

ANZ

Overview of misconduct

- 4.1 Aggressive sales targets and conflicted remuneration were some of the factors contributing to cases of misconduct at ANZ, the Royal Commission heard.
- 4.2 In relation to home mortgage lending, it was revealed that ANZ 'relied heavily on brokers to make enquiries into the customer's financial situation' and, in some cases 'did not take any steps to verify the customer's general living expenses'.¹
- 4.3 Issues of responsible lending were again raised in relation to ANZ's car finance business, including the revelation that the asset finance division responsible for car loans at ANZ was classified as an extreme risk. The division was suspended on the eve of the Royal Commission.²
- 4.4 It was revealed that ANZ repeatedly ignored requests from ASIC to compensate 330,000 customers who had been inappropriately sold savings account loans. ANZ was fined \$212,500 for allegedly breaching responsible lending laws by issuing unsolicited preapproved overdraft facilities.³
- 4.5 ANZ was also forced to refund customers \$90 million after it found it had charged incorrect interest rates or fees to thousands of customers due to a technical error.⁴ The Interim Report noted that ANZ's 'systems or processes were not properly set up to charge the correct rate or fee or to

1 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report*, vol 2, p. 43.

2 B Butler, 'ANZ's 'extreme' risk finance unit', *The Australian*, 23 March 2018.

3 S Danckert, 'ANZ ignored regulator's pleas', *Sydney Morning Herald*, 21 March 2018, p. 6.

4 J Frost, 'ANZ still charging the wrong interest rate', *Australian Financial Review*, 22 March 2018, p. 5.

provide the appropriate discount or benefit.⁵ Furthermore, because ANZ was unable to fix the error, it ‘continued to sell the same or similar products, and encounter the same or similar problems, over a period of time.’⁶

- 4.6 The Royal Commission heard that ANZ made allowances for taking over 7,124 farm loans worth \$2.4 billion from Landmark Financial Services in 2010 and that 12 per cent of the loans, worth \$273 million, were unlikely to be repaid.⁷
- 4.7 The Interim Report highlighted ‘ANZ’s lack of preparation for the very high probability that it would have to deal (as it did) with significant numbers of agribusiness customers experiencing financial difficulties’ as the main reason for the poor conduct.⁸ It also noted the ‘then prevailing culture and practices in ANZ’s Lending Services group’ contributed to the failings.⁹
- 4.8 The Royal Commission heard evidence of poor service provided by ANZ to vulnerable customers in remote regions of the Northern Territory. In each of 2016 and 2017, ANZ charged in excess of \$1.27 million in informal overdraft fees to account holders in the Northern Territory and in excess of \$215,000 in interest on informal overdrafts.¹⁰ It was also revealed that ANZ took four months to open a no fee bank account for an Aboriginal Centrelink customer who was concerned about dishonour fees.¹¹
- 4.9 In addition to the conduct examined by the Royal Commission:
- The Australian Securities and Investments Commission (ASIC) has brought criminal charges against senior ANZ Bank staff and investment banks Deutsche and Citigroup over a \$2.5 billion capital raising in 2015¹²
 - ANZ is also facing civil action from ASIC for not telling investors that its investment banks had bought \$791 million of its shares following the capital raising,¹³ and

5 Commissioner Hayne, ‘Financial Services Royal Commission’, *Interim report*, vol 2, p. 77.

6 Commissioner Hayne, ‘Financial Services Royal Commission’, *Interim report*, vol 2, p. 77.

7 J Frost, ‘ANZ farming push bungled from start’, *Australian Financial Review*, 26 June 2018, p. 1.

8 Commissioner Hayne, ‘Financial Services Royal Commission’, *Interim report*, vol 2, p. 387.

9 Commissioner Hayne, ‘Financial Services Royal Commission’, *Interim report*, vol 2, p. 387.

10 Commissioner Hayne, ‘Financial Services Royal Commission’, *Interim report*, vol 2, p. 481.

11 M Han, ‘ANZ takes four months to open no-fee account’, *Australian Financial Review*, 6 July 2018, p. 7.

12 P Durkin, J Shapiro & J Eyers, ‘Share cartel: ANZ, Deutsche, Citi face charges’, *Australian Financial Review Weekend*, 2 June 2018, p. 1.

13 C Yeates & M Beeby, ‘ANZ faces civil action over \$2.5b share sale’, *Sydney Morning Herald*, 15 September 2018, p. 1.

- ANZ agreed to settle its case with ASIC in relation to rate rigging for approximately \$50 million.¹⁴

Financial Services Royal Commission

- 4.10 Australian and New Zealand Banking Group Limited (ANZ) was the subject of nine case studies in the Royal Commission's interim report in the first four rounds of hearings.
- 4.11 In response to the Royal Commission's interim report, ANZ CEO Mr Shayne Elliott acknowledged to the committee ANZ has engaged in misconduct and conduct falling below community standards and expectations.
- 4.12 Further, ANZ was not sufficiently focused on holding executives to account for failures that harm customers. Mr Elliott described instances where executives had received pay cuts or left the bank but a clear link between poor outcomes and consequences was lacking.
- 4.13 Ms Alexis George, Deputy CEO of ANZ, reiterated this point when she noted ANZ's previous processes did not clearly record the reasons for reductions in executive remuneration.
- 4.14 Mr Elliott stressed this would not continue and reinforced the idea that changes are being made when he noted:
- Failings acknowledged by the commission and the lack of satisfactory progress on remediation will have a material impact on executive remuneration this year.¹⁵
- 4.15 Given many Australians no longer trust the banks as a consequence of the findings of the interim report, the committee scrutinised how ANZ was making executives more accountable.
- 4.16 In response, Mr Elliott confirmed ANZ has dismissed around 200 people for misconduct in the past year, including senior management, although not all of these were as a result of misconduct highlighted during the Royal Commission.
- 4.17 ANZ was pressed on how it is ensuring changes to improve accountability flow through all levels of the organisation to prevent future misconduct from occurring. Like CBA, Mr Elliott noted ANZ has restructured and simplified its business.

14 Australian Securities and Investments Commission (ASIC), 'ASIC accepts enforceable undertakings from ANZ and NAB to address conduct relating to BBSW', *Media Release 17-393*, 20 November 2017.

15 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 2.

- 4.18 Mr Elliott acknowledged the decision to simplify ANZ was a strategy to prevent mistakes of the type highlighted by the Royal Commission's interim report.

Reforms to remuneration

- 4.19 Reform to remuneration was another important line of questioning given the central role remuneration played in creating a culture within the banking industry that prioritised sales over all else, as the interim report noted:

First, staff and others engaged by an entity will treat as important what they believe that the entity values. Rewarding volume and amount of sales is the clearest signal that selling is what the entity values. What staff and others believe that the entity values informs what they do. It is a critical element in forming the culture of the entity.¹⁶

- 4.20 When asked about the reforms to remuneration for frontline staff Ms George acknowledged that previous schemes had emphasised sales. Ms George reported that bank tellers are now assessed on customer service metrics rather than sales.
- 4.21 The committee questioned the role of referrals in the score cards for bank tellers. While Ms George noted it was normal to assess how staff were helping to expand the business, Mr Elliott agreed referrals could be considered a derivative of sales and promised to review that element of the scorecard.
- 4.22 Like the other major banks ANZ accepted all of the recommendations of the Sedgwick review and are in the process of implementing all the recommendations, noting there is a delay in mortgage broker remuneration reform.
- 4.23 To assess the performance of staff, ANZ has a similar process to the other major banks but do not formally refer to certain behaviours as gate-openers. Instead ANZ performs a values assessment that considers characteristics such as integrity and accountability when determining the level of variable remuneration.
- 4.24 However, ANZ defended the commercial nature of their organisation, noting more senior staff are assessed on financial metrics.
- 4.25 For example, Mr Elliott explained financial metrics accounted for one quarter of his variable remuneration, while the remaining three quarters is

16 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report*, Vol 1, p. 55.

determined by other metrics such as customer service and control functions.

- 4.26 When pressed about the level of his own remuneration, Mr Elliott noted his remuneration was a matter for the board and shareholders to approve. However, Mr Elliott did inform the committee he did not receive his 'full target of compensation' last year.¹⁷

Customer remediation

- 4.27 On 8 October 2018 ANZ announced charges of \$374 million would affect its full year profit for 2018.¹⁸

- 4.28 At the hearing, Mr Elliott referred to this amount as '...a real cost. That's real money. That's their [shareholder's] money that is being paid out.'¹⁹

- 4.29 When the committee pressed ANZ on this point, Mr Elliott accepted that funds for remediation belonged to the customers noting, 'I accept that I misspoke there, fair point.'²⁰

- 4.30 However, Mr Elliott went on to state:

...the bulk of the money is not refunds, actually. The bulk of the money is actually the cost of going back, finding and recalculating the money and doing the dataset. That is the piece I was talking about: the cost of remediation. The work costs significant amounts of money. That was what I was referring to. But you're quite right: the refund money obviously belongs to customers.²¹

- 4.31 In addition ANZ told the committee it has significantly increased the level of resources devoted to customer remediation. Mr Elliott noted the number of staff for the specialist remediation team increased from 20 or 30 to about 165²² not including an additional 100 staff working on remediation in the wealth division.²³

17 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 26.

18 ANZ, 'Update on Customer Compensation and Software Amortisation', *Media release*, 8 October 2018, <https://media.anz.com/posts/2018/10/update-on-customer-compensation-and-software-amortisation>, viewed 25 October 2018.

19 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 11.

20 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 15.

21 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 15.

22 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 10.

23 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 20.

CEO actions to address customer complaints

- 4.32 Throughout the hearing the committee sought to identify the specific actions taken by Mr Elliott to demonstrate he understood the effect of a dispute with CBA for individual customers.
- 4.33 In his opening statement Mr Elliott told the committee he would meet with customers who had made submissions to the Royal Commission.
- 4.34 Mr Elliott committed to responding to ANZ customers who contact him directly when he said 'If any customer wants to contact me, my email address is public. It's shayne.elliott@anz.com.'²⁴
- 4.35 The committee intends to follow-up at future hearings on efforts of CEOs to improve complaints handling mechanisms and the pace of remediation.

Complaint handling mechanisms

- 4.36 The committee questioned how ANZ had improved its complaints handling mechanism, to which ANZ responded that it had increased the degree of visibility its executive have of customer complaints.
- 4.37 Mr Elliott said the customers who were featured in the Royal Commission's interim report were a priority for review by a team who would reassess ANZ's remediation approach.
- 4.38 Mr Elliott pointed out ANZ has had a customer advocacy office since the early 2000s and confirmed an increase in the number of cases they are reviewing.
- 4.39 Mr Elliott speculated this could in part be owing to the publicity generated by the Royal Commission.
- 4.40 Mr Elliott described a trend where a strong culture of accountability at ANZ had declined over the past decade and the structure of the bank had much to do with the failures:
- We had a very strong matrix management, where it was very difficult to look at conduct in any part of the bank and say: who is the senior executive that is directly accountable for that? By rearranging the way we organise ourselves... we had improved the accountability framework...²⁵
- 4.41 However, despite the changes ANZ had made the committee reaffirmed the bank still had work to do to prove to Australians that it could prevent future misconduct.

24 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 2.

25 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 4.

Bank Executive Accountability Regime

4.42 ANZ considered implementation of the Bank Executive Accountability Regime (BEAR) as a very useful exercise to help clarify accountability for the 15 to 20 executives covered by the BEAR. Mr Elliott made this view clear when he said:

I think the BEAR has given us a very valuable tool... We're having conversations as an executive team at this point about exactly how we do a better job at getting frameworks and definitions around accountability.²⁶

4.43 Mr Elliott observed ANZ's previous use of matrix style management introduced a degree of complexity which made it difficult to unpick who was accountable when a problem arose.

4.44 Ms George reaffirmed the usefulness of the BEAR as a means of eliminating gaps in accountability when responsibilities are shared among executives when she stated:

We've gone through hours and hours of case studies around the BEAR to try and figure out if there are any other overlapping responsibilities.²⁷

4.45 To confirm to the committee that the BEAR had changed the way ANZ operated, Mr Elliott noted that they have eliminated conflicts such as financial performance metrics which would reduce the incentive for an executive to invest in improving business processes.

Relationship with regulators

4.46 The committee questioned the nature of ANZ's relationship with the regulators, particularly the Australian Securities and Investments Commission (ASIC), citing criticisms highlighted in the Royal Commission's interim report of informality between ASIC and the banks.

4.47 Mr Elliott explained the chief risk officer is the executive with the closest ties to the regulators. Ms George emphasised in general the approach was to be transparent and respectful towards ASIC.

4.48 Mr Elliott did not agree that ANZ should be fearful of ASIC and also rejected the claim that ANZ is 'in bed with ASIC' when he noted:

26 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 3.

27 Ms Alexis George, Deputy CEO, ANZ, *Transcript*, 12 October 2018, p. 12.

Yes. Fear is a strong word, but we respect ASIC. There's no doubt that having any kind of action from ASIC against any individual, unit or the general bank is seen in a negative light in the company.²⁸

4.49 The committee continued to press on ANZ's past experience with ASIC and its approach to customer remediation citing an ASIC report released in September 2018 which found:

We identified historical documents from two of these major financial groups that referred to remediation for consumers as a 'distraction'.²⁹

4.50 Mr Elliott agreed ANZ had not given due attention to remediation in the past.

Competition in the financial system

4.51 ANZ was also asked about the degree of competition in the financial system and whether a lack of competition allowed ANZ to retain customers despite poor performance at times.

4.52 Mr Elliott asserted there is competition in the banking system which enables customers and the community to hold ANZ to account, when he stated:

I think the competitive environment is far more intense today than it has been in at least 10 years.³⁰

4.53 Mr Elliott pointed to competition from new entrants including digital banks as well as new payments system and wealth offerings. However the committee was unsatisfied with this response, suggesting the concentrated nature of the market resulted in record profits for the banks.

4.54 However, like Mr Hartzler from Westpac, Mr Elliott also disputed the claim that bank profits only ever increase when he observed:

Margins in banking – the difference between what we pay for deposits and what we lend money out at – have never been lower, and they continue to fall. And that's a sign of competition.³¹

28 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 5.

29 Australian Securities and Investments Commission, 'REP 594 Review of selected financial services groups' compliance with the breach reporting obligation', *Report*, 25 September 2018, p. 8.

30 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 16.

31 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 28.

Small-medium enterprise lending

- 4.55 The committee raised penalty interest rates for small businesses with ANZ. Mr Elliott explained an increase in the borrower's interest (penalty) rate could be charged if the risk profile of the borrower changes and this is explained to customers when they enter the loan contract.
- 4.56 The committee also sought to confirm if ANZ had implemented the recommendations of the Carnell review, particularly the removal of unfair contract terms, to which Mr Elliott replied they had.
- 4.57 On some aspects of the Carnell review, Mr Elliott said he would endeavour to confirm to the committee details such as if ANZ provides borrowers with copies of valuation reports.

Access to credit

- 4.58 The committee sought to test ANZ's view on the role of further regulation as a means of addressing misconduct. This line of questioning probed an observation in the Royal Commission's interim report which stated:
- Much more often than not, the conduct now condemned was contrary to law. Passing some new law to say, again, 'Do not do that', would add an extra layer of legal complexity to an already complex regulatory regime.³²
- 4.59 Mr Elliott postulated a bank executive was perhaps not the right person to ask about the benefits of simplifying the regulatory regime, although he agreed the observations in the interim report were sensible.
- 4.60 Mr Elliott noted current laws and regulations already present a challenge for businesses to navigate when he stated:
- I can say that I believe, in terms of operating our business, there absolutely is a complexity factor around the law and regulations and the multitude of those and where they overlap and intersect, which has made things complex.³³
- 4.61 The committee questioned whether the penalties for misconduct were harsh enough, to which Mr Elliott stated it was sensible to make the punishment fit the crime. However, Mr Elliott suggested greater accountability would be better for all corporations not just banks.

32 Commissioner Hayne, 'Financial Services Royal Commission', *Executive summary*, p. 2.

33 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 32.

Decision to restructure

4.62 In his opening statement, Mr Elliott told the committee during his time as CEO he has tried to make ANZ a simpler bank.

4.63 An example was the decision in December 2017 to sell OnePath Life Insurance to Zurich Financial Services Australia. The transfer was approved under the *Financial Sector (Shareholdings) Act 1998* on 10 October 2018.

4.64 Mr Elliott recognised that with a simpler business it would be easier to detect and fix misconduct of the type highlighted in the Royal Commission's interim report. For example, in the case study summarising examples of ANZ providing bad financial advice:

ANZ acknowledged that between 2006 and 2013, more than 10,000 Prime Access customers paid fees for documented annual reviews that were never provided by ANZ financial planners...

ANZ also acknowledged that between June 2007 and August 2016, service fees were deducted from customers' accounts in amounts or at rates in excess of those quoted in their service agreements.

This affected approximately 4,035 customers to a total cost of \$4.5 million.³⁴

4.65 However, the announcement in October 2017 of ANZ's intention to sell its superannuation business OnePath P&I (pensions and investments) to IOOF has proved to be complex.

4.66 The committee asked about the status of the sale to which Ms George replied it is incomplete. Ms George said she was conscious of the legal requirement for ANZ to act in the best interests of the members of its superannuation fund throughout the transition process.

4.67 The committee pointed to failures of governance and compliance by IOOF highlighted during the Royal Commission's superannuation hearings and questioned how the sale of OnePath P&I could be in the best interests of its members. Ms George responded by stating:

we've had multiple contacts, formally and informally, with the management and with the board of IOOF to inquire about the issues that arose and what they were doing to address those, what they had done to address those in the past.³⁵

4.68 In addition, Ms George noted there is an independent trustee board to provide a check and balance against ANZ's decisions.

34 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report*, Vol 1, p. 109.

35 Ms Alexis George, Deputy CEO, ANZ, *Transcript*, 12 October 2018, p. 21.

- 4.69 The committee also pressed ANZ about the fees associated with OnePath MasterFund which reduced the rate of return to below the cash rate.
- 4.70 On the subject of fee free cash funds, Ms George asserted 95 per cent of ANZ's cash funds do not have fees and customers could freely choose one of those.³⁶

Mortgage brokers

- 4.71 On mortgage brokers, Mr Elliott stated ANZ is the only major bank that does not own a mortgage broker business. However, Mr Elliott acknowledged their importance given more than half of all mortgages are originated by brokers.
- 4.72 Mr Elliott estimated ANZ pay brokers an up-front commission of around 0.8 per cent and a trailing commission of around 0.2 per cent.³⁷ Mr Elliott suggested there is room for debate on the structure of commissions for brokers and noted the industry has moved away from volume based commissions.
- 4.73 Mr Elliott did not give an opinion on whether brokers should be paid a flat fee or a fee for service.
- 4.74 On the subject of a best interests duty, Mr Elliott considered it an interesting idea. However he went on to defend most brokers as decent and honourable people who build a lifetime relationship with their clients.

Branch closures

- 4.75 The committee asked ANZ to explain its branch closure policy.
- 4.76 Mr Elliott noted he had visited Beaudesert to explain why ANZ was shutting their branch and to listen to the concerns of customers. However, the decision to close reflects the reality that fewer and fewer people come into branches.
- 4.77 Mr Elliott confirmed this claim by referring to research which found multiple demographics prefer to bank at their own convenience. However, Mr Elliott did acknowledge there was a residual group of customers who are unwilling or unable to use technology in this way.

36 Ms Alexis George, Deputy CEO, ANZ, *Transcript*, 12 October 2018, p. 22.

37 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 9.

- 4.78 Although ANZ had previously closed branches at a rate of 30 to 50 per year, Mr Elliott told the committee he doubted it would continue at that pace over the next 12 months.

Code of conduct for legal disputes

- 4.79 Throughout the hearing the committee emphasised the importance of efficient dispute resolution processes for customers, particularly those who were not featured as case studies in the Royal Commission.
- 4.80 Mr Elliott recognised although customers had the option to go to the Financial Ombudsman Service (FOS) and from 1 November 2018 the Australian Financial Complaints Authority (AFCA) these forums were not always easy for customers. Ms George emphasised the customer advocate was a helpful alternative.
- 4.81 However, the committee noted once a dispute reached court the resources of the banks vastly outweighed those of the customers and it was important to consider measures to help address this imbalance.
- 4.82 The committee asked if ANZ has acted as a 'model litigant' meaning, it acted in good faith and did not seek to abuse its power.
- 4.83 Mr Elliott admitted this was not always the case when he said:
...since my time in leadership, the culture that we have set is that we need to be fair and reasonable and equitable and customer-focused. Do we always get it right? I'm sure we don't.³⁸
- 4.84 To improve the experience of dispute resolution for bank customers the committee tested whether ANZ would commit to a code of conduct for legal disputes.
- 4.85 Mr Elliott said there was merit in the idea, particularly given he had already made the effort to speak to third-parties, such as law firms, to ensure they met ANZ's expectations. Mr Elliott stated:
One of the things I've been doing is actually sitting with our legal firm representatives...and I've said: 'These are my expectations of you. You are representing ANZ. You need to live our values and conduct according to my culture and values; not just what you would do for any other bank.'³⁹

38 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 31.

39 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 31.