

**HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS**

**REVIEW OF THE FOUR MAJOR BANKS (FIFTH HEARINGS)**

**Australia and New Zealand Banking Group Limited**

**ANZ01QON:** Hansard p. 13

Complaints cases

Mr CRAIG KELLY: The Australian Financial Complaints Authority commenced back in November. Since it commenced, how many cases have been lodged against your bank?

Ms George: We've had 1,400 cases since 1 November.

...

Ms George: Complaints also came across from the previous dispute bodies. I don't know the exact numbers of which ones would have been resolved—

Mr CRAIG KELLY: Can you make an estimate of how many came across from—

Ms George: I can take it on notice. Honestly, I wouldn't know how many came across versus how many have been resolved that came after that date.

**ANSWER**

837 ANZ Financial Ombudsman Service and Superannuation Complaints Tribunal customer cases were open on 1 November 2018.

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**ANZ02QON:** Hansard p. 14

Complaints cases – Legal costs

Mr CRAIG KELLY: In addition, as well as AFCA, how many cases do you have where customers have brought action against you in either the Supreme, Federal or District courts?

Mr Elliott: I don't know the number for that. I know it's extremely small, if any. I'm not aware that we have any customer accounts in the Supreme or High courts. There will inevitably be procedural issues that go through with customers in some of the other courts. I'd have to come back to you on the exact number.

Mr CRAIG KELLY: Do you think that's because of the legal costs that are involved for a customer, a complainant, to bring a case—that they would make it impossible for them? How does someone who is just outside of or above the AFCA limits do that? Is it a burden for them to actually have that dispute resolved because of the costs?

Mr Elliott: It could be. I don't know that I'm in a position to talk about what the motivations or issues are for a customer. I don't know.

Mr CRAIG KELLY: Maybe you can take that one on notice.

#### **ANSWER**

ANZ has identified 74 current court actions brought by customers against ANZ.

Two are class actions. Of the remainder, two are small businesses, one relates to a medium sized business loan, and 69 relate to wealth products, with the majority of these related to life insurance.

This estimate is for Australia and limited by the timeframe for response requested by the Committee.

We believe that there are wide range of avenues through which retail, small and medium businesses, and wealth customers can resolve disputes with ANZ at no cost, and avoid action through the courts.

For example, the Australian Financial Complaints Authority has jurisdiction for small business disputes up to \$5 million, an estimated coverage of 98 per cent of the number of Australian businesses.

ANZ customers with disputes can also contact the ANZ Customer Advocate, our branches or service centres, or ANZ executives.

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**ANZ04QON:** Hansard p. 19

Model litigant framework – providing documents

Mr JOSH WILSON: ... ANZ was, I think, one of the first banks to make the commitment to being a model litigant—you'll correct me if that's not right—but it has been raised with me that the sort of model-litigant framework that the ANZ has settled doesn't make a specific commitment around providing documents in a fair, comprehensive and timely way. Is that something that you're—

Mr Elliott: I'm happy to look at that. We were first to do that. In fact, it was a result of a question at this very committee six months ago, I think.

...

Ms George: One of our principles is 'take quick action'. We can look at the words, as to whether that's incorporated, but that was certainly the intention.

Mr Elliott: There was no intent to leave something out. If that's designed to be part of the principles, we'll certainly look at it.

...

Mr JOSH WILSON: Thank you. I suggest that you perhaps take on notice that it's been raised.

**ANSWER**

ANZ will consider its model litigant principles and the fair provision of documents to customers in the context of complaints and disputes.

ANZ is already subject to related obligations. For example, under AFCA Operational Guidelines (A.9 Gathering relevant information), ANZ must supply information within specified timeframes.

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**ANZ05QON:** Hansard p. 20

Legacy products

Mr JOSH WILSON: Can you just take on notice and perhaps come back to this committee with some numbers on the customers who continue to sit in what you describe as 'legacy products' or, in the case of those ANZ OnePath funds, the underperforming funds, where presumably they haven't yet done the smart thing and moved out?

Ms George: Of course.

**ANSWER**

Since October 2015, One Path has transitioned 202,171 default super members from legacy products to its Smart Choice super offering.

As at 28 February 2019, 38,290 members have chosen to remain in these products.

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**ANZ06QON:** Hansard pp. 24-25

Introducer program – accreditation for introducers

Mr Elliott: ...There are two parts to the program. I can't give you the numbers, in terms of the weighting, off the top of my head, but those are the sorts of introducers that we're dealing with. It's typically not just anybody off the street, and they are accredited through a program we have to make sure that they understand what they're doing and that they can meet their obligations.

Mr THISTLETHWAITE: How long does that program take? What is it?

Mr Elliott: I'll have to take that on notice and come back. I can send you the details on exactly what the process is.

Mr THISTLETHWAITE: What does the program deal with? Does it deal with the law relating to mortgage broking and providing advice?

Mr Elliott: I'll have to come back to you on the details...

#### **ANSWER**

ANZ Home Loan Introducer accreditation generally takes 2-4 weeks to complete. An ANZ accredited banker interviews the applicant to understand their business and assess suitability. An application form is completed by the applicant and is assessed by ANZ centrally. Police, bankruptcy, ASIC and ANZ fraud checks are carried out.

If the application is successful, a draft agreement is created and the ANZ banker meets the applicant to confirm their obligations under the agreement. If these steps are completed and the contract is signed, the introducer is accredited on the ANZ system and referral forms are issued.

An introducer only refers the potential borrower to ANZ. They are not involved in an application for credit or responsible lending assessment process. As a result, ANZ does not provide training to introducers about the law relating to mortgage broking or providing advice.

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**ANZ07QON:** Hansard p. 25

Introducer program – migration agents

Mr THISTLETHWAITE: Are the referrers required to disclose the relationship that they have with the bank when they refer someone to you?

Mr Elliott: Yes, and the fee.

Mr THISTLETHWAITE: And the fee?

Mr Elliott: Yes.

Mr THISTLETHWAITE: Are migration agents included in the group that you have a relationship with?

Mr Elliott: I'll have to check. I'll take that on notice. I'm not sure.

**ANSWER**

The ANZ Home Loan Introducer program includes a small number of migration agents. ANZ requires introducers who are migration agents to be registered by the Australian Migration Agents Authority.

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**ANZ08QON:** Hansard p. 28

Commissions –clawback provisions

Mr CRAIG KELLY: And you currently have a standard rate card that you talked about that has some clawback provision in it?

Mr Elliott: Yes.

Mr CRAIG KELLY: So you have an up-front trail commission—and what's the clawback period?

Mr Elliott: I can't remember off the top of my head. It's a couple of years, I think, but we can come back to you.

**ANSWER**

A clawback of the upfront commission payments from the aggregator occurs if the loan is paid out or re-financed to another financial institution within the first 18 months of drawdown (100% within the first 12 months, 50% within 15 months and 25% within 18 months).

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**ANZ09QON:** Hansard p. 28

Expenditure calculation models – HEM and Triex

Mr JOSH WILSON: I just want to ask a couple of questions about the Household Expenditure Method. I understand that the ANZ is seeking to move away from the use of it or decrease the use of it. You were up around three-quarters of loans relying on some reference to that, and you've dropped down to the mid-50s as a percentage and you're on track to get to about a third. As part of that, you're introducing, or making use of, a new means of assessment called Triex or something. I'm interested if you could answer: are you on track with your ambitions to get down to a third of loans relying on the HEM; and can you take on notice and provide to the committee some information about the on-average or aggregate outcomes—particularly, the sorts of differences in outcome—that you're seeing through the application of the Triex method in comparison to the HEM?

#### **ANSWER**

ANZ is continuing to work on reducing its reliance on HEM through a range of measures including: capturing an expanded set of expense categories in customer interview guides during the home loan application process, rolling out additional lender and broker training on capturing accurate living expenses and enhancing internal governance activities related to HEM use. As noted at the hearing, ANZ has made a commitment to reduce use of HEM. The proportion of applications employing the HEM method is now in the mid-50s and trending lower. The TRIEX method is not currently operational for expenses and therefore we cannot comment on the differences in outcome through the application of the TRIEX method in comparison to HEM.

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**ANZ10QON:** Hansard p. 32

Foreclosures on farmers

CHAIR: How many farmers—the nominal share as a percentage—has ANZ foreclosed on?  
Mr Elliott: How many of our farmers in total have we foreclosed on? As a share, it would be de minimis—very small.

CHAIR: But you could get the nominal numbers and provide them to us?

Mr Elliott: Yes, we can get you the numbers.

**ANSWER**

Approximately 0.015%.

ANZ initiated 3 enforcements against agribusiness customers in the 15 months to end March 2019 and has an agribusiness customer base of approximately 20,000.

ANZ initiated enforcements excludes appointments of Voluntary Administrators at the request of the customer or by appointment by courts where not initiated by ANZ.

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**ANZ11QON:** Hansard p. 32

Foreclosures on farmers – legal fees and time-lines

CHAIR: When that occurs, the liquidators who go in and look at the assets and the ability to repay debt are nominated by the bank—that's correct? What quantum of legal fees to be incurred would be deemed appropriate?

Mr Elliott: I'd have to come back to you. I don't know. It's a good question—I should know, but I don't.

Mr Elliott: No, I don't know the answer to the question about the quantum of legal fees that is reasonable.

CHAIR: No, all right. There's the actual and then there's what you deem would be legit. Say there are assets to the value of \$1 million and an appropriate amount of legal fees would be no more than, say, 10 per cent—because, of course, it comes out of the estate.

Mr Elliott: I don't know. It's a good question. I'm not equipped to answer the question, sorry.

CHAIR: Does that mean that you would be prepared to take it on notice and come back with an answer?

Mr Elliott: Sure, absolutely.

CHAIR: What time lines or options do banks, at all, provide farmers around the right to negotiate or restructure once a default has occurred?

Mr Elliott: Again, that varies. I can come back to you on the specifics in terms of time lines. In reality, at the end of the day, nobody wants to get into that situation, least of all us. The last thing we want to be doing is recovering assets and selling farms or businesses.

#### **ANSWER**

ANZ seeks to minimise any instances of enforcement. As outlined in an answer to question on notice 10, ANZ initiated 3 enforcements against agribusiness customers in the 15 months to end March 2019 out of an agribusiness customer base of approximately 20,000. In the rare instances where an enforcement occurs, ANZ and its appointees seek to minimise the amount spent on legal fees noting that every situation is case specific.

In its forecasting, ANZ typically estimates total enforcement costs (including legal fees) to be around 10% of total assets. As noted above, every situation is case specific and so the actual legal fees incurred may be more or less than the estimate. For farming customers, if the enforcement is not contested, the legal fees incurred will generally be limited to the costs of preparing the required enforcement notices, appointment documents, property sale documents and attending the property settlement.

Typically, where a customer defaults, ANZ's practice is to engage with our customer to discuss their individual circumstances and to ascertain what actions the customer is proposing to take as a result of the breach. ANZ may take a number of different approaches depending on the nature and severity of the default. There is no prescribed time line for ANZ to deal with such defaults and this will be determined on a case by case basis.

In 2017, ANZ estimated that in the past the time between ANZ first issuing a breach or default notice and then taking action under its security documents was on average a period of over 2.5 years for Agribusiness customers (p.10, ANZ Submission to the Senate Select Committee Inquiry into Lending to Primary Production Customers, May 2017).

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**ANZ12QW:**

Default interest

In regards the application of default interest:

- a. Does the Bank believe that its lawful right to impose a default interest charge arises from a breach of contract?
  
- b. Does the Bank believe that the quantum of such default interest charged is subject to the 'law of penalties' i.e. that is the quantum must be based upon a genuine pre-estimate of the loss incurred to the bank – and if not, that it may be deemed as an unenforceable penalty?

**ANSWER**

Given the increase in risk to ANZ where a customer defaults, ANZ's standard loan contract allows ANZ to charge higher rates in these circumstances. There is an increased cost to ANZ of carrying higher risk and impaired loans, as explained in our response to Question on Notice number 3.