending on the issues revealed. This may involve referral of the matter to ANZ's legal team and/or Group Investigations (if the conduct is suspicious)⁴² and the

³¹ First Rixon Statement (Ex. 2.152) at KR-30 (ANZ.800.369.1899 at 1928, 1930-1931).

³² First Rixon Statement (Ex. 2.152) at KR-30 (ANZ.800.369.1899 at 1929).

³³ See also First Rixon Statement (Ex. 2.152) at [107(a)] and [110] (ANZ.999.003.0001 at 0060-0061), KR-17 (ANZ.800.388.0004) and KR-19 (ANZ.800.388.0001).

³⁴ First Rixon Statement (Ex. 2.152) at KR-30 (ANZ.800.369.1899 at 1932).

³⁵ First Rixon Statement (Ex. 2.152) at KR-30 (ANZ.800.369.1899 at 1929).

³⁶ First Rixon Statement (Ex. 2.152) at KR-30 (ANZ.800.369.1899 at 1929).

³⁷ First Rixon Statement (Ex. 2.152) at [69(d)] (ANZ.999.003.0001 at 0055).

³⁸ First Rixon Statement (Ex. 2.152) at KR-30 (ANZ.800.369.1899 at 1941).

³⁹ First Rixon Statement (Ex. 2.152) at KR-30 (ANZ.800.369.1899 at 1929-1930).

⁴⁰ First Rixon Statement (Ex. 2.152) at KR-30 (ANZ.800.369.1899 at 1934, 1940-1941).

⁴¹ First Rixon Statement (Ex. 2.152) at [69(g)] (ANZ.999.003.0001 at 0056) and KR-30 (ANZ.800.369.1899 at 1940).

⁴² ANZ's Group Investigations team investigates, among other things, events that involve questions of integrity such as suspicious signatures and any indicators of potential fraudulent activity; see, for example, Forde Statement (Ex. 2.194) at [12] (ANZ.999.006.0001 at 0009-0011).

Advice Review Team (if remediation of systemic issues is considered a possibility), which will then also receive oversight from the Remediation Governance Forum.⁴³

33. During each of these escalations, events and any patterns or trends that suggest an emerging or increasing risk are reported to: (i) the Consequence Management Forum;⁴⁴ (ii) the Business Risk and Compliance Committee;⁴⁵ and (iii) where an ADG adviser is involved, the ADG Risk and Compliance Board Committee.⁴⁶
34. In the case of advice assurance audits completed by practice managers and state managers, ANZ's Practice Manager/State Manager Supervision Framework and Procedure Guide⁴⁷ sets out the process for the escalation, identification and management of potential risks to clients. That process includes:
- (a) the manager determining what development or remediation is required based on what is uncovered during the audit;⁴⁸
 - (b) where the failure relates to the adviser's responsibilities, materially impacts the clients or are considered as an incident then that incident must be logged into COR.⁴⁹ Once those incidents are logged, the processes referred to in [31(e)(i)] and [32]-[33] will be enlivened; and
 - (c) utilising advice coaches to support them with training and coaching the adviser.⁵⁰
35. In addition, through technological developments, and in particular the use of advanced and automated data analytics,⁵¹ Adviser Hub,⁵² Better Risk Data Analytics⁵³ and the use of the Grow for Advice platform⁵⁴ (and in particular, the weekly reporting and governance of that platform⁵⁵), ANZ has enhanced its ability to identify, manage and escalate potential risks through routine compliance measures.⁵⁶ These measures are discussed in more detail below in response to questions 10 and 11.
36. ANZ also has a system in place where it does not need to rely solely on routine compliance measures in order to identify, manage and escalate potential risks. In addition to the technological developments referred to in [35] above, ANZ also has a procedure for conducting targeted reviews through the Advice Review Team to facilitate the detection of

⁴³ First Rixon Statement (Ex. 2.152) at [69(c)] (ANZ.999.003.0001 at 0055) and KR-31 (ANZ.800.359.1128 at 1138, 1140).

⁴⁴ First Rixon Statement (Ex. 2.152) at KR-31 (ANZ.800.359.1128 at 1141).

⁴⁵ First Rixon Statement (Ex. 2.152) at [69(b)] (ANZ.999.003.0001 at 0055) and KR-31 (ANZ.800.359.1128 at 1141).

⁴⁶ First Rixon Statement (Ex. 2.152) at [66], [69(a)] (ANZ.999.003.0001 at 0055) and KR-31 (ANZ.800.359.1128 at 1141).

⁴⁷ First Rixon Statement (Ex. 2.152) at KR-26 (ANZ.800.382.1070).

⁴⁸ First Rixon Statement (Ex. 2.152) at KR-26 (ANZ.800.382.1070 at 1079).

⁴⁹ First Rixon Statement (Ex. 2.152) at KR-26 (ANZ.800.382.1070 at 1080).

⁵⁰ First Rixon Statement (Ex. 2.152) at KR-26 (ANZ.800.382.1070 at 1080); See also First Rixon Statement (Ex. 2.152) at [107(a)], [110] (ANZ.800.999.0003.0001 at 0060-0061), KR-17 (ANZ.800.388.0004) and KR-19 (ANZ.800.388.0001).

⁵¹ First Rixon Statement (Ex. 2.152) at [90]-[93] (ANZ.999.003.0001 at 0058-0059), KR-12 (ANZ.800.378.0370) and KR-13 (ANZ.800.378.0354); T1585.41-43; T.1585.2-4; T1588.8-15.

⁵² First Rixon Statement (Ex. 2.152) at [94]-[97] (ANZ.999.003.0001 at 0059-0060) and KR-14 (ANZ.800.165.1659); T1568:34-35.

⁵³ First Rixon Statement (Ex. 2.152) at [134]-[138] (ANZ.999.003.0001 at 0064), KR-28 (ANZ.800.365.0247).

⁵⁴ First Rixon Statement (Ex. 2.152) at [71]-[89] (ANZ.999.003.0001 at 0056-0058).

⁵⁵ First Rixon Statement (Ex. 2.152) at [86]-[89] (ANZ.999.003.0001 at 0058).

⁵⁶ See for example the discussion as to the use of Adviser Hub and Better Risk Data Analytics by advice assurance officers in the First Rixon Statement (Ex. 2.152) at [95], [137] (ANZ.999.003.0001 at 0059, 0064).

advisers giving systemic inappropriate advice or acting dishonestly, in a more timely manner.⁵⁷ Those targeted reviews can be triggered by a number of means including by referral from the Event Working Group and/or the Risk & Event Forum (including by reference to the results of better risk data analytics).⁵⁸ The Advice Review Team reports the results of the targeted reviews to either the Event Working Group, the Risk & Event Forum or the Remediation Governance Forum.⁵⁹

Question 10: Is it possible for financial services licensees to adequately monitor the quality of advice provided by employees and authorised representatives where that advice is provided in a manual environment? [T1969:26-28]

37. ANZ believes that it is possible for financial services licensees to adequately monitor the quality of advice provided by employees and authorised representatives where that advice is provided in a manual environment.⁶⁰
38. In this regard, ANZ has a number of systems in place to monitor the quality of advice provided by employees and authorised representatives in a manual environment.⁶¹ These systems operate within various teams or groups of persons within ANZ including:
- (a) Advice Coaches, who are responsible for improving the advice quality of advisers. These persons work with financial advisers who receive an adverse audit score. The coaches seek to upskill and coach financial advisers by training them in relation to the adverse matters that have been detected in the adviser's audits, incidents and complaints;⁶²
 - (b) the Advice Assurance Team, which conducts advice assurance reviews of adviser files. The advice assurance officers are trained to detect possible instances of an adviser giving inappropriate advice or engaging in dishonest conduct.⁶³ Since July 2017, where a financial adviser has given advice to a vulnerable client, the advice assurance officers review at least one of those client files when conducting an advice assurance review;⁶⁴
 - (c) supervisors and managers, who are responsible for identifying issues that occur with financial advisers. The supervisory role includes monitoring the conduct of the authorised representatives to ensure that they are not engaging in dishonest conduct, and that the advice given to clients is appropriate;⁶⁵
 - (d) the Advice Review Team, which also assists in the advice monitoring, supervision and governance framework. The purpose of the targeted review process referred to in [36] above is to support other functions in the business (most commonly, the advice assurance team) to conduct more detailed reviews and investigations of a sample of an adviser's files (including engaging with the adviser and a client where appropriate) to form a view as to whether a known or suspected issue impacts

⁵⁷ First Rixon Statement (Ex. 2.152) at [149]-[151] (ANZ.999.003.0001 at 0065) and KR-31 (ANZ.800.359.1128).

⁵⁸ First Rixon Statement (Ex. 2.152) at [69(d)], [137] (ANZ.999.003.0001 at 0055, 0064).

⁵⁹ First Rixon Statement (Ex. 2.152) at KR-31 (ANZ.800.359.1128).

⁶⁰ T1587:45.

⁶¹ First Rixon Statement (Ex. 2.152) at [65]-[70], [98]-[133], [141]-[151] (ANZ.999.003.0001 at 0055-0056, 0060-0061, 0065).

⁶² First Rixon Statement (Ex. 2.152) at [107]-[110] (ANZ.999.003.0001 at 0060-0061), KR-17 (ANZ.800.388.0004), KR-18 (ANZ.800.244.3730) and KR-19 (ANZ.900.388.0001).

⁶³ First Rixon Statement (Ex. 2.152) at [141]-[145] (ANZ.999.003.0001 at 0065) and KR-30 (ANZ.800.369.1899).

⁶⁴ First Rixon Statement (Ex. 2.152) at [147] (ANZ.999.003.0001 at 0065).

⁶⁵ First Rixon Statement (Ex. 2.152) at [126] (ANZ.999.003.0001 at 0063) and KR-26 (ANZ.800.382.1070 at 1074-1076).

multiple clients of an adviser or practice, and if so, to determine whether that issue is a systemic issue of that adviser or practice that needs to be remediated;⁶⁶ and

- (e) dedicated practice development coaches, who are assigned to a panel of authorised representatives who they train as to the best practice use of systems, such as XPLAN, to enable efficient delivery of compliant advice.⁶⁷
39. The above persons can monitor the quality of advice in the ways described above as well as through various other means such as Adviser Improvement Plans. These plans can take form in a number of ways and can be applied at any stage of the advice process where issues or development needs are identified.⁶⁸ The improvement activities can include, where necessary, a program of vetting where all or selected types of advice are subject to vetting.⁶⁹
40. Having said this, ANZ has also utilised and continues to improve upon a number of advances in technology as a way of enhancing its monitoring of the quality of advice given by financial advisers in addition to lowering the risk of inappropriate advice being provided and improving prompt detection of inappropriate advice if it is provided.⁷⁰
41. These advances in technology include:
- (a) the development and use of Grow for Advice;⁷¹
 - (b) the operation of a smart data analytics platform;⁷²
 - (c) the Better Risk Data Analytics process;⁷³
 - (d) in the case of the ADGs, a majority of practices using a centralised financial planning system called XPLAN to generate statements of advice.⁷⁴
42. ANZ has further enhanced its technological systems through Adviser Hub, which consolidates a number of databases. This has enabled ANZ to more effectively interrogate data for the purpose of monitoring and supervision, which can assist in detecting the risk indicators for inappropriate advice or dishonest conduct more quickly. For example, ANZ's back office teams no longer need to manually transfer/handle data or spend time sifting through emails to prepare for audits.⁷⁵

Question 11: Are improvements in technology the only way to ensure that financial advisers provide quality advice? [T1969:30-31]

43. For the reasons outlined in addressing question 10 above, ANZ considers that technology is not the only way to ensure that financial advisers provide quality advice. ANZ employs a variety of such ways to reduce the risk of inappropriate advice, including:

⁶⁶ First Rixon Statement (Ex. 2.152) at [149]-[151] (ANZ.999.003.0001 at 0065) and KR-31 (ANZ.800.359.1128).

⁶⁷ First Rixon Statement (Ex. 2.152) at [124]-[127] (ANZ.999.003.0001 at 0063) and KR-29 (ANZ.800.334.0344 at 0350).

⁶⁸ First Rixon Statement (Ex. 2.152) at KR-30 at (ANZ.800.369.1899 at 1930).

⁶⁹ First Rixon Statement (Ex. 2.152) at KR-30 at (ANZ.800.369.1899 at 1930).

⁷⁰ T1588:29.

⁷¹ First Rixon Statement (Ex. 2.152) at [82]-[88] (ANZ.999.003.0001 at 0057-0058).

⁷² First Rixon Statement (Ex. 2.152) at [90]-[93] (ANZ.999.003.0001 at 0058-0059).

⁷³ First Rixon Statement (Ex. 2.152) at [134]-[138] (ANZ.999.003.0001 at 0064).

⁷⁴ First Rixon Statement (Ex. 2.152) at [140] (ANZ.999.003.0001 at 0064-0065) and KR-29 (ANZ.800.334.0344).

⁷⁵ First Rixon Statement (Ex. 2.152) at [94]-[97] (ANZ.999.003.0001 at 0059-0060) and KR-14 (ANZ.800.165.1659).

- (a) a compliance framework which includes the principles, policies, procedures and systems for managing compliance (including compliance with regulatory change), with manuals regularly updated to reflect changes in legislation and compliance standards, which are in turn communicated to advisers and other relevant business areas through discussions between Practice Managers and advisers, newsletter communications and training forums;⁷⁶
 - (b) the on-boarding processes used, including ensuring that advisers hold various qualifications;⁷⁷
 - (c) training advisers,⁷⁸ generally and specifically where advice assurance reviews reveal issues;
 - (d) governance forums, such as the Risk Committee of the ADG Single Governance Board, the Risk and Event Forum and the Business Risk and Compliance Committee, which have oversight of key risks, controls, treatments, and risk indicators;⁷⁹
 - (e) the approval process which governs the composition of the APLs (including by the Advice Research Team, the Wealth Investment Governance Forum, the ANZFP Distribution Forum and the Advice Products and Investments Committee), and the ongoing review and monitoring of products on APLs by the Advice Research Team;⁸⁰ and
 - (f) the exceptions process for approving financial advice recommending financial products that are not included on the relevant APL.⁸¹
44. However, ANZ recognises that improvements in technology have the potential to greatly assist financial advisers in providing quality advice. This is for two principal reasons.
45. First, because many of the manual controls in the industry are either preventative in the sense of broadly creating an environment that lowers the risk, or detective, which is only after the advice has been provided.⁸²
46. Secondly, ANZ has seen through its own significant investment in technology many benefits in its use. In particular, technology has enhanced the effectiveness of the traditional ways of reducing the risk of inappropriate advice and provided new ways to supplement them and assist advisers to provide advice that is appropriate and in the best interests of clients.
47. As a consequence of the above, ANZ actively leverages technology to assist advisers providing quality advice. This assistance includes:
- (a) the use of Grow for Advice, which enables ANZFP financial advisers to complete end-to-end scaled insurance advice for clients who meet certain criteria. The platform includes a logic based advice engine that makes 180 decisions using algorithms which encompass client research through to fact finding, strategy development, product comparison and selection, and creation of a statement of advice. Further, it provides:

⁷⁶ First Rixon Statement (Ex. 2.152) (ANZ.999.003.0001 at 0035-0045).

⁷⁷ First Rixon Statement (Ex. 2.152) (ANZ.999.003.0001 at 0006-0013).

⁷⁸ First Rixon Statement (Ex. 2.152) (ANZ.999.003.0001 at 0013-0017).

⁷⁹ First Rixon Statement (Ex. 2.152) at [65]-[70] (ANZ.999.003.0001 at 0055-0056).

⁸⁰ Sillar Statement (Ex. 2.3) at [14]-[19], [28]-[41] and [47] (ANZ.999.005.0001 at 0005, 0007-0010).

⁸¹ Sillar Statement (Ex. 2.3) at [50]-[65] (ANZ.999.005.0001 at 0011-0015).

⁸² T1587:45-1588.29.

- (i) guiderails for advisers, making it easier for them to deliver appropriate advice, including by automating many record keeping requirements; and
 - (ii) a higher level of client engagement and education about the advice. This increases the likelihood that the client's financial needs and objectives have been captured correctly.
- (b) encouraging authorised representatives to use XPLAN (or equivalent) to generate statements of advice. ANZ has encouraged this by covering the cost of conversion for practices to use XPLAN. XPLAN utilisation assists with implementing key controls and provides a central repository from which ANZ can monitor advice quality.⁸³

Question 12: How should financial services licensees ensure that customers of their authorised representatives are adequately protected while the licensee investigates the conduct of the authorised representative [T1969:31-33]

48. There are a number of different mechanisms that may be utilised to ensure clients are adequately protected whilst a licensee investigates the conduct of a financial adviser. The particular mechanism that should be utilised in a given instance will depend on the circumstances of the investigation, and the nature and veracity of the allegations involved.
49. The mechanisms that ANZ uses to seek to ensure clients are adequately protected during an investigation include:
- (a) advice assurance officers conducting risk-based reviews to target thematic issues (such as when fraud is identified or suspected), which includes notifications to the Manager Advice Assurance and/or the Head of Advice Quality and Assurance;⁸⁴
 - (b) placing advisers on pre-vetting;
 - (c) imposing further mandatory training obligations on the adviser;
 - (d) imposing increased supervision on the adviser through the practice manager and/or state manager; and
 - (e) suspending or terminating the adviser from providing any further advice on behalf of the licensee.

Question 13: Taking into account that it may never be possible to reduce the risk to zero, what is an acceptable level of risk that customers will be provided with inappropriate advice? [T1969:34-36]

And associated with the acceptable level of risk must be also a connection with identification and investigation and remediation. It may be that all of those elements and, perhaps, others as well, need to be considered as a whole rather than distinctly. [T1969:38-42]

50. While it may never be possible to reduce the risk to zero, there is no acceptable level of risk that clients will be provided with inappropriate advice. It is for this reason that ANZ engages in a continuous process of training, education and improvements in the control

⁸³ First Rixon Statement (Ex. 2.152) at [124]-[127], [140] (ANZ.999.003.0001 at 0063) and KR-29 (ANZ.800.334.0344 at 0347).

⁸⁴ First Rixon Statement (Ex. 2.152) at KR-30 (ANZ.800.369.1899 at 1934-1936).

environment, systems and processes it uses as set out in more detail in the Statement of Ms Rixon, and elsewhere in these submissions.⁸⁵

Question 14: What is an acceptable period of time after identifying that a client has been or may have been provided with inappropriate financial advice to inform the client of that fact? [T1976:30-32]

51. Where ANZ has identified that a client has received inappropriate financial advice and suffered a loss as a result of that advice, ANZ believes there should be communication with the client in the shortest time possible.
52. In all other circumstances, namely where the client may have received inappropriate advice, client notification depends on the particular circumstances of the case.
53. By way of example, if a financial adviser becomes the subject of a banning order (even if that banning order is made after the adviser has left ANZ, which is often the case), ANZ generally writes to the clients of that adviser within a short time thereafter to notify them that the banning order has been made.

Question 15: What is an acceptable period of time after identifying that a client has been or may have been provided with inappropriate financial advice to remediate the client for any losses suffered? [T1976:32-35]

54. It is difficult to quantify what an acceptable period of time would be after identifying that a client has been or may have been provided with inappropriate financial advice to remediate the client for any losses suffered. This is due to the complexities involved in remediating clients who have suffered loss as a result of inappropriate financial advice being given.
55. Where multiple clients have or may have received inappropriate advice from a financial adviser, the following factors apply in the remediation of those clients:
 - (a) If it is suspected that there are systemic issues with the advice given by an adviser to all clients, a process needs to be followed to determine whether there is in fact a systemic issue, and if so, to identify potentially affected clients.⁸⁶ That process is not a straightforward exercise and will be dependent on the number of clients an adviser has. The process involves, among other things, the use of targeted reviews⁸⁷ and/or an analysis and scoping of the adviser's client files, including through a sampling process.⁸⁸ That process is expected to be accelerated through the use of advanced data analytics.⁸⁹
 - (b) Once potentially affected clients have been identified, determining whether they have in fact received inappropriate advice requires an in-depth analysis of the client's circumstances, the advice that was given and the advice that the client should have received. Depending on the records kept by the adviser, that may not be a straightforward process and may require, among other things, for the file to be reconstructed,⁹⁰ for interviews to be undertaken with the client and for enquiries

⁸⁵ First Rixon Statement (Ex. 2.152) (ANZ.999.003.0001 at 0006-0013 (Question 2(b), 0013-0017 (Question 2(c), 0024-0035 (Question 2(f), 0055-0066 (Question 5) and [163] at 0067-0068 (Question 6)).

⁸⁶ First Rixon Statement (Ex. 2.152) at [152]-[154] (ANZ.999.003.0001 at 0066).

⁸⁷ First Rixon Statement (Ex. 2.152) at [149]-[151] (ANZ.999.003.0001 at 0065-0066) and KR-31 (ANZ.800.359.1128 at 1152-1156).

⁸⁸ First Rixon Statement (Ex. 2.152) at KR-31 (ANZ.800.359.1128 at 1155-1172).

⁸⁹ First Rixon Statement (Ex. 2.152) at [92(c)] (ANZ.999.003.0001 at 0059).

⁹⁰ T1570:46-47; T1571:1-4.

to be made with third parties.⁹¹ This process needs to be completed for each potentially affected client.

- (c) Once there is confirmation that a client has in fact received inappropriate advice, consideration has to be given as to the precise remediation required to rectify that inappropriate advice. Where compensation is the appropriate remediation, calculations tailored to each case (which may be complex) need to be made which will be specific to the client's circumstances in each instance.⁹²

56. ANZ seeks to remediate clients for losses suffered within the shortest time possible once it has identified that inappropriate financial advice has been given and calculated the loss a client has suffered. In this regard, ANZ has taken a number of steps to enhance its remediation capabilities to ensure that clients are remediated within timeframes that conform with community standards and expectations, including:⁹³

- (a) developed a dedicated Advice Review Team to undertake remediation tasks,⁹⁴ and the establishment of the Remediation Governance Forum to oversee remediation activities;⁹⁵
- (b) developing an advice remediation framework;
- (c) implementing the use of advanced data analytics;⁹⁶ and
- (d) engaging external consultants for specialist assistance to expedite and ensure the robustness of its remediation programs.⁹⁷

57. ANZ also considers that remediation timeframes need to be flexible so as to allow the remediation of certain clients to be prioritised, such as where clients are suffering from financial hardship.

58. To ensure that clients who have received inappropriate advice are compensated for the time required to undertake a remediation program, ANZ includes in its compensation an amount for clients' lost earnings at a rate reflecting the rate of return appropriate to the risk profile of the client.⁹⁸ ANZ is committed to remediating all current inappropriate advice cases by the end of this calendar year.

Question 16: How should financial services licensees balance the need to ensure that employees are held responsible for misconduct against the risk that punishing poor behaviour will encourage employees to conceal that behaviour? [T1979:45-T1980:1]

59. ANZ acknowledges that one matter relevant to dealing with misconduct is the need to ensure that employees are held responsible for misconduct without, at the same time, exacerbating the risk that punishing poor behaviour will encourage employees to conceal that behaviour. This is facilitated by having a range of mechanisms to address poor behaviour, as described in the response to question 12 above.

⁹¹ First Rixon Statement (Ex. 2.152) at KR-31 (ANZ.800.359.1128 at 1173-1176); January Submissions at [5.64].

⁹² First Rixon Statement (Ex. 2.152) at KR-31 (ANZ.800.359.1128 at 1176-1182).

⁹³ First Rixon Statement (Ex. 2.152) at [163(f)] (ANZ.999.003.0001 at 0068); January Submissions at [5.67].

⁹⁴ First Rixon Statement (Ex. 2.152) at [156] (ANZ.999.003.0001 at 0066); January Submissions at [5.67(a)].

⁹⁵ First Rixon Statement (Ex. 2.152) at [156] (ANZ.999.003.0001 at 0066); January Submissions at [5.67(d)].

⁹⁶ First Rixon Statement (Ex. 2.152) at [93(c)(i)] (ANZ.999.003.0001 at 0059).

⁹⁷ January Submissions at [5.67(e)].

⁹⁸ January Submissions at [5.67(f)]; First Rixon Statement (Ex. 2.152) at KR-31 (ANZ.800.359.1128 at 1177-1179); T1549.15-37.

60. ANZ does not consider, beyond ensuring that only relevant matters are considered when dealing with misconduct, that there should be any limitation on what matters licensees take into consideration and how those matters are balanced in respect of misconduct. Rather, ANZ considers that licensees should consider any misconduct on a case by case basis. In this way, the licensee is best able to balance the need to ensure that employees are held responsible without also encouraging employees to conceal misconduct.
61. For example, some misconduct engaged in is through lack of knowledge or appreciation that the conduct is improper, whilst other misconduct that is engaged in is due to the dishonesty of the individual.⁹⁹ In some circumstances, the first kind of misconduct can be addressed through better education, whereas the latter kind may more readily be seen as something that ought to be the subject of sanction.

Question 17: How should financial services licensees recognise and reward ethical conduct by financial advisers? [T1980:1-2]

62. ANZ believes that the most obvious way to recognise and reward ethical conduct is through internal recognition by the licensee, as ANZFP does through the Balanced Scorecard system set out in its response to question 7.

Question 18: Are there particular characteristics of the financial advice industry which lead to there being a higher incidence of improper, unethical or dishonest conduct than in other industries? If so, what should be done to address that issue?; What are those characteristics? And what do you do about them? [T1980:2-12]

63. ANZ considers that there are 3 principal reasons as to why financial advisers engage in improper, unethical or dishonest conduct:¹⁰⁰
- (a) First, the financial adviser considers that their conduct is more convenient for both the financial adviser and the client.
 - (b) Second, the financial adviser wishes to address some deficiency in their documents to pass a compliance audit, to hide any mistakes they have made in the provision of advice and/or to avoid adverse impacts from a failed audit.
 - (c) Third, the financial adviser seeks to dishonestly obtain a financial gain.
64. ANZ is addressing improper, unethical or dishonest conduct amongst financial advisers through:
- (a) increased educational standards and qualifications that have been imposed by ANZ, and through the increased education standards, qualifications and entrance exams being introduced by the Financial Adviser Standards and Ethics Authority (**FASEA**), which ANZ supports;¹⁰¹
 - (b) the Code of Ethics being introduced by the FASEA, which ANZ supports;¹⁰²
 - (c) the use and strengthening of due diligence and on-boarding processes;¹⁰³
 - (d) the requirement for advisers to pass an annual assessment on its professional standards, including ethical questions concerning dishonest behaviour;¹⁰⁴

⁹⁹ First Rixon Statement (Ex. 2.152) at [60]-[63] (ANZ.999.003.0001 at 0054-0055).

¹⁰⁰ First Rixon Statement (Ex. 2.152) at [60]-[61], [63] (ANZ.999.003.0001 at 0054-0055).

¹⁰¹ First Rixon Statement (Ex. 2.152) at [163(c)] (ANZ.999.003.0001 at 0068); T1566.16-17, 29-35 and [69(a)(ii)(B)] below; Divisions 8A – 8C Part 7.6 *Corporations Act 2001*.

¹⁰² Code of Ethics, 20 March 2018, Financial Adviser Standards and Ethics Authority, <https://www.fasea.gov.au/consultations/code-of-ethics/>.

¹⁰³ See T1566:29-35 and [69(c)] below.

- (e) performance managing advisers who do not meet high standards, and in some cases, terminating those relationships;¹⁰⁵ and
 - (f) transforming the culture within ANZ to focus on placing the client at the centre.¹⁰⁶
65. Conduct where a financial adviser seeks to dishonestly obtain a financial gain relates to behaviour that is unique to that adviser's circumstances.¹⁰⁷ In addition to taking the steps referred to above, the risk of advisers who may be prone to engaging in such behaviour can be minimised through the use of mechanisms to test and determine the integrity of advisers including, for example, through the ASIC Financial Adviser Register and the ABA adviser Reference Checking and Information Sharing Protocol.¹⁰⁸

Question 19: Are the steps required by the ABA reference checking and information sharing protocol adequate to protect the public when financial advisers transfer between licensees [T1984:44-46]

66. ANZ supports the content of the ABA Reference Checking and Information Sharing Protocol. However, that protocol is currently only binding on licensees who have signed up to it.
67. ANZ considers that the ABA protocol should be binding on all licensees of financial advisers and asked the House of Representatives Standing Committee on Economics, 'Review of Australia's four major banks' for such changes on 11 October 2017.

Question 20: Should licensees be required to maintain a minimum degree of satisfaction as to the competence and integrity of applicants to become authorised representatives before authorising? If so, what form should that requirement take, and what minimum levels should be set? [T1984:46-T1985:1-2]

68. ANZ agrees that there should be minimum standards applied to ensure that licensees are satisfied as to the competence and integrity of financial advisers.
69. ANZ has adopted a number of different mechanisms to achieve that satisfaction, including through the use of:
- (a) minimum education and accreditation requirements for its advisers.¹⁰⁹ Those minimum requirements comprised:
 - (i) the guidelines set out in ASIC Regulatory Guide 146;¹¹⁰
 - (ii) minimum requirements that advisers hold Diplomas or Advanced Diplomas. However, in this regard:
 - (A) from May 2018, ANZ will require all new advisers to hold a relevant bachelor's degree (e.g. accounting, financial planning, law or economics) *and* to have a relevant professional certification (e.g. CFP, FchFP, CA, CPA, CFA). All existing advisers will also need to commence a pathway to attain that relevant bachelor's degree and

¹⁰⁴ See [69(e)] below.

¹⁰⁵ T1566:11-25; T.1568:4-13.

¹⁰⁶ T1561:2-7; T1562:36-43; T1566:40-41; First Rixon Statement (Ex. 2.152) at [47]-[48] (ANZ.999.003.0001 at 0053).

¹⁰⁷ First Rixon Statement (Ex. 2.152) at [63] (ANZ.999.003.0001 at 0055).

¹⁰⁸ See [69] below.

¹⁰⁹ First Rixon Statement (Ex. 2.152) (ANZ.999.003.0067 at 0006-0008 (ANZFP), 0009-0010 (FSP), 0011-0012 (M3) and 0013 (RI)).

¹¹⁰ See for example the discussions on margin lending in the First Rixon Statement (Ex. 2.152) (ANZ.900.003.0001 at 0007-0008 (ANZFP), 0010 (FSP), 0011-0012 (M3) and 0013 (RI)).

professional certification by 1 January 2019, and must attain them by 1 January 2023; and

- (B) in March 2018 the FASEA published a consultation paper as to further proposed minimum education standards for financial advisers due to commence in 2019, which ANZ supports, that would further enhance the minimum competency levels of advisers across the industry;¹¹¹ and
- (iii) the completion and passing of internal ANZ assessments;
- (b) minimum training and continuing professional development requirements,¹¹² failing which the adviser will be referred to the Consequence Management Forum and will be suspended from providing any further advice on behalf of the licensee (after a short grace period of approximately 1-2 weeks to meet those requirements);
- (c) due diligence and on-boarding processes that have been designed to determine, among other things, whether a financial adviser: (i) is competent at the provision of financial advice;¹¹³ and (ii) is a person of good fame and character.¹¹⁴ In addition, in March 2018 the FASEA published an exposure draft of a code of ethics for financial advisers, which ANZ supports, that would further enhance licensees being satisfied of the integrity of a financial adviser;¹¹⁵
- (d) the use of pre-vetting programs that must be adhered to before a financial adviser is authorised (or re-authorised) to provide statements of advice directly to the client;¹¹⁶ and
- (e) requiring advisers to pass an annual assessment on the content of ANZ's professional standards, failing which an adviser will be referred to the consequence management forum.¹¹⁷ That assessment includes ethical questions concerning dishonest behaviour.¹¹⁸

¹¹¹ Proposed Guidance on Education Pathways for All Advisers, 20 March 2018, Financial Adviser Standards and Ethics Authority, <https://www.fasea.gov.au/consultations/proposed-guidance-on-qualification-pathways-for-all-advisers/>; First Rixon Statement (Ex. 2.152) at [163(c)] (ANZ.999.003.0001 at 0068); Divisions 8A – 8C of Part 7.6 *Corporations Act 2001*.

¹¹² First Rixon Statement (Ex. 2.152) (ANZ.999.003.0001 at 0013-0014 (ANZFP), 0014-0015 (FSP), 0015-0016 (M3) and 0016-0017 (RI)).

¹¹³ For example, through the use of reference checks and, in particular, the ABA Reference Checking and Information Sharing Protocol, and the review of audits from previous licensees; First Rixon Statement (Ex. 2.152) (ANZ.999.003.0001 at 0017-0018 (ANZFP), 0020-0021 (FSP), 0022 (M3) and 0023 (RI)).

¹¹⁴ For example, through the use of reference checks, police checks, sanction checks, searches on ASIC registers, searches on APRA registers and bankruptcy checks (see footnotes 112 and 113).

¹¹⁵ Code of Ethics, 20 March 2018, Financial Adviser Standards and Ethics Authority, <https://www.fasea.gov.au/consultations/code-of-ethics/>; First Rixon Statement (Ex. 2.152) at [163(c)] (ANZ.999.003.0001 at 0068); Divisions 8A – 8C of Part 7.6 *Corporations Act 2001*.

¹¹⁶ First Rixon Statement (Ex. 2.152) (ANZ.999.003.0001 at 0024-0029 (ANZFP), 0029-0031 (FSP), 0031-0033 (M3) and 0033-0035 (RI)).

¹¹⁷ First Rixon Statement (Ex. 2.152) at [116]-[119] (ANZ.999.003.0001 at 0062). An adviser who is referred to the consequence management forum will be dealt with in accordance with the consequence management framework, which may include that adviser's authorisation to provide advice being suspended or terminated.

¹¹⁸ First Rixon Statement (Ex. 2.152) at KR-25 (ANZ.800.386.2778 at 2780-2781).

Question 21 - Are the general obligations set out in section 912A of the Corporations Act expressed at too high a level of generality to be capable of being effectively enforced? What alternative obligations would be more appropriate? [T1985:43-46]

70. In ANZ's submission, the obligations in s 912A are capable of effective enforcement. The general terms in which those obligations are expressed reflect that the obligations apply to the licensee's financial services generally and not only in particular defined circumstances. Many of the provisions of s 912A(1) are examples of 'open-textured' provisions, expressed in terms of norms and values that call for an evaluative judgment having regard to all the circumstances of the case rather than a unitary test designed to capture or recognise precise future applications:¹¹⁹ for example, s 912A(1)(a), (aa), (ca), (d) and (h). This is not novel. Many legal principles are expressed in terms of norms and values rather than specific definitions or linguistic prescriptions. The concept of 'reasonableness' is a general law example.¹²⁰ The statutory standard of unconscionability is a statutory example.¹²¹ Judicial evaluation of statutory norms proceeds by an established technique, guided by reference to the text, structure and context of the legislation, and with due regard to 'all connected circumstances'.¹²² Other provisions of s 912A(1) are expressed in general terms that pick up more detailed prescriptions elsewhere: for example, s 912A(1)(b) and (c).

Question 22 - Is the current division of responsibility for professional discipline of financial advisers between employers, ASIC and professional associations operating effectively to ensure that financial advisers face appropriate consequences for breaching their statutory and professional obligations? [T1985:46-1986:1-2]

Question 23 - Does that division of responsibility create gaps in the disciplinary system? If so, what are they? [T1986:4-5]

Question 24 - Is it possible to implement a single system for professional discipline of financial advisers? Would structural changes to the financial advice industry be required to bring that about? Would a system of licensing at both an individual and an entity level be more appropriate than the existing system of licensing only at the entity level? [T1986:5-9]

71. ANZ acknowledges that the arrangements and practices for professional discipline of financial advisers can be enhanced.
72. ANZ supports the existing regulatory reform efforts as an appropriate response to this. The *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* (Cth) will come into force progressively from 1 January 2019, and facilitates the introduction of a new Code of Ethics, education standards, and the establishment of an independent standards body. With the establishment of the new Financial Adviser Standards and Ethics Authority (**FASEA**), ANZ believes that there is an opportunity to codify and provide greater standardisation to industry professional bodies' requirements and disciplinary procedures and for that reason supports it.¹²³ ANZ is currently considering the approach it will take and the processes it will adopt for reporting misconduct under this new legislative regime.

¹¹⁹ Cf *Commonwealth Bank of Australia v Kojic* (2016) 249 FCR 421 at [85]-[86] per Edelman J.

¹²⁰ See for example *Hills & Company Ltd v Arcos Ltd* [1932] All ER 494 at 507 per Lord Wright.

¹²¹ For example, in ss 12CA and 12CB of the *Australian Securities and Investments Commission Act 2001* (Cth).

¹²² *Paciocco v ANZ Banking Group* (2015) 236 FCR 199 at [296]-[299] and [304]-[306].

¹²³ See [64] and [69] above.

73. The legislative reforms also require the establishment of new monitoring bodies (which can be a professional association or similar, but not an AFS licensee)¹²⁴ to administer compliance schemes, which will monitor adherence to the new Code of Ethics. ASIC has said that a monitoring body for a compliance scheme applies to it for approval of the compliance scheme, and ASIC will only approve a compliance scheme if it is satisfied that compliance with the Code of Ethics will be appropriately monitored and enforced, and the monitoring body has sufficient resources and expertise to carry that out.¹²⁵ There will be updates to the ASIC financial adviser register to include a more comprehensive information set on financial advisers. These legislative changes were designed to elevate the professionalism and education standards of the financial advice industry.
74. Further, on 16 April 2018, the Government released its response to the report of the ASIC Enforcement Review Taskforce, agreeing or agreeing-in-principle to all recommendations in the Taskforce report.¹²⁶ The Taskforce's terms of reference included the development of policy options to address gaps or deficiencies in the regulatory regime, so as to allow more effective enforcement. The Government has accepted a range of recommendations made by the Taskforce, including shifting to a co-regulatory model for industry codes, strengthening of ASIC's licensing powers, strengthening ASIC's banning powers, and granting ASIC a directions power. The increase in ASIC's responsibilities will improve its oversight of the industry, but appropriate resourcing should be provided to enable ASIC to manage their expanded role. In general, and subject to the form of any specific legislative proposals, ANZ supports the Government's position.

Question 25: Is there a particular regulatory culture that has developed in relation to the regulation of the financial advice industry? What is that culture and what has contributed to its development? [T1986:11-13]

Question 26: Has the existing regulatory culture in the financial advice industry contributed to the occurrence of misconduct in the financial advice industry? What changes in regulatory culture might assist in reducing the incidence of misconduct in the financial advice industry? [T1986:13-16]

75. In ANZ's experience, the 'regulatory culture' in relation to the financial advice industry is one of engagement with the regulator.
76. By way of example, ANZ refers to its notification to ASIC in August 2013 concerning the failure to deliver annual reviews to Prime Access clients. It was through this notification that ASIC first became aware of service non-delivery issues in the financial advice industry.¹²⁷ ANZ subsequently developed a comprehensive remediation program for affected clients in consultation with ASIC, as referred to in [5.10] of its submission dated 29 January 2018, and described in more detail in [3.1]-[3.18] of Part II of its submission dated 13 February 2018 and in the statement of Darren Williams.¹²⁸ ANZ's approach to breach reporting generally is addressed in [8.1]-[8.11] of its submission dated 29 January 2018.
77. ANZ disagrees with Professor Hanrahan's suggestion,¹²⁹ that 'black letter prescriptive rules and guidelines' have been introduced as a result of 'relentless industry pressure' and allow advice licensees to manage compliance risk by using a 'check-box approach'. ANZ

¹²⁴ Section 921G(3) of the *Corporations Act 2001*.

¹²⁵ <http://asic.gov.au/regulatory-resources/financial-services/professional-standards-for-financial-advisers-reforms/>

¹²⁶ Australian Government response to the ASIC Enforcement Review Taskforce Report, published by the Treasury on 16 April 2018.

¹²⁷ T1033:1-47.

¹²⁸ Williams Statement (Ex. 2.92) at [182]-[187] and [214] (ANZ.999.007.0001 at 0032-0033, 0036).

¹²⁹ Background Paper 7 published by the Commission at 12.

proactively monitors the quality and compliance of advice given by financial advisers through advice assurance audits, supervision of its financial advisers and vetting processes and is increasingly using technology to enhance that monitoring and supervision as well as to reduce the risk of non-compliant advice being given.¹³⁰ This is not a 'check-box approach' but rather a detailed and substantive analysis.

78. ANZ supports ASIC being a strong regulator and the 'user pays' model to enhance ASIC's surveillance and enforcement activities.

Question 28: Should the statutory carve-outs to the ban on remuneration including the recent carve-out in relation to insurance commissions be maintained. If so, why? [T1986:25-27]

79. For the following reasons (and see further the answer to question 3 above), ANZ submits that the Commission may require additional evidence of the matters that would be relevant for the purpose of formulating any proposed changes.
80. First, the legislative policy underlying the continued permissibility of life insurance commissions was that insurance advice would otherwise be unaffordable for some (FOFA Explanatory Memorandum at [3.77]).¹³¹ The Commission has not received evidence as to what, if any, increase in the cost of life insurance (and other) advice may result from prohibiting life insurance commissions.
81. Secondly, the reforms introduced by the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017* (Cth) commenced on 1 January 2018. ANZ submits that they should be allowed time to operate and for their impact on quality of financial advice to be assessed, before any further changes are considered. ANZ notes that ASIC is gathering data for the purpose of reviewing the impact of the changes.¹³²

7 May 2018

¹³⁰ First Rixon Statement (Ex. 2.152) at [23]-[25], [71]-[97], [134]-[140] (ANZ.999.003.0001 at 0024, 0056-0059, 0064).

¹³¹ See also T1453-1454.

¹³² Statement of Peter Kell dated 12 April 2018 (Ex. 2.1) at [100(a)] (ASIC.0092.0001.3284).