ANZ Submission to the Senate Select Committee Inquiry into Lending to Primary Production Customers

May 2017

A. SUMMARY

1. Agriculture is an important sector in the Australian economy and a foundation for regional and rural communities. ANZ is a long term supporter of the sector. We have around 24,000 agriculture customers and ANZ loans to Australian agriculture totalled over $13.1 billion as at 31 March 2017. We regularly publish studies on how to develop the sector such as "Funding the Future", promote international trade and export opportunities for our agriculture clients, and provide extensive assistance to sectors or regions facing difficulties.

2. ANZ considers that our agriculture business is very sound. ANZ's loss rate for the 12 months ended 31 March 2017 was approximately 0.34%of the entire portfolio. In broad terms, the sector is not stressed and the overwhelming majority of the portfolio is financially sound.

3. The success of our customers' businesses is fundamentally important to ANZ. Where customers experience financial difficulty, we work with them to identify issues quickly and restore them to financial health. In a small number of cases where this is not possible, we seek to minimise losses to their business and to ANZ.

4. Credit and risk management is an essential bank function. Although the scale of bank lending is very large, the profit margin on bank lending is relatively narrow. For the ANZ Australia division as a whole (including most agricultural lending), the return on assets is ~1.1%.[1] A relatively small deterioration in loan portfolio performance would have major impacts on the bank and its profitability.

5. ANZ uses both qualitative controls and quantitative models in risk management and lending decisions. Agriculture lending takes into account the borrower and their farming capability, cashflows and financial projections, security, and relevant industry characteristics.

6. The capacity of a borrower to repay is the central consideration in all lending decisions. Repayment of a loan means that the customer is achieving their business objectives and ANZ can meet its commitments to depositors, wholesale lenders and shareholders.

7. We have made substantial improvements to our approach to working with agricultural customers in difficulty since 2014. These include establishing a dedicated Agribusiness team within our Lending Services area that deals with customers in difficulty, increased customer visits, offering greater assistance to customers (eg paying for independent legal and financial/operational advice for the borrower), and a focus on finding more flexible solutions aimed at keeping farmers on their land. New guidelines include the requirement that senior executive approval is obtained for the rare circumstances where ANZ takes action under its security documents.

[1] Return on assets (ROA) is the net income after costs divided by average assets. ROA is reported for Australia as a whole but not separately for agriculture because of the complexity of accounting for joint costs and resources shared by agriculture and other ANZ business segments.

8. In the overwhelming majority of cases of financial difficulty, ANZ successfully works with customers to agree strategies that return the business to a stable footing or allow the customer to restructure their businesses voluntarily. This is the best possible outcome for the customer and the bank. We would be happy to respond in detail to any cases referred by the Committee where customers remain dissatisfied with ANZ.

9. In recent years, ANZ has worked to resolve issues with a number of dissatisfied agribusiness customers with long standing issues. This work is largely complete. We will continue to look into situations where any customer feels they have not been treated fairly and, where this is shown to be the case, ANZ will work with those customers to set matters right.

10. ANZ does not engage in the alleged practice of constructing a default or use non-monetary conditions of default to move to enforcement action. In 2015, we undertook an assessment of our lending for a submission to the Joint Committee on Corporations and Financial Services Inquiry into the Impairment of Customer Loans. It showed that as at 31 March 2015, of the 30 agribusiness customers where ANZ had taken action under its security documents, all 30 were in monetary default and had been for a substantial period of time and the monetary default was relied upon to take possession of property held as security by ANZ.

11. In the 18 months from 1 October 2015 to 31 March 2017, ANZ has appointed an insolvency practitioner in relation to an agribusiness customer on six occasions. In each of these cases, the decision was made at the request of the customer who, after receiving their own independent legal advice, believed that this action was in their best interests.

12. In responding to the recent Australian Small Business and Family Enterprise Ombudsman's (ASBFEO) inquiry, ANZ has agreed to make changes to simplify its loan contracts for small business, including agribusiness. These changes include reducing the number of non-monetary default clauses, removing financial indicator covenants for the vast majority of lending to small business customers and providing increased notice periods for key changes (eg 90 days’ notice where a loan is not to be rolled over).

13. Since May 2016, ANZ has adopted the practice of providing the customer with a copy of instructions and the final valuation report where a customer has paid for an external valuation. Where an investigating accountant is appointed by ANZ, ANZ has also adopted the practice (since March 2017) of providing the customer with a copy of the instructions and a full copy of the final report.

14. Agribusiness customers in dispute with ANZ can contact the relevant ANZ Manager, ANZ Internal Dispute Resolution, the ANZ Customer Advocate (who provides an independent internal review), or the Financial Ombudsman Service (FOS). It is ANZ’s practice in all cases involving a dispute that may lead to ANZ taking action under its security documents, that ANZ seeks farm debt mediation prior to taking any action. ANZ supports increasing the jurisdiction of FOS to cover a larger range of disputes and a national farm debt mediation approach.

B. ANZ INVOLVEMENT IN AGRICULTURE

15. ANZ is a long term supporter of the agriculture sector:

    a. As at March 2017, ANZ agricultural lending was $13,190m, up from $11,323m in March 2012: a growth rate of around three per cent per year.[2]

    b. We have approximately 24,000 customers in our agricultural portfolio, whose facilities with ANZ range from asset finance through to complex corporate lending. Around half of this number of customers have lending limits under $100,000 and three quarters have lending limits less than $500,000.

    c. The majority of lending (83% by value) is managed through the ANZ Regional Business Bank. Seven per cent is managed through the ANZ Retail Division (non-complex lending under $1m) and ten per cent is managed through the ANZ Institutional Division.

16. ANZ provides a range of support for the rural sector and assistance to the community:

    a. *Disaster and drought assistance:* assists customers experiencing financial difficulty as a result of natural disasters such as drought, cyclone, or floods, and also in cases such as the 2016 drop in dairy prices or storms affecting crops. For example, ANZ has announced assistance measures for customers affected by Cyclone Debbie including suspending repayments on loans, and temporary adjustments to existing lending limits.

    b. *Seeds of Renewal:* Since 2002, the ANZ Seeds of Renewal program has provided total of $3m in grants to support over 750 community projects around the country. The focus is on creating education and employment opportunities that offer long term benefits to rural communities.

    c. *Opportunity Asia customer trips:* We regularly take customers and industry to engage with the market in Asia and identify new opportunities.

    d. *Insights:* We produce regular reports including recently "The Sheep's Back", "Cattle Call" and "Funding Our Future" that assist customers and investors.

    e. *Sponsorships and field days:* ANZ regularly attends and presents at key field days in all States.

    f. *Education:* We have provided education and information courses such as financial markets for women to help build knowledge and expertise in currency, commodity and financial market instruments. The ANZ Business Growth program helps small and medium companies increase their rate of growth. ANZ supports the Horizon scholarship (through Rural Industries Research & Development Corporation) and the Nuffield scholarship, and has an annual intake of graduates to its regional business.

17. Agricultural income is volatile and cyclical as a result of variable seasons and global commodity price fluctuations. Despite this volatility, Australian farms have

[2] As measured by Exposure at Default (EAD), that is the outstanding debt at default.

achieved high productivity growth and been managed well overall. Trends that have contributed to the performance of the sector to date and that ANZ sees continuing are:

a. Farmers continue to build equity as a buffer against the occasional poor season. For example, Farm Management Deposits have increased 34% in 3 years, while debt levels have not increased markedly compared to capital values.

b. Continuing consolidation of the farming sector, reflecting benefits of economies of scale, greater access to superior technologies and greater management depth available to larger businesses.

c. Increasing capital intensity, particularly to increase use of machinery and equipment and to achieve larger scale.

d. Continuing application of new agricultural science, technology and business techniques.

e. Increasing use of skilled professionals including farm managers, agricultural consultants, lawyers and accountants.

f. Growing attention to the end-to-end supply chain, logistics and integration between the farm and end purchasers. [3]

18. As has been commented on by the Agricultural and Resource Economics and Sciences (ABARES), there are significant differences between different types of farms. On average, the level of farm debt is quite low.[4] Larger farms are much more profitable than smaller farms, and consequently take on most debt. Around 12% of broadacre farms account for 70% of farm debt, and around half of production.

19. ANZ has identified that there are substantial opportunities for growth in the sector but new investment is needed. The November 2016 ANZ report, *Australian Agriculture - Funding Our Future* identified sources of demand such as expanded trade under new free trade agreements, growing regional middle class consumption, or increasing Australia's share of global exports (current share is 3% by value, or (~1.1% in volume terms).

20. Australian farmers have faced significant challenges in raising capital to grow and support their existing business. Most farmers have used retained earnings and bank debt to grow. *Funding our Future* argues that the agricultural sector would benefit from more diversified funding including a greater role for superannuation funds and agricultural fund managers, partnerships or investment by offshore companies, or sale and leaseback arrangements for land.

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[3] See discussion of these factors, page 83 on in *Transitioning Regional Economies*, Productivity Commission Initial Report, April 2017.
[4] ABARES Australian Agricultural and Grazing Industries Survey indicates 88% equity ratio for an 'average' broadacre farm. 'Broadacre' is essentially non-intensive farming: wheat and other crops, mixed livestock-crops, sheep, beef, or sheep-beef.

C. LENDING PRACTICES

BANK FUNDING

21. Banks raise funds from depositors, wholesale lenders and shareholders, which are then used to lend and provide products and services to our customers.

22. The cost of funds varies according to the risks and obligations associated with particular type of funds and market conditions. Funding from depositors and wholesale lenders is less expensive than shareholder's equity. Equity is most expensive because shareholders are most exposed to risk.

23. Funds from these sources form a pool, from which loans to customers are made or bank products funded. The interest rate that we charge our customers varies according to the risk characteristics of the customer, product or service and takes into account the level of certainty that funds will be repaid, the term of the loan and any security provided by the customer. The interest rate charged by ANZ to customers will be lower if the risk of default is lower, the term of the loan is shorter or if there is more security.

24. Bank balance sheets are very large, proportionate to the role of banking in funding the Australian economy. Net loans and advances for the ANZ Australia division were $327bn as at September 2016.

25. The net return or profit margin on bank assets (that is the profit for shareholders - after taking into account deposit and funding costs, and product costs - compared to bank assets) is nevertheless low. As at September 2016, Return on Assets was 1.1% for the ANZ Australia Division.

26. A relatively small deterioration in loan portfolio performance can have a major impact on bank profitability given this relatively low overall return on assets. For this reason, risk management in lending is a core function of the bank.

CREDIT RISK MANAGEMENT

27. ANZ's lending business and credit risk management is segmented into retail and wholesale customers.

28. Retail customers include personal lending (personal loans, credit cards, mortgages) and small business lending (including agriculture) up to $1m. Retail rating models are developed to deal efficiently with high volumes of customer applications with limited variation and complexity.

29. Wholesale customers include larger and more complex businesses. Wholesale rating models are built for lower volumes of transactions and take into account more specialised features of particular customer groups.

30. By value, most of the ANZ agriculture portfolio is managed as wholesale customers, although the majority by number are managed as retail customers.

31. ANZ lending managers will consider the following (in addition to use of rating models) when lending to customers:

    a. *People:* experience in industry and geography, strength of processes around decision-making, third party advisers, growth strategy and governance.

    b. *Cashflow:* historical profitability, sensitivity analysis, diversity in income, stability, ability to withstand shocks such as seasonal impacts and commodity price volatility, and quality of offtake arrangements and market.

    c. *Industry (including commodity and geography):* may consider scale, quality and volatility of production, reputation, role in the industry and tenure. Attention is paid to the commodity outlook, farm location, rainfall and climate.

    d. *Security:* is generally held in land value, but can also be held in livestock and crops, machinery and guarantees.

32. In analysing a loan application, the primary assessment factor is the customer's ability to repay the loan, that is their capacity to service the debt. The customer is allocated a risk grade, which in ANZ is an assessment of the customer's probability of default or not repaying the loan, coupled with a security indicator representing the loan to valuation ratio. Both of these influence pricing.

33. Quantitative rating modelling used takes into account four primary factors:

    a. *Financial analysis* including business size and turnover, asset growth, profitability, leverage (debt/equity) and ability to meet financial obligations, liquidity and efficiency of the business.

    b. *Prior account behaviour* such as conduct of their cheque account, repayment arrears, number and reason for loan increases in the past 12 months, and provision of financial information demonstrating business performance.

    c. *Industry specific information* including the industry segment, industry trends and government policy impacts.

    d. *Structural characteristics* such as management quality, reliance on or concentration of suppliers/purchasers and dependence on customer geography or parent company.

34. The models and methodologies used by ANZ are overseen and approved by APRA.

35. As well as using rating models, lending managers exercise judgement in assessing applications. Larger, riskier and more complex applications are escalated to senior and more experienced lending managers.

36. ANZ wants to see customers maintain profitability, as well as grow and develop in line with their business objectives. This is in the customer's and ANZ's common interest.

37. Credit management and risk assessment continue through the life of a loan. This allows ANZ to provide support and advice to the customer taking into account the changes that might be occurring to their business or industry.

COVENANTS IN LENDING

38. The banking industry including ANZ has agreed to make changes to small business contracts and policies in response to concerns raised in the 2016 Parliamentary Joint Committee on Corporations and Financial Services inquiry into Impairment of Customer Loans (PJC) and the ASBFEO inquiry into small business lending practices. These include minimising and simplifying the use of covenants (see Box 1).

39. Financial ratio covenants will be eliminated for the vast majority of small business lending. They will be necessary in more complex lending to assist the bank and customer monitor the business's financial health and recognise early warning signs of financial problems. They provide information that reduces risk and allows banks to offer more credit with longer term and lower cost than would otherwise be the case.

40. There has been allegations made that financial covenants or non-monetary default covenants are used by banks as a basis for enforcement action against customers. ANZ has rejected such allegations in multiple inquiries and continues to do so.

Box 1: Summary of response to ASBFEO recommendations

Small business definition

- Total business lending to the business group is up to $3 million, and there are no more than 20 employees (or up to 100 employees for manufacturers), and turnover is less than $10 million.

Reform oversight (recommendation 1)

- Bank progress reported by Ian McPhee, former Commonwealth Auditor General.

Code of Banking Practice (recommendation 2)

- Code redrafted in plain English and to be approved by ASIC.
- Redraft targeted for 2017 with implementation over following year.

Loan conditions and covenants (recommendations 3, 6 and 7)

- Simplified version of the main ANZ small business loan contract for new customers and existing customers who take out a new loan.
- Remove from ANZ general conditions those clauses which allow ANZ to treat a customer as being in default where there is a material adverse change to the business.
- Reduce the number of specific event clauses that could result in bank enforcement action if breached (remaining clauses will be unlawful behaviour, insolvency, misrepresentation, change in beneficial control of the company, loss of licence to conduct business, and failure after a reasonable period to provide proper accounts).
- No financial indicator covenants, such as loan-to-value ratios, for the vast majority of ANZ small business customers.
- Financial indicator covenants will be necessary where the loan purpose contains an underlying complexity (e.g. SMSF lending, property development, property investment and tailored cash flow lending), or the product is deemed to be 'complex' (e.g. markets based products, trade based products, FX type loans).

Notice periods (recommendations 4 and 5)

- 30 calendar days' notice where a bank exercises the power to unilaterally vary a particular small business's credit contract in a way that is 'materially adverse'.
- 90 calendar days' notice by a bank where the bank intends not to roll over a loan on maturity.
- Principle that the customer should be given sufficient time in which to find alternative financing, including a longer period for rural properties.

Valuers, receivers and investigating accountants (recommendations 8 to 10)

- ANZ practice is already to provide customers with a copy of a valuation and instructions relating to that valuation where they pay for it.
- Develop industry guideline for valuation practices, and appointment of investigative accountants, receivers, administrators and liquidators.
- Provide the customer with a copy of the full instructions to and the final report provided by an investigative accountant to a bank.
- Bank to examine any perceived conflict of interest raised with it relating to the appointment of an investigating accountant as a receiver. Where a conflict is established, principle agreed that it would not be appropriate for the investigative accountant to be appointed as receiver.

Customer advocate (recommendation 12)

- ANZ customer advocate, including for small business and farmers, since 2003.

Notes: Carnell recommendations 11, 13, 14 and 15 are for Government. Further detail will be determined as implementation plans are developed and operational matters are taken into account

D. CUSTOMERS IN DIFFICULTY

ANZ'S APPROACH

41. ANZ aims to work with its agribusiness customers experiencing financial difficulty to help them get back on track. We consider this process generally has worked for the benefit of our agribusiness customers and the bank.

42. New policies have been introduced since 2014, recognising the need for more empathetic and specialised management. Changes include:

    a. *Increased preparedness to offer additional support* to customers at higher risk where needed. This includes counselling to assist customers facing hardship or mental health issues, financial assistance to support farmers choosing to relocate off the land, ANZ contributing to the customers' legal or financial advice costs, payment of costs to upkeep the property (e.g. animal health, cleaning, mowing and general maintenance work) and interest rate relief in cases of extreme financial distress.

    b. *A dedicated Agribusiness team* with an appropriate depth of industry expertise.

    c. *More regular customer communication and on farm visits* to customers.

    d. *Heightened focus on improving customer retention rates* including finding tailored or flexible solutions to keep customers on the land.

    e. *Introduction of new guidelines* including approval at senior executive levels for any proposed enforcement action. This ensures that all other avenues have been explored and exhausted with the customer and the customer understands the process, before any action is taken by ANZ under its security documents.

43. Steps taken by ANZ to manage customers in financial difficulty broadly include:

    a. *Stage 1: Monitor and manage* – customer still managed by the regular front line relationship manager, notwithstanding increased risk. Consideration is given as to how to manage and mitigate the increased risk, such as lending the customer more money to farm another season or make capital improvements to assist profitability.

    b. *Stage 2: Escalation in oversight – shadow process*. A Lending Services manager is appointed to shadow the management of the customer. The front line manager continues to manage the account and has all customer interactions and a plan focused on turnaround is worked through. The key here is that, notwithstanding the increased risk and the possibility of default, the front line are still assisting the customer for as long as possible.

    c. *Stage 3: Complete due diligence, agree customer turnaround strategy, monitor against strategy* – Lending Services control. Once it is agreed that the customer and ANZ can benefit from the additional management by skilled restructuring bankers, the file is transferred to Lending Services for full management including customer interaction. A revised turnaround plan will then be agreed and documented with the customer and monitored over time. The turnaround plan is specific to the circumstances of each individual customer and can include options such as deferral of principal repayments, reduction in interest rates, or debt restructure. In the case of Agribusiness customers, the need to fund the next season's plantings is also a key consideration.

d. *Stage 4: Determining alternatives.* If a customer's situation (performance and risk profile) does not improve, then ANZ's Lending Services team will continue to discuss alternatives with the customer. If a new plan can be agreed on, which will be specific to the circumstances of each individual customer, this may take another 12 months or longer to work through. If plans do not work, a point is reached where joint recognition that the business is not viable is reached. In all cases, where it is determined that a customer's business is no longer viable with its current debt level, and sale of some assets or the entire business as a going concern is the solution, the customer is asked to arrange a voluntary sale. ANZ recognises that assets sold voluntarily will usually attract a higher price than assets sold by a mortgagee. A strong plan to protect the customer's remaining equity becomes a priority.

e. *Stage 5: The last resort* – taking possession of property. In a very small number of cases, a customer may be unable to improve their business and cannot meet previously agreed commitments. The customer at this point has been unable or is unwilling to sell assets at the market price that has been determined by their voluntary sale program. After all avenues for improvement have been exhausted, ANZ may then elect to exercise its rights to take possession of the property or appoint an insolvency practitioner over the company or security property. In almost all cases, it would take a number of years to reach this point. In every case of ANZ taking action in the last 18 months, our customer has requested or invited us to take this action, recognising that their options were exhausted.

44. Where taking action is absolutely necessary, final payment notices may be served on the customer following the failure of protracted attempts to resolve issues including farm debt mediation and when there are no other alternatives. We endeavour to ensure a 'no surprises' approach so our customers are aware of our position and to ensure a fair notice period is given before any action is taken.

45. It should be recognised that by the time ANZ takes action under its security documents, the customer has always exhausted all other possibilities to meet their commitments to the bank and other creditors. We estimate that in the past the time between ANZ first issuing a breach or default notice and ANZ taking action under its security documents is on average a period of over 2.5 years for Agribusiness customers.

ACTION UNDER ANZ SECURITY DOCUMENTS

46. In the 18 months from 1 October 2015 to 31 March 2017, ANZ has only taken action under its security documents in relation to six agricultural customers. In every case the action was taken at the request of our customer. That indicates that after taking appropriate advice, the customer reached the conclusion that the bank taking action was in their interests and the best outcome for all parties.

47. The low level of activity reflects improvements to ANZ policies and processes, and specialist approach of the Agricultural team within Lending Services.

48. ANZ legal or recovery action is costly for all parties and only considered as a last resort, when all other avenues are exhausted. A directly negotiated agreement, or an agreement resulting from mediation, is generally faster, less costly and less distressing for all parties than an enforcement action.

49. Mediation typically takes place after attempts have been made by ANZ to resolve issues with its farming customers. ANZ supports the move towards a national farm debt mediation process. It is ANZ's practice in all cases involving agriculture customers that ANZ seeks farm debt mediation prior to taking any action under its security documents. This approach is adopted even in jurisdictions where Farm Debt Mediation is not compulsory.

50. In situations where the farmer is unable to afford legal representation to attend a farm debt mediation, ANZ will often contribute to the farmer's legal costs as a measure of assistance, and, more importantly, to ensure that the farmers get the required independent legal advice at mediation. Where appropriate, ANZ may also make a contribution to the costs of an accountant to provide independent financial advice to the customer at mediation.

51. ANZ's experience is that the vast majority of its farming customers are willing to participate in farm debt mediations and in almost all cases an agreement is reached at the mediation. In a number of cases where our farming customers have then been unable to comply with the terms of the agreement reached at mediation, ANZ has continued working with those farmers and has agreed a revised set of terms.

DISASTER AND RELATED ASSISTANCE

52. ANZ assists customers experiencing financial difficulty as a result of natural disasters such as drought, cyclone, or floods, and also in cases such as the 2016 drop in dairy prices. The relief measures typically include a commitment not to increase interest rates on financially distressed farms, interest rate relief in cases of extreme distress, financial assistance to support farmers choosing to relocate off the land, and an increase in funding for rural counselling.

53. In December 2014 our drought support measures extended to also include a moratorium on farm repossessions in drought declared regions of Queensland and North-West New South Wales. These relief measures remained in place until 31 December 2016 for areas that continued to be drought declared and we continue to offer relief and support where required post this time.

E. ROLE OF OTHER SERVICE PROVIDERS

VALUERS

54. ANZ engages external valuers and also undertakes internally prepared appraisals of farms or rural securities. External valuers are engaged for more complex businesses or where an independent valuation is required (for example, in the

case of a dispute). Internal appraisals are used for routine and simpler transactions. Customers bear the cost of external valuations but not ANZ internal appraisals.

55. ANZ has a panel of external valuers who are subject to regular quality assurance checking. ANZ requirements are designed to ensure suitably qualified and experienced consultants are engaged for agribusiness valuations.

56. The Risk function centrally manages ANZ's valuer panel, instructions to valuers, and approval of valuations. This ensures that valuation decisions are taken at arm's length from lending decisions. Separation of the valuation process also ensures that the framework for the use of valuations is underpinned by regulatory and prudential requirements and in line with international standards.

57. When ANZ instructs a valuer to determine the current market value of a property for a security, the valuer must apply the following definition of market value from the International Valuation Standards Council:

> "The estimated amount for which an asset or liability should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion."

58. In May 2016, ANZ adopted the practice of providing to the customer a full copy of the instructions given to an external valuer and a full copy of the valuation report. An exception to this is where a sale process is underway and information about a valuation could potentially be passed to a prospective bidder or impact the sale. In this case, the valuation would be provided to the customer at a later stage.

59. Where the customer has paid for the valuation and disagrees with the valuation given by the valuer, ANZ gives the customer the opportunity to discuss the valuation with it and the valuer, if necessary.

60. It is ANZ's practice to provide the customer name as the contact point for the valuer. This gives the customer the opportunity to talk directly to the valuer about the property and its attributes.

61. ANZ supports an industry wide guideline on the role and use of valuations, particularly to make sure the valuations process is transparent and easily understood by our customers. A guideline could, for example, explain how a bank appoints valuers and when customers should receive copies of valuations.

62. ANZ is working with the ABA to develop industry guidelines to ensure the fair and transparent process for valuing customer properties.

INSOLVENCY PRACTITIONERS

63. ANZ works with its agribusiness customers to identify appropriate solutions if these customers indicate they are experiencing financial difficulties, have missed payments and are in arrears, or are struggling to manage their financial obligations. When a business is in financial difficulty ANZ's preference is to work with customers to try and agree a solution that can help to turn the business around and back to health.

64. Where an appointment becomes necessary, ANZ seeks to ensure that the process is transparent and understood by the customers. It would be expected that ANZ would discuss the appointment with the customer prior to it occurring, including who is to be appointed. This was the approach taken in each of the six cases in the last 18 month period ending 31 March 2017, where ANZ has taken action under its security documents.

65. The ABA is currently drafting guidelines which provide minimum standards expected of banks in the appointment of receivers or insolvency practitioners to small business, commercial or agricultural properties. The guidelines provide that banks and insolvency practitioners are to act fairly, responsibly and transparently throughout the appointment process.

INVESTIGATIVE ACCOUNTANTS

66. Investigative accountants are appointed in circumstances where ANZ has concerns surrounding issues such as business operations, the industry sector involved, the financial viability of the business, whether the amount of debt is sustainable, or the customer is not able to provide proper financial or operational information. They may also be used to assist ANZ to make a decision about a customer's request for additional funding.

67. In March 2017, ANZ adopted the ASBFEO recommendation that banks must provide its customers with an identical copy of the instructions given to the investigative accountant and a full copy of the report must also be provided to the customer.

68. ANZ monitors the use of advisors and requires its managers to ensure that there are no conflicts of interest. Our advisors are also required by their professional bodies to declare any conflicts of interest. ANZ's practice is to encourage customers concerned about a conflict to draw the matter to our attention so we can investigate it.

69. The appointment of a receiver who has also been acting as an investigative accountant is common and appropriate in many circumstances. In rural and remote areas, there may be few investigative accountants and receivers with requisite industry or enterprise expertise to choose from. It will most often result in the best outcome for the customer, its creditors and ANZ.

70. An investigative accountant is already aware of circumstances of the customer's business and any related issues. The appointment and action can be taken quickly, for example, to preserve deteriorating assets, address problems that can arise such as animal welfare or risk of fraud, and act with less costs. Engaging a new insolvency practitioner at a late stage would delay the appointment and increase costs unnecessarily impacting all parties.

RECEIVERS

71. ANZ will only appoint a receiver or insolvency practitioner when a customer has defaulted on their monetary obligations and all other options have been exhausted (or some other significant event occurs such as the directors appointing a voluntary administrator or another creditor taking action).

72. The appointment of a receiver is rare and the least preferred option. It can be distressing for customers and may result in a lower net return than would be achieved through alternative approaches.

73. It is important to note however that the appointment of a receiver can be essential to arresting losses and erosion of equity, protecting suppliers (or unsecured creditors), and protecting the directors from trading while insolvent.

74. Receivers are officers of the debtor corporation and have statutory duties owed to the corporation under the Corporations Act. Their primary obligations are to the company. These duties include exercising care and diligence, not gaining personally or for another party, or acting to the detriment of the corporation. In the exercise of a power of sale of the corporation's property, the Court looks at the process the receiver undertook to sell the secured property rather than the sale price obtained.

75. In many instances of receivership appointments, both the customer and the bank may incur a loss, so it is in ANZ's interest to ensure that the assets are sold on the best possible terms and that the receivers and other costs are reasonable and proportionate.

76. ANZ only uses insolvency practitioners and investigative accountants that are members of appropriate professional bodies including the Australian Restructuring Insolvency and Turnaround Association, Turnaround Management Association, Chartered Accountants Australia and New Zealand or CPA Australia. These professional bodies have standards of conduct that their members are required to meet, including those relating to conflicts of interest.

F. DISPUTE MANAGEMENT

77. As a holder of an Australian Financial Services (AFS) licence, ANZ is required to have in place internal dispute resolution (IDR) procedures and to be a member of an ASIC-approved EDR scheme.

CUSTOMER GENERAL RESOLUTION PROCESS

78. ANZ's IDR complaints process has three stages:

   a. *Lodgement:* Customers can lodge a complaint through multiple channels including by contacting their ANZ manager (commonly the case in agricultural cases), phone, email, mail, fax, website, social media, or to an external dispute resolution body.

   b. *Investigation of the matter by the Complaint Resolution Centre* will consider service delivery, terms and conditions, legal principles, applicable industry codes, fairness, industry practice, previous history and the customer relationship

   c. *Resolution:* where an error, breach or service breakdown has occurred, ANZ will return the customer to the position they would otherwise be in. If the customer does not accept the proposed resolution, they can escalate their dispute to an EDR scheme – either FOS or the Superannuation Complaints

Tribunal (SCT). At this stage they are also offered the opportunity to seek an impartial review by the ANZ Customer Advocate. Most customer disputes and complaints are managed by the complaints resolution team.

79. Many complaints are resolved at the first point of contact, such as the branch or call centre. ANZ encourages this and provides contact centre staff with the discretion to resolve issues at the first point of contact.

80. All formal complaints are acknowledged within 24 hours and ANZ aims to resolve 90 per cent of retail and small business complaints within five business days in Australia and New Zealand

ANZ CUSTOMER ADVOCATE

81. The Customer Advocate reviews disputes from retail, small business and wealth customers in Australia. In some cases, particularly difficult complaints may be referred directly to the Customer Advocate for resolution.

82. The Customer Advocate operates separately from ANZ's businesses and reports to the Senior Executive Australia Division (the head of the ANZ Australian business). ANZ is bound by the Customer Advocate's findings in all cases.

83. The way the role operates at ANZ complements existing IDR, is optional and customers can exit the process at any point and go to EDR. This is communicated to them throughout the process. The Customer Advocate concludes all reviews by advising the customer that they can refer the matter to FOS, if it remains unresolved. The Customer Advocate has a target service level agreement of 20 working days, which is met in the vast majority of cases.

PARTICIPATION IN EXTERNAL DISPUTE RESOLUTION

84. The Financial Ombudsman Service can make a determination about a dispute taking into account all the information provided by the parties, applicable laws and industry codes of practice. Determinations are binding on ANZ if the customer accepts the FOS outcome. A customer can still go to court if they are not satisfied with FOS's decision.

85. This approach is aided by the principles FOS applies to its dispute processes and decision making: it seeks to resolve disputes fairly, informally and in a timely manner by working with the parties cooperatively and transparently. We agree with FOS that this contributes to sustaining community trust in financial services.

86. Funding by members both acts as an incentive to reduce the incidence of customer complaints and ensures there is sufficient funding when required.

87. To ensure small businesses have access to a simple, efficient and appropriate dispute resolution, ANZ supports increasing current jurisdiction limits.[5] In nearly all cases we believe ANZ resolves issues either internally, including through the ANZ Customer Advocate, or through FOS. There are nevertheless benefits to

[5] FOS jurisdiction is being considered by the Review of the financial system external dispute resolution and complaints framework.

expanding access to FOS to ensure small business customers have an alternative to seeking redress through the courts.