

## HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

### REVIEW OF THE FOUR MAJOR BANKS (SECOND REPORT)

#### Australia and New Zealand Banking Group Limited

**ANZ35QW: Small Business and Family Enterprises Ombudsman**

The Australian Small Business and Family Enterprises Ombudsman recently gave evidence to the Senate Economics Committee that some cases they were looking at in relation to their small business loans inquiry were settled, including 'fairly dramatic' confidentiality agreements? Did your bank procure the signing of confidentiality agreements in relation to cases that were being considered by the Ombudsman in relation to this inquiry?

**Answer:** ANZ does not use confidentiality clauses in settlement agreements to constrain customers from participating in Parliamentary Inquiries.

ANZ's general position in relation to confidentiality clauses in settlement agreements is set out in our March 2016 supplementary submission to the Parliamentary Joint Committee Impaired Loans Inquiry. Confidentiality clauses give ANZ more scope for flexibility in reaching settlements with customers and allow the parties to settle matters commercially. It reduces the likelihood of a settlement outcome being published and potentially creating unrealistic expectations for customers whose circumstances and banking relationships are different.

During the *Inquiry into Small Business Lending* by the Australian Small Business and Family Enterprise Ombudsman (ASBFEO), ANZ was asked questions regarding three former ANZ customers. ANZ had settled with two of the three customers, by way of agreements signed in July 2011 and September 2012. Both customers received independent legal advice on the terms of settlement before signing.

The confidentiality clauses contained in the two agreements are reproduced below:

#### **Customer 1 – Agreement signed July 2011**

##### *8.3 Confidentiality*

*This document and all matters relating to this document are and remain strictly confidential. Except as required by law or permitted by this document those matters must not be disclosed by any party to any person, whether directly or indirectly, in any manner whatever without the prior written consent of all of the other parties to this document, except on a confidential basis to their respective officers, employees, professional or financial advisors or appointors or pursuant to any statutory requirements, or if such disclosure is reasonably required for the purposes of any legal, mediation or arbitration proceedings, or if the subject matter of such disclosure is already generally known to or generally available to the public.*

**Customer 2 – Agreement signed September 2012**

9. *Confidentiality*

*This Deed and all matters relating to this Deed are and will remain strictly confidential and must not be disclosed to any other person, whether directly or indirectly, without the prior consent of the other except:*

- (a) As is required to perform or enforce any provision (including enforcement for a breach) of the Deed;*
- (b) As is required by law;*
- (c) On a confidential basis to the parties' respective professional advisors, insurers and as the case may be to their Related Body Corporate, officers and employees; or*
- (d) Pursuant to any statutory requirements.*