

**ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND
FINANCIAL SERVICES INDUSTRY**

**ROUND 4 HEARINGS – EXPERIENCES WITH FINANCIAL SERVICES ENTITIES IN
REGIONAL AND REMOTE COMMUNITIES**

**SUBMISSIONS OF ST ANDREW’S LIFE INSURANCE PTY LTD AND BANK OF
QUEENSLAND LIMITED – SELECT AFSL, TRADING AS LET’S INSURE CASE STUDY**

13 JULY 2018

A. INTRODUCTION

1. This submission addresses the findings proposed by Senior Counsel Assisting in relation to the Select AFSL, trading as Let’s Insure (**Select**) case study during closing submissions for the Round 4 hearings of the Commission on 6 July 2018.
2. This submission is provided pursuant to the grant of leave given to St Andrew’s Life Insurance Pty Ltd (**St Andrew’s**) and Bank of Queensland Limited (**BOQ**) by the Commissioner pursuant to paragraph 1 of the order granting leave to appear dated 28 June 2018. St Andrew’s is a subsidiary of BOQ, but BOQ has signed a contract to sell the St Andrew’s group of companies to the Freedom Insurance Group Limited.¹
3. The Select case study relates to the sale by Select of funeral insurance products to indigenous communities, in particular, the sale of two funeral insurance policies to Ms Kathy Marika in 2015.

**B. SUMMARY OF AVAILABLE FINDINGS PROPOSED BY SENIOR COUNSEL
ASSISTING**

4. Senior Counsel Assisting submitted that it is open for the Commission to make six findings of misconduct by Select, being:
 - (a) in the course of selling the funeral insurance policies to Ms Marika in September 2015, Select breached s 952C of the *Corporations Act 2001* (Cth) (**Corporations Act**) by providing personal advice to Ms Marika;
 - (b) in the course of selling the funeral insurance policies to Ms Marika in September 2015, Select breached s 992A(3)(e) of the *Corporations Act* by providing an oral product disclosure statement to Ms Marika without expressly obtaining her consent;
 - (c) by selling funeral insurance to Ms Marika, Select engaged in unconscionable conduct contrary to ss 12CA or 12CB of the *Australian Securities and Investments Act 2001* (Cth) (**ASIC Act**);
 - (d) the two sales representatives to which Select principally attributed the spike in 2015 funeral insurance sales engaged in unconscionable conduct contrary to ss 12CA or 12CB of the *ASIC Act*;

¹ ASX Media Release, ‘Acquisition of St Andrew’s Insurance & Trading Update’ (17 April 2018), <https://www.asx.com.au/asxpdf/20180417/pdf/43t8by662xx7xq.pdf/>.

- (e) Select failed to notify ASIC under s 912D of the Corporations Act that by the actions of its employees, it had engaged in significant breaches of its obligations under s 912A of the Corporations Act; and
 - (f) the actions of the two Select representatives constituted a breach of s 13 of the *Insurance Contracts Act 1984* (Cth).
5. Senior Counsel Assisting also submitted that it is open for the Commission to make four findings of conduct falling below community standards and expectations in relation to Select, being:
- (a) it was deeply inappropriate for the Select sales representative to induce Ms Marika to provide the names and contact details of a significant number of family and friends during the phone call on 10 September 2015;
 - (b) when coupled with Select's sales culture and Select's remuneration and KPI arrangements, the referral program used by Select clearly carried a risk that Select representatives would mis-sell funeral insurance policies;
 - (c) it was inappropriate for a Select representative to dissuade Ms Marika from cancelling her policies a week after she took them out by offering her one month's free coverage in circumstances where Ms Marika had expressed serious concerns about affordability; and
 - (d) contrary to ASIC's recommendation, Select fails to provide an upfront estimate of the total costs of its policies.
6. Senior Counsel Assisting submitted that it is open for the Commission to find that a number of the causes of the misconduct were attributable to Select's culture and governance practices, namely its sales training, remuneration and incentive structure and quality assurance system.
7. With respect to these submissions, St Andrew's and BOQ note the following:
- (a) from April 2013 to March 2018, Select sold life insurance products, including funeral insurance, underwritten by St Andrew's under a distribution agreement;²
 - (b) in October 2016, in the course of a routine product review, St Andrew's identified a 'spike' in sales of funeral insurance in postcodes with a high proportion of indigenous residents during 2015, and notified Select of this issue. By email dated 31 October 2016, Mr Patrick Moore of St Andrew's sought an explanation and other information relating to the spike.³ At this time, St Andrew's and BOQ commenced an investigation into this issue;
 - (c) in light of its concerns about Select's conduct, on 17 January 2017, St Andrew's made a voluntary disclosure to ASIC regarding this issue;⁴
 - (d) on 27 February 2017, representatives from St Andrew's and BOQ met with Mr Russell Howden and other representatives of Select to discuss Select's analysis of the spike and planned remediation;⁵

² Russell Howden at T3896.8-32.

³ Exhibit 4.178 (SAF.0004.0001.0207).

⁴ Mr Howden at T3952.9-10.

⁵ Exhibit 4.177 (SAF.0004.0001.0220).

- (e) BOQ and St Andrew's co-operated with and assisted ASIC in its investigation of the potential mis-selling of funeral insurance throughout 2017;⁶
- (f) in February 2018, Select provided St Andrew's with a copy of the letter it received from ASIC dated 2 February 2018⁷ and its response dated 23 February 2018;⁸
- (g) on 7 and 8 March 2018, St Andrew's conducted an onsite review to assess compliance with, and the effectiveness of, changes to sales processes and practices implemented by Select to address concerns raised by ASIC in its letter dated 2 February 2018;⁹
- (h) Mr Matthew Way of St Andrew's wrote to Mr Howden on 14 March 2018 stating, among other things, that it was the "strong position [of St Andrew's] that Select immediately cease the sales activities identified by ASIC, undertake all actions necessary to fully rectify the issues raised by ASIC and remediate affected customers fairly and in accordance with the guidance provided by ASIC";¹⁰
- (i) further, as outlined below, on 16 March 2018 (following the onsite review), St Andrew's requested that Select immediately put all proactive sales calls on hold until a range of actions had been completed, including review and approval of scripts and training of Select's personnel. Mr Howden subsequently agreed that Select would do so (St Andrew's and BOQ seek leave to tender additional documents, not previously produced to the Commission, to address this issue); and
- (j) in April 2018, the distribution agreement between St Andrew's and Select was terminated.

8. St Andrew's and BOQ wish to address two aspects of the evidence given by Mr Howden which they submit are inaccurate having regard to the matters set out below.

C. RESPONSE TO EVIDENCE GIVEN BY RUSSELL HOWDEN

9. During the course of the hearings, Mr Howden gave evidence that the contents of Exhibit 4.187 (BOQ.0001.0112.0092) were inaccurate. In particular, Mr Howden suggested that:
- (a) Select's responses to recommendations by St Andrew's and BOQ that it implement compliance changes were inaccurately reflected in an action plan commencing on page BOQ.0001.0112.0142 (**action plan**), as Select "never said" it would not implement those changes;¹¹ and
 - (b) St Andrew's "never told us to stop selling. We elected, Select AFSL, and, again, for commercial reasons, to stop selling".¹² Accordingly, Mr Howden gave evidence that the following statement on page BOQ.0001.0112.0141 was inaccurate:

⁶ See, for example, Exhibit 4.177 (SAF.0004.0001.0220).

⁷ Annexure RH-18 to the Statement of Russell Howden (Rubric 4-23) (SAF.0002.0001.0239).

⁸ Annexure RH-19 to the Statement of Russell Howden (Rubric 4-23) (SAF.0002.0001.0249).

⁹ See Exhibit 4.188 (ASIC.0025.0003.0790).

¹⁰ Exhibit 4.188 (ASIC.0025.0003.0790).

¹¹ Mr Howden at T3965.46 – T3966.2.

¹² Mr Howden at 3968.31-33.

5.2 *Management submitted their high level findings to Select on 16 March 2018 where a number of next steps were made as a result of the visit including that sales activity be ceased until such time the concerns raised in the findings and recommendations have been resolved to the satisfaction of all parties.*

5.3 *Select advised on 19 March that all sales activities had been ceased and would remain so until the parties could come to an agreement on sales processes and practices.¹³*

10. With respect to paragraph 9(a) above, on 23 January 2018, Mr Moore of St Andrew's sent Mr Howden a draft of the action plan containing Select's responses to St Andrew's and BOQ's recommendations provided in the course of a meeting on 18 January 2018.¹⁴ The covering email stated "[p]lease advise should you wish to amend any of the actions noted by COB 25th Jan". The responses to the recommendations for compliance changes are materially similar to those included in the final version of the action plan contained in Exhibit 4.187.¹⁵ Mr Howden was given the opportunity to correct these responses if they were inaccurate (as he suggested in the course of his evidence), but did not do so. St Andrew's and BOQ consider the minutes to be accurate and the clear inference to be drawn is that Select's responses to St Andrew's and BOQ's recommendations set out in the action plan were an accurate reflection of Select's position.

11. With respect to paragraph 9(b) above, as noted at paragraph 7(g) above, on 7 and 8 March, St Andrew's conducted an onsite review of the changes in sales processes and practices introduced by Select in response to, among other things, the issues raised in ASIC's letter to Select dated 2 February 2018. On 16 March 2018, Mr Moore of St Andrew's wrote to Mr Peter Keller of the BlueInc Group setting out the findings and recommendations from this onsite review.¹⁶ The email stated:

Next Steps

In light of our findings and the issues identified, we request Select takes the following actions to ensure the issues we have identified are addressed expediently:

Immediate

1. Proactive sales calls be put on hold until the following actions have been completed:

- *The system and hard copy scripts are reviewed and updated to ensure that they are fully aligned to the approved [St Andrew's] version. [St Andrew's] should have appropriate oversight of this process.*
- *Quality Assurance templates updated to ensure they include all items contained within the approved scripts. [St Andrew's] should have appropriate oversight of this process*
- *Refresher training to be provided to both Sales and QA staff to ensure that they are aware of and understand the new script and that it required to be read verbatim. Select to provide confirmation to [St Andrew's] when training for all staff has been completed.¹⁷*

¹³ Mr Howden at T3968.40 – T3969.6.

¹⁴ See BOQ.0001.0116.0001.

¹⁵ See BOQ.0001.0116.0002 at 0003-0004.

¹⁶ See BOQ.0001.0116.0007 at 0008-0011.

¹⁷ See BOQ.0001.0116.0007 at 0010.

12. Mr Howden subsequently wrote to Mr Way acknowledging receipt of Mr Moore's email referred to in the preceding paragraph and stating:

As you would be aware a key recommendation from Patrick is that 'proactive sales calls be put on hold' until certain actions are completed. In the circumstances, we confirm that we have suspended all Let's Insure sales and remediation activities (other than sending out dishonour notifications, processing changes of policyholders' bank details or requests to change payment dates) until such time as you and we can come to an agreement on the sales processes and practices.¹⁸

13. The documents referred to above make it clear that St Andrew's actively requested that Select cease sales activities until the actions referred to above were addressed. That was a request to which Select expressly acceded.

¹⁸ BOQ.0001.0116.0007.