



***ANZ submission to the Inquiry into
consumer protection in the banking, insurance and
financial services sector***

March 2017

ANZ SUBMISSION TO THE INQUIRY INTO CONSUMER PROTECTION IN THE BANKING, INSURANCE AND FINANCIAL SERVICES SECTOR

A. INTRODUCTION

1. ANZ welcomes the opportunity to assist the Senate Economics Legislation Committee's (**Committee**) *Inquiry into consumer protection in the banking, insurance and financial services sector* (**Inquiry**).
2. **The Inquiry's terms of reference cover diverse and important aspects of the financial consumer protection framework that applies within Australia.** ANZ believes that a strong framework is fundamental to the ability of the financial system to serve the financial needs and support the wellbeing of Australia's consumers. Trust in financial service providers is the sine qua non of an effective financial system.
3. **It is clear that financial consumers, particularly in the advice and life insurance markets, have not always been well served in recent times.** People affected by poor products and services have experienced financial harm and emotional stress. This is unacceptable. Reviews and action by individual financial service providers, industry groups and the official sector have been needed to address these failings and reduce the risk of their reoccurrence.
4. **This submission summarises our view of the framework for consumer protection in the banking industry and reforms to that framework now in train.** ANZ would be pleased to provide further detail on specific matters of interest to Committee members.
5. **ANZ always seeks to resolve any customer complaint or issue, either through our internal disputes resolution process and customer advocate or external dispute resolution bodies.** We welcome the opportunity to assist with any customer matters raised with the Committee. Where the Committee seeks our view, our preference is that the customer gives permission for ANZ to provide information or that the Committee requests relevant information from ANZ.

B. OVERVIEW OF REFORMS

6. **Since the end of the financial crisis, there have been well over 30 reviews of the Australian financial system (or parts of it) and its ability to serve financial consumers well.** These wide ranging reviews (detailed in Appendix 1) have comprehensively considered the key elements of the framework and made recommendations for significant policy reform.
7. **Post-crisis policy reforms provide consumers with significantly more protection.** Largely as a result of these reviews, Governments and industry have implemented major reforms to the framework under which Australians buy and benefit from financial services. Further reforms are currently proposed, under consideration or underway. These post-crisis developments are set out in the table on the following page. Australia's contemporary consumer protection framework is fundamentally different to the framework which applied before and during the financial crisis.
8. **The reforms improve the accountability of providers, strengthen protections from product development through to distribution, boost pro-consumer competition and enhance ASIC's powers.** The reforms cover the major issues of consumer protection: tougher enforcement, reduced information asymmetry through better disclosure, more complete alignment of interests between consumer and provider, enhanced internal oversight by providers and better competition so consumers are well-served.
9. **The reforms strengthen ASIC's ability to protect consumers.** The post crisis reforms have and will grant ASIC significant new powers to protect consumers' interests. Of note, these include the proposed introduction of a product intervention power.¹ As currently proposed, this would allow ASIC to ban product or product features for up to 18 months. It would then be open to Parliament to consider legal reform to continue the ban. This power matches powers granted to regulators in the European Union and the United Kingdom in recent years. A Government review is also underway concerning ASIC's enforcement powers.²

¹ The Australian Government the Treasury *Design and Distribution Obligations and Product Intervention Power* (December 2016).

² <http://www.treasury.gov.au/ConsultationsandReviews/Reviews/2016/ASIC-Enforcement-Review>

TABLE 1: SIGNIFICANT CONSUMER PROTECTION REFORMS

| POLICIES SUPPORTING ACCOUNTABILITY AND OVERSIGHT BY BANK LEADERSHIP | | | |
|---|---|---|---|
| <ul style="list-style-type: none"> • Advisor employment register/bank reference checking (2017) • ABA Guiding Principles for whistle-blowers (2016)/Review of whistleblowing protections (2017) • Accountable executive and risk management recommendations (Review of the Four Major Banks (Coleman), 2017) | | | |
| POLICIES SUPPORTING GOOD CUSTOMER OUTCOMES THROUGH PRODUCT AND SERVICE VALUE CHAIN | | | |
| PRODUCT FEATURES | DISCLOSURE | SALES AND ADVICE | POST-SALE PROTECTIONS |
| <ul style="list-style-type: none"> • Consumer credit reforms (2009) • Government credit card reforms (consulted in 2016) • New Payments Platform (end 2017) • APRA residential mortgage standards (2016/2017) | <ul style="list-style-type: none"> • Existing disclosure requirements • ASIC RG 221 allowing increased use of digital disclosure (2016) • Open data to allow customers to better compare products (future) | <ul style="list-style-type: none"> • FoFA reforms (2012) • Sedgwick remuneration review (Q1 2017) • Advisor professional standards body and code of ethics • Life insurance code of conduct review • Client money reforms (draft laws in 2016) | <ul style="list-style-type: none"> • External dispute resolution – proposed FOS changes (now) • Last resort compensation scheme (preliminary work now) • Customer advocate at all banks (2017) |
| <ul style="list-style-type: none"> • Product design/distribution obligation (consultation Q1 2017) • Reform of Code of Banking Practice (end 2017) • Carnell small business loan recommendations (released Feb 2017) | | | |
| POLICIES UNDERPINNING COMPETITION | | | |
| <ul style="list-style-type: none"> • Staged APRA accreditation for use of internal models (Dec 2015) • Proposed competition mandate for ASIC (future) • New misuse of market power provisions (draft laws now) • Unfair contract terms (2016) | | <ul style="list-style-type: none"> • Switching roundtable (March 2017) • Open data (future) • Regular government reviews of bank competition (proposed) • Government’s fintech agenda (announced 2016) | |
| POLICIES SUPPORTING REGULATORY ENFORCEMENT | | | |
| <ul style="list-style-type: none"> • ASIC enforcement review considering breach reporting/fines (review work H1 2017) • ASIC product intervention power (consultation Q1 2017) | | <ul style="list-style-type: none"> • Increased, and industry-based, funding for ASIC (consultation now) | |

10. **New obligations require providers to take consumer interests into account.** The enactment of the National Consumer Credit Protection Act 2009 (Cth) and the new best interests duty in section 961B of the Corporations Act 2001 (Cth) mean that credit providers and those giving personal advice (respectively) need to consider consumer interests. Credit can now only be extended when it is not unsuitable for the borrower and financial advisers need to meet prescribed steps when giving advice. Financial advice is also being strengthened through new training and standards.³
11. **The reforms also include increased obligations on issuers and distributors to consider the quality and appropriateness of financial products and services.** Supporting ASIC's intervention power and supplementing the credit laws detailed above would be an obligation on issuers and distributors to design and distribute non-credit products and services in a way that takes into account consumers' needs and ability to understand.⁴ While many financial service providers would already have product approval and distribution processes that incorporate these steps, the new obligations will provide additional clarity on optimal design and distribution.
12. **'Open data' reforms will further enhance the disclosure that consumers can use to understand and select products.** Digital technology and well-calibrated Government policy could increasingly allow providers to provide disclosure interactively and in ways that take better account of individual circumstances. ASIC has liberalised disclosure requirements to allow providers to use digital and innovative means of disclosure,⁵ while the use of data offers the prospect that consumers will be able to use algorithms and data concerning their financial behaviour to select optimal financial products and services.⁶
13. **Financial technology has significant potential to improve consumer outcomes generally.** Fintech offers the potential of innovation delivering new services to consumers. These can help consumers understand and control their finances. For example, ANZ's pairing with ApplePay allows customers to securely pay for purchases using their phone. ANZ supports Government policy to foster fintech innovation on the basis that consumer protections are consistently applied across the sector.

³ Hon. Kelly O'Dwyer *Higher standards for financial advisers to commence* (Media Release, 9 February 2017); available at: <http://kmo.ministers.treasury.gov.au/media-release/006-2017/>

⁴ The Australian Government the Treasury, above n 1.

⁵ Australian Securities and Investments Commission Regulatory Guide RG 221 *Facilitating Digital Financial Services Disclosure* (March 2016).

⁶ See recommendation 19 of The Australian Government the Treasury *Financial System Inquiry Final Report* (November 2014) and The Australian Government *Improving Australia's Financial System – Government response to the Financial System Inquiry* (October 2015). This recommendation has been carried through in work of the Productivity Commission. See Productivity Commission *Data Availability and Use, Draft Report* (October 2016). See recommendation 4 of the House of Representatives Standing Committee on Economics *Review of the Four Major Banks: First Report* (November 2016).

14. **Consumers will further benefit from a continued policy focus on competition within the financial services industry.** ANZ believes that the current financial services market is highly competitive. However, we support well-calibrated Government initiatives that seek to open up additional competition. Competition provides protections to consumers by forcing providers to focus on their service offering and pricing. Some of these policy measures include a proposed competition mandate for ASIC, the recommendation for a Government agency to undertake regular reviews of financial services competition⁷ and new competition laws.⁸
15. **Reforms to the external dispute resolution framework are intended to make it easier for consumers to get redress when things go wrong.** The Ramsay Review is examining Australia's external dispute resolution system.⁹ The review has made draft recommendations including that there be a single ombudsman service for financial, credit and investment disputes (other than superannuation) and that the current monetary caps be increased.
16. **Changes to small business lending following the Carnell Review will increase confidence that small businesses will be treated fairly.**¹⁰ Proposed changes include to the use of covenants in lending contracts, notice periods, a one page summary of clauses and covenants that might cause default, and a shorter and easier to understand lending contract.

C. BETTER BANKING INDUSTRY REFORM

17. **Comprehensive industry initiatives are augmenting Government policy initiatives to improve Australia's financial consumer protection framework.** The Australian Bankers' Association (**ABA**) *Better Banking* program of reforms will significantly improve the protections enjoyed by Australian consumers.¹¹ An Independent Expert, Mr Ian McPhee AO PSM, is overseeing the implementation of the program and reports quarterly on its progress.¹²
18. **A key element is the review of the Code of Banking Practice.** This code forms part of the contract between Code signatories and their customers. The Independent Reviewer, Mr Phil Khoury, published the Final Report on 20 February 2017 and the banking industry anticipates publishing its response in March.¹³ Review recommendations include a 'plain English' revision of the Code, greater focus on small business, and ASIC approval of the Code.

⁷ See recommendation 30 of *Financial System Inquiry Final Report and Improving Australia's Financial System*; and recommendation 3 of the *Review of the Four Major Banks: First Report*.

⁸ See *Competition and Consumer Amendment (Misuse of Market Power) Bill 2016* available at: http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5788

⁹ The Australian Government the Treasury *Review of the Financial System External Dispute Resolution and Complaints Framework Interim Report* (6 December 2016).

¹⁰ The Australian Small Business and Family Enterprise Ombudsman *Inquiry into small business loans* (12 December 2017).

¹¹ Industry reforms are primarily the six-point plan being implemented under the auspices of the Australian Bankers' Association: <http://www.betterbanking.net.au/>

¹² Mr McPhee's reports are available at <http://www.betterbanking.net.au>.

¹³ The report is available at <http://cobpreview.crkhoury.com.au>.

They also include requiring banks to take steps to identify and contact customers at high risk of future financial difficulty and offer assistance.

19. **An independent review into how banks pay staff is being conducted by Mr Stephen Sedgwick AO.** The aim of the review is to identify whether commissions, bonuses or other incentives in retail banking might motivate bank staff to focus on their financial interest rather than their customers'. Following a public consultation process, and with the help of legal and remuneration experts, the reviewer plans to present his findings by 31 March on how banks can ensure their pay structures align with good customer outcomes.
20. **Other elements of the bank reform program enhance whistle-blower protections, require banks to have customer advocate, and prevent employees with poor conduct records moving between banks.** In December 2016, new Whistle-blower Guiding Principles to help banks ensure their policies meet the highest standard were released. ANZ established a Customer Advocate role in 2002 to facilitate prompt and impartial conclusions to disputes. Banks are currently working on a protocol on background conduct checks with a view to completing it in March.

D. ANZ ACTIONS

21. **Individual banks are also initiating changes to better serve their customers.** ANZ has recently appointed Colin Neave as our Customer Fairness Advisor. Colin has had a distinguished career as a customer advocate including most recently as the Commonwealth Government Ombudsman. His role is to help ensure our products and services are fair and responsible. As a first step, Colin is helping us establish remediation principles so that we have a consistent set of standards for how we fix problems that affect our customers. He will also conduct a fairness review of our core retail deposit and credit products, including their fees and charges, to ensure they continue to operate fairly. Colin reports directly to ANZ's CEO and has a reporting line to the ANZ Board.
22. **ANZ acknowledges problems and changes its practices where shortcomings are identified.** The 2016 report of the Joint Parliamentary Committee Inquiry into Impairment of Customer Loans welcomed ANZ's acknowledgement that its treatment of customers could be improved and our implementation of better practices in agricultural lending.¹⁴ Improved practices included changing processes to take into account individual circumstances are more carefully, giving staff greater flexibility to assist customers manage through hard times, and increasing staff skill in the sector.

¹⁴ Parliamentary Joint Committee on Corporations and Financial Services Inquiry into *Impairment of Customer Loans* (May 2016) at paragraph 1.34.

23. **ANZ reports on volumes of complaints, customer advocate activities and hardship assistance in the annual sustainability review.**¹⁵ The review also includes information of broader interest such as voluntary tax transparency, environmental, health and safety, and diversity disclosures. ANZ believes that providing this information assists stakeholders to understand how ANZ manages key issues of community concern and promotes trust in the industry.

E. CONCLUSION

24. **Comprehensive reforms mean that Australia's consumer protection framework is markedly stronger and more consumer focused than ever before.** Australian consumers now (or soon will) benefit from a significantly enhanced consumer protection framework. This more muscular framework means that many of the policy gaps and organisational failings that have been identified through Australia's extensive inquiries and which allowed past instances of customer harm are largely now, or shortly will be, addressed.
25. **Historical failings of the financial services industry should be assessed against this new post-crisis consumer protection framework.** In considering whether past instances of consumer harm warrant further policy measures, it is important to ask whether such harm could have occurred if the new post-crisis reforms were in place. Many historical gaps in the consumer protection framework are addressed in the post-crisis reform work. As such, the starting point for analysis concerning further reforms is to ask whether existing post-crisis reforms would have prevented historical failings. Australia should allow the current raft of reforms to be fully implemented and their effectiveness assessed before pursuing further measures.

¹⁵ Available at <http://www.anz.com/about-us/corporate-sustainability/reporting-performance/sustainability-reporting/>.

APPENDIX 1 – POST CRISIS OFFICIAL INQUIRIES AND REVIEWS CONCERNING FINANCIAL SERVICES

| | BODY | TITLE | SUBJECT | STARTED | STATUS |
|----|--|---|---|----------------|---|
| 1. | Senate Select Committee | Lending to Primary Production Customers | The regulation and practices of financial institutions in relation to primary production industries, including agriculture, fisheries and forestry | Feb 2017 | Due to report by 18 October 2017 |
| 2. | Senate Economics Reference Committee | Consumer protection in the banking, insurance and financial sector | Protection of consumers, including small businesses, in the banking, insurance and financial services sector | Dec 2016 | Due to report Autumn 2018 |
| 3. | Senate Economics Reference Committee | Australia's general insurance industry | Broad ranging inquiry into the general insurance industry (eg cost, competition, legislation) | Nov 2016 | Due to report June 2017 |
| 4. | Joint Committee on Corporations and Financial Services (JCCFS) | Life Insurance | Inquiry into Life Insurance. ToR examining APRA and ASIC, the need for further reform, sales practices, claims avoidance. Expected to question the role of insurance in superannuation. | Sep 2016 | Due to report June 2017 |
| 5. | House of Representatives Economics | Review of Australia's four major banks | Financial market developments, prudential regulation and its effects, cost of funds and bank pricing decisions, and banks' responses to previous inquiries | Sep 2016 | First report handed down in November 2016; Second inquiry current |
| 6. | Federal Government | Small business lending practices (Carnell) | Adequacy of the law to address concerns raised by the Inquiry into Impairment of Customer Loans. | Aug 2016 | Report handed down in February 2017 |
| 7. | JCCFS | Whistleblower protections in the corporate, public and not-for-profit sectors | Whistleblower protections in the corporate, public and not-for-profit sectors | Jun 2016 | Due to report June 2017 |
| 8. | Federal Government | Review of external dispute resolution and complaints schemes (Ramsay) | Role, powers, governance and accountability of the existing external dispute resolution and complaints framework (eg FOS, Super tribunal) | May 2016 | Due to report March 2017 |

| | BODY | TITLE | SUBJECT | STARTED | STATUS |
|-----|--------------------------------------|---|---|------------|--|
| 9. | Australian Bankers Association | Better Banking Program | 1. Reviewing product sales commissions 2. Making it easier for customers when things go wrong 3. Reaffirming support for employees who 'blow the whistle' on inappropriate conduct 4. Removing individuals from the industry for poor conduct 5. Strengthening the commitment to customers in the Code of Banking Practice 6. Supporting ASIC as a strong regulator. | Apr 2016 | Underway, quarterly progress reports |
| 10. | Productivity Commission | Data availability and use | Benefits and costs of making public and private datasets more available. | Mar 2016 | Due to report March 2017 |
| 11. | Productivity Commission | Review into superannuation efficiency and competitiveness | The commissioned study will develop criteria to assess the efficiency and competitiveness of the superannuation system | Feb 2016 | Final report due Nov 2016 |
| 12. | Productivity Commission | Alternative default models | The PC was asked to prepare alternative models for a formal competitive process for allocating default members to products | Feb 2016 | Final report due Aug 2017 |
| 13. | ASIC | Advice compliance project | ASIC is reviewing major banks and AMP's approach to identifying and remediating systemic issues involving personal financial advice provided to retail clients | July 2015 | Ongoing |
| 14. | Federal Government | Financial System Inquiry (Murray) | Wholesale review of the financial system which resulted in 44 recommendations | Jan 2014 | Completed 7 December 2014 Government adopted 43 recommendations |
| 15. | ASIC | Report 492 – Sale of add-on insurance through car dealers | Examines the practice of selling 'add-on' insurance along with finance. Has implications for consumer credit insurance | Early 2016 | Reported in Sep 2016 |
| 16. | Senate Economics Reference Committee | White collar crime | Inconsistencies and inadequacies of current criminal, civil and administrative penalties for corporate and financial misconduct or white-collar crime | Nov 2015 | Re-referred in October 2016 – due to report in February 2017 |
| 17. | Senate Economics Reference Committee | Foreign bribery | Activities of Australian corporations, entities, organisations, individuals, government and related parties with respect to foreign bribery | Jun 2015 | Re-referred in October 2016 – due to report in June 2017 |

| | BODY | TITLE | SUBJECT | STARTED | STATUS |
|-----|---|---|---|----------|---|
| 18. | JCCFS | The impairment of customer loans | Numerous public hearings held looking at treatments of customers in default and use of "constructive default". Examined ANZ Landmark issues | Jun 2015 | May 2016 reported. Recommendations being examined through Gov Carnell and Ramsay reviews |
| 19. | Senate Economics Reference Committee | Matters relating to credit card interest rates | Recommendations on credit card reform including minimum repayment changes and responsible lending reforms | Jun 2015 | Dec 2015 reported. Government consultation paper (submissions closed 17 June 2016) |
| 20. | RBA | Review of Card Payments regulation | Review resulted in cost regulation for surcharges, lower interchange rates and regulating AMEX | Mar 2015 | Completed May 2016 |
| 21. | Productivity Commission | Business set-up, transfer and closure | Inquiry into barriers of setting up, transferring and closing a business and identify options for reducing barriers | Nov 2014 | Dec 2015 report. Govt supported changes to insolvency laws as a result |
| 22. | Senate Economics Reference Committee | Scrutiny of Financial Advice (SOFA) | Inquiry into the financial advice sector. Extended in Mar 2016 to look at life insurance. Life insurance inquiry passed to JCCFS in Sep 2016 | Sep 2014 | Re-referred in October 2016 – due to report in June 2017 |
| 23. | JCCFS | Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry | Report sought to provide a model to increase the professional standards of advisers, involving a co-regulatory approach where Government, professional associations, industry and academia set and manage standards | Jul 2014 | Dec 2014 reported. Treasury consultation process followed. Minister O'Dwyer has announced reforms |
| 24. | Senate Economics Reference Committee | Forestry managed investment schemes | Inquiry into the structure and development of forestry managed investment schemes. ANZ and Timbercorp were in scope | Jun 2014 | Mar 2016 reported |
| 25. | Financial Services Council (note: this is an <i>industry review</i> , prompted by the 2014 ASIC | Review into the Life Insurance industry (Trowbridge) | Recommended new remuneration arrangements, reducing or removing inefficiencies and conflicts in the industry and improving advice standards through increased education, training and professional requirements. | Oct 2014 | Mar 2015 reported. |

| | BODY | TITLE | SUBJECT | STARTED | STATUS |
|-----|--------------------------------------|---|--|----------------|---|
| | inquiry) | | | | |
| 26. | ASIC | ASIC Report 413 – Review of retail life insurance advice | Presented the findings of ASIC’s research into, and surveillance of, personal advice given to consumers about life insurance. Of the 202 files reviewed, 63% were rated a pass while 37% were rated a fail—that is, they did not comply with the law | Sep 2013 | Oct 2014 reported. |
| 27. | Senate Economics Reference Committee | The post-GFC banking sector | An examination of post-GFC banking developments including the impact of international regulatory changes on Australia | Mar 2012 | Nov 2012 reported |
| 28. | Productivity Commission | Default Superannuation Funds in Modern Awards | Placed default super in the industrial relations system. Resulted in the establishment of the (defunct) Expert Panel of the Fair Work Commission. FSC subsequently has the expert panel dismissed in court | Feb 2012 | Oct 2012 reported |
| 29. | JCCFS | Access for small and medium business to finance | The types of finance and credit options available to SMEs in Australia and the current levels of choice and competition between lending institutions | Nov 2010 | Apr 2011 reported |
| 30. | Senate Economics Reference Committee | Competition within the Australian banking sector | Competition within banking including between bank and non-bank providers | Oct 2010 | May 2011 reported |
| 31. | Federal Government | Compensation arrangements for consumers of financial services (St John) | Looked at compensation for losses by retail financial services clients attributable to misconduct by licensees. Considered a last resort compensation scheme | Apr 2010 | Apr 2012 reported. Did not recommend a scheme but more rigorous compliance. Labor gov did not respond |
| 32. | Senate Economics Reference Committee | Access of small business to finance | This inquiry investigated the current circumstances of issues surrounding access of small businesses to finance | Feb 2010 | Jun 2010 reported |
| 33. | Senate Economics Reference Committee | Bank Funding Guarantees | The circumstances and basis of the decision to introduce an unlimited bank deposit guarantee | Jul 2009 | Sep 2009 reported |
| 34. | Federal Government | The Super System Review (Cooper) | Covered the governance, efficiency, structure and operation of the superannuation system. Following the Cooper review, Treasury consulted on components of the reforms (MySuper, SuperStream, SMSF, governance) | May 2009 | Jun 2010 reported. Led to the Stronger Super reforms of the Labor Gov in 2011 |

| | BODY | TITLE | SUBJECT | STARTED | STATUS |
|-----|--------------------------------------|---|---|----------------|--|
| 35. | JCCFS | Aspects of agribusiness managed investment schemes | Examined the collapses of Timbercorp and Great Southern schemes | May 2009 | Sep 2009 reported. |
| 36. | JCCFS | Financial Products and Services in Australia (Ripoll) | The issues associated with financial collapses, such as Storm Financial and Opes Prime | Feb 2009 | Nov 2009 reported. Labor Gov developed the FOFA reforms in response, including the best interest obligations |
| 37. | Senate Economics Reference Committee | Aspects of bank mergers | The economic, social and employment impacts of the recent mergers among Australian banks. | Nov 2008 | Sep 2009 reported |