

Summary of Potential Adverse Findings from Rounds 1 to 4 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

Round 1 - Summary of Potential Adverse Findings from Case Studies in Consumer Lending
(as per closing submissions on 23 March 2018)

Financial Institution	Issue / Case Study	Potential Findings
NAB	Introducer Program <ul style="list-style-type: none"> - falsifying documentation re: home loan applications - knowingly accepting falsified documentation re: home loan applications - receiving payments from introducers - failing to disclose personal relationships with introducers - failing to meet face-to-face with customers - accepting home loan application and supporting documentation from introducers rather than directly from customers 	1. Misconduct <ul style="list-style-type: none"> - s.47(1)(a) National Credit Act (NCA) and s.912A(1)(a) Corporations Act (CA) – to ensure its activities are engaged in efficiently, honestly and fairly - s.47(1)(b) NCA and s.912A(1)(aa) CA – to have adequate arrangements in place for the management of conflicts of interest to ensure customers are not disadvantaged by conflicts of interest - s.47(1)(g) NCA and s.912A(1)(f) CA – to ensure representatives are adequately trained - s.128(a) NCA – not to enter into a credit contract in circumstances where: <ul style="list-style-type: none"> o it had not made reasonable enquiries about a customer’s financial situation (s.130(1)(b)) o it had not taken reasonable steps to verify a customer’s financial situation (s.130(1)(c))

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	<ul style="list-style-type: none"> - approving home loans in circumstances where the customer did not have the capacity to service the loan and where the loan was, therefore, unsuitable for the customer 	<ul style="list-style-type: none"> - s.133 NCA – not to enter into credit contracts with consumers in circumstances where the contract was unsuitable - s.912D(1) CA – to provide a written report to ASIC within 10 business days of becoming aware of errors, which constitute significant breaches of its obligations (under s.912A CA) - misleading and deceptive conduct - unconscionable conduct - Regulatory Guide 209 “Credit Licensing” – failure to comply with the expectations of ASIC re: responsible lending - Regulatory Guide 78: “Breach Reporting by AFS licensees” – failing to comply with the expectations of ASIC in relation to breach reporting - cl.3.2 of the Banking Code of Practice (Code) – to act fairly and reasonably towards customers in a consistent and ethical manner - cl.27 of the Code – to exercise care and skill of a diligent and prudent banker in selecting and applying credit assessment methods and in forming an opinion about the customer’s ability to repay the credit facility <p>2. Engaging in conduct that fell below community standards and expectations</p> <ul style="list-style-type: none"> - not offering remediation to any affected customers - delaying commencement of formal investigation until late October 2015 after two whistle blower disclosures, despite being aware of potential misconduct in April 2015 <p>3. Causes of misconduct</p> <ul style="list-style-type: none"> - remuneration and incentive scheme which rewarded bankers for the volume of sales of home loans (i.e. Star Sales Incentive Program) - inadequacy of policies and processes for recruitment and training of bankers – not fully effective in ensuring bankers understood consumer lending process compliance requirements

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		<ul style="list-style-type: none"> - inadequacy of policies for the recruitment and monitoring of introducers - inadequacy of processes for managing conflicts of interest - inadequacy of policies for the prevention and detection of fraud by bankers and introducers - inadequacy of policies and procedures to ensure that bankers were engaging in responsible lending <p>4. Effectiveness of mechanisms for redress</p> <ul style="list-style-type: none"> - NAB has not effectively and adequately responded to the detriment suffered by its customers as a result of the misconduct
CBA	<p>Arrangements with mortgage brokers and head groups (mortgage aggregators or mortgage franchises)</p> <ul style="list-style-type: none"> - potential for conflict of interest due to remuneration rates of mortgage brokers and head groups being based on sales volumes, size of loan and duration of loan - inadequate monitoring of mortgage brokers and head groups - accreditation process inadequate and contractual rights not acted upon to ensure training and compliance - not informing customers of the amount of commission paid to the head group or broker - revoking accreditation of a number of mortgage brokers on the basis of inactivity with immediate effect 	<p>1. Misconduct</p> <ul style="list-style-type: none"> - s.47(1)(b) NCA and s.912A(1)(aa) CA – to have adequate arrangements in place for the management of conflicts of interest to ensure customers are not disadvantaged by conflicts of interest - s.47(1)(a) National Credit Act (NCA) and s.912A(1)(a) Corporations Act (CA) – to ensure its activities are engaged in efficiently, honestly and fairly (re: failing to adequately monitor activities of head group branches) - s.47(1)(a) National Credit Act (NCA) and s.912A(1)(a) Corporations Act (CA) – to ensure its activities are engaged in efficiently, honestly and fairly (re: failing to disclose to customers the commissions paid to head groups in respect of their loan) - cl.3.2 of the Code – to act fairly and reasonably towards customers in a consistent and ethical manner <p>2. Engaging in conduct that fell below community standards and expectations</p> <ul style="list-style-type: none"> - failing to remove volume-based commissions paid to brokers or to take steps to remove the conflict of interest created by these commissions

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		<ul style="list-style-type: none"> - revoking the accreditation of a number of mortgage brokers on the basis of inactivity with immediate effect, without first providing brokers with an opportunity to satisfy CBA of the quality of their activities
Aussie Home Loans	<p>Falsification of documents submitted to lenders in support of home loan applications (by four former AHL brokers)</p> <ul style="list-style-type: none"> - Falsification of bank statements, payslips and letters of employment - AHL did not report the misconduct to the police, ASIC or the Mortgage & Finance Association of Australia - AHL did not notify the affected customers of any of the four brokers of the basis on which it had terminated its relationship with the brokers (it transferred the customers to another AHL broker) 	<p>1. Misconduct</p> <ul style="list-style-type: none"> - s.47(1)(a) NCA – to ensure its activities are engaged in efficiently, honestly and fairly - s.47(1)(b) NCA – to have adequate arrangements in place for the management of conflicts of interest to ensure customers are not disadvantaged by conflicts of interest - s.47(1)(c) NCA – to take reasonable steps to ensure that its representatives comply with the NCA - s.47(1)(ii) NCA – to have adequate risk management systems - s.117(1)(a) NCA – to take reasonable steps to verify the financial situation of customers prior to making an assessment of whether the home loans would be unsuitable for the customers - misleading and deceptive conduct - unconscionable conduct - Regulatory Guide 209: ‘Credit licensing: Responsible Lending Conduct’ – failure to comply with the expectations of ASIC re: responsible lending - Code of Practice of the Mortgage & Finance Association of Australia – to act with appropriate care, skill and diligence; to not engage in any acts or omissions of a dishonest or fraudulent nature; to suggest or recommend to customers only credit that AHL reasonably believed was appropriate to the needs of the customer after undertakings an appropriate assessment of the customer’s capacity to service the proposed credit; to keep customers informed of all relevant information known to AHL relating to current credit applications re: reasons for termination of a broker connected with allegations of fraud related to any current credit application of that broker

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		<p>2. Engaging in conduct that fell below community standards and expectations</p> <ul style="list-style-type: none"> - failing to advise customers whose loans had been submitted by one of the four brokers, and which had been approved, of their termination of their relationships with the brokers and the reasons for the termination of those relationships - prioritising the retention of its trailing commissions from the broker's home loan book over investigating and dealing with the conduct that led to the termination of the broker, or ensuring that such conduct had not led to any detriment for a customer - submitting annual compliance certificates under s.53 NCA in circumstances where it was aware that a number of its brokers had, in the years covered by the certificates, engaged in fraudulent conduct <p>3. Causes of misconduct</p> <ul style="list-style-type: none"> - not merely because of rogue conduct of individuals but because the systems, processes and culture at AHL permitted such misconduct to occur because remuneration of AHL brokers was tied directly to the number and size of home loans introduced by the broker - prioritisation of selling of home loans over the proper assessment of the customers' requirements and objectives for the purpose of identifying and recommending a loan product that was not unsuitable for the customer - inadequate systems for prevention and detection of fraud - inadequate systems for ensuring that the recommendations made by AHL brokers complied with AHL's general conduct obligations and responsible lending obligations under the NCA <p>4. Effectiveness of mechanisms for redress</p> <ul style="list-style-type: none"> - AHL did not effectively and adequately respond to: <ul style="list-style-type: none"> o the potential detriment suffered by customers o the danger posed to other future customers of the four brokers

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ANZ	<p>Failure to take reasonable steps to verify information provided by brokers in relation to a customer's financial situation</p> <ul style="list-style-type: none"> - ANZ does not take any steps to verify the customer's general living expenses. Where ANZ holds information that is inconsistent with the information provided on the Statement, it disregards that information and does not make any further enquiries into that inconsistency. - Home Loan of \$50,000 for "renovations" was provided to 1 customer (Robert Regan) with a recent transaction history of multiple Western Union money transactions of thousands of dollars. The ANZ assessment officer considered an exit strategy of Mr Regan downsizing if need be, without having discussed this with Mr Regan. Mr Regan's age was not considered (he was 72 and receiving a pension). The loan was approved for a 30 year term. Mr Regan used the money to pay overseas individuals who were scamming Mr Regan. Hardship application was completed incorrectly and application was rejected (on basis of incorrect completion). 	<p>1. Misconduct</p> <ul style="list-style-type: none"> - s.47(1)(a) NCA and s.912A(1)(a) CA – to ensure its activities are engaged in efficiently, honestly and fairly - s.128(a) NCA – not to enter into a credit contract in circumstances where: <ul style="list-style-type: none"> o it had not made reasonable enquiries about a customer's financial situation (s.130(1)(b)) o it had not taken reasonable steps to verify a customer's financial situation (s.130(1)(c)) - s.133(1) NCA – to not enter into credit contracts with consumers in circumstances where the contract was unsuitable - Regulatory Guide 209: 'Credit licensing: Responsible Lending Conduct' – failure to comply with the expectations of ASIC re: responsible lending - cl.3.2 of the Code – to act fairly and reasonably towards customers in a consistent and ethical manner - cl.27 of the Code – to exercise care and skill of a diligent and prudent banker in selecting and applying credit assessment methods and in forming an opinion about the customer's ability to repay the credit facility <p>2. Engaging in conduct that fell below community standards and expectations</p> <ul style="list-style-type: none"> - Incorrect completion of Mr Regan's financial hardship application form resulting in Mr Regan being denied hardship assistance - After receiving information that Mr Regan was suffering financial hardship, failing to offer hardship assistance in a timely fashion - offering hardship assistance which was inadequate and which did not adequately address the hardship suffered by Mr Regan - when verifying the declared living expenses of a customer, relying on the HEM benchmark (a conservative measure of expenditure) when assessing a customer's ability to service a home loan

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		<ul style="list-style-type: none"> - not making enquiries when Mr Regan sought that the funds of the loan be drawn down for payment in RGBP rather than in AUD when the loan was stated to be for home renovations <p>3. Effectiveness of mechanisms for redress</p> <ul style="list-style-type: none"> - inadequate to address the detriment suffered by Mr Regan
CBA	<p>Sale of add-on insurance policies to customers who did not meet the employment eligibility criteria</p> <ul style="list-style-type: none"> - CBA staff had not been required to inform unemployed customers that in the event that the customer suffered temporary or permanent disability or involuntary unemployment, loan repayment cover could not be claimed if the customer remained unemployed 	<p>1. Misconduct</p> <ul style="list-style-type: none"> - s.912A(1)(a) CA – to ensure its activities are engaged in efficiently, honestly and fairly - s.912D CA – to provide a written report to ASIC within 10 business days of becoming aware of errors, which constitute significant breaches of its obligations - cl.3.2 of the Code – to act fairly and reasonably towards customers in a consistent and ethical manner - misleading and deceptive conduct (?) <p>2. Engaging in conduct that fell below community standards and expectations</p> <ul style="list-style-type: none"> - failure to introduce a knock-out question to the online credit card application form to prevent the sale of the product online to people who did not meet the employment eligibility criterion; - failure to make a significant breach report to ASIC under s.912D or to notify ASIC in any way - delay in agreeing to implement a remediation program that was acceptable to ASIC - including in sales scripts an explicit invitation to CBA staff to attempt to overcome the customer's objections up to two times during the entire application <p>3. Causes of misconduct</p> <ul style="list-style-type: none"> - Culture and processes within CBA that permitted such misconduct to occur

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		<ul style="list-style-type: none"> - CBA's processes required its staff to attempt to sell the insurance policies and loan protection products as part of the credit card application process - CBA did not require its staff to highlight the major exclusions of the two policies, despite recommendations of ASIC approximately two years earlier <p>4. Effectiveness of mechanisms for redress</p> <ul style="list-style-type: none"> - CBA did not effectively and adequately respond to the potential detriment suffered by customers - CBA was not proactive in the approach that it took to remediating customers who suffered detriment – negotiations with ASIC were protracted
CBA	<p>Programming error in the automated serviceability calculator used by CBA to assess long-form personal overdraft applications</p> <ul style="list-style-type: none"> - no regard had for rental amount figures included in the long-form applications completed by customers - customers' declared expenses replaced with a benchmark 	<p>1. Misconduct</p> <ul style="list-style-type: none"> - s.47(1)(a) NCA and s.912A(1)(a) CA – to ensure its activities are engaged in efficiently, honestly and fairly - s.133 NCA – to not enter into credit contracts with consumers in circumstances where the contract was unsuitable - cl.27 of the Code – to exercise care and skill of a diligent and prudent banker in selecting and applying credit assessment methods and in forming an opinion about the customer's ability to repay the credit facility <p>2. Cause of misconduct</p> <ul style="list-style-type: none"> - inadequate governance of data management
ANZ	<p>Failure to inquire into customer's objectives and requirements before offering pre-approved overdraft facility</p> <ul style="list-style-type: none"> - unsolicited mail-outs to 330,000 existing customers holding transaction accounts offering an 'arranged' overdraft facility with a limit of \$500 or \$1000 	<p>1. Misconduct:</p> <ul style="list-style-type: none"> - s.47(1)(a) NCA – to ensure its activities are engaged in efficiently, honestly and fairly - s.128(a) and s.128(aa) NCA – not to make an unconditional representation to customers to be eligible to enter a credit contract in circumstances where:

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		<ul style="list-style-type: none"> ○ it had not made reasonable enquiries about the customers' requirements and objectives in relation to the credit contract (s.130(a) NCA) ○ it had not made reasonable enquiries about the customer's financial situation (s.130(1)(b) NCA) ○ it had not taken reasonable steps to verify the customer's financial position (s.130(1)(c) NCA) ○ it had not made reasonable enquiries about the maximum credit limit that the customers required (s.130(1)(d) NCA and Reg 28JA National Credit Regulations 2010) <ul style="list-style-type: none"> - Regulatory Guide 209: 'Credit licensing: Responsible Lending Conduct' – failure to comply with the expectations of ASIC re: responsible lending - cl.3.2 of the Code – to act fairly and reasonably towards customers in a consistent and ethical manner - cl.27 of the Code – to exercise care and skill of a diligent and prudent banker in selecting and applying credit assessment methods and in forming an opinion about the customer's ability to repay the credit facility <p>2. Engaging in conduct that fell below community standards and expectations</p> <ul style="list-style-type: none"> - failure to remediate customers <p>3. Cause of misconduct</p> <ul style="list-style-type: none"> - inadequacy of ANZ's internal systems to ensure that its overdraft offers complied with its responsible lending obligations <p>4. Effectiveness of mechanisms for redress</p> <ul style="list-style-type: none"> - ANZ has not responded effectively to any potential detriment suffered by customers as a result of the misconduct
ANZ	Processing errors in connection with home loans	1. Misconduct:

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	<ul style="list-style-type: none"> - some offset accounts were not properly linked to home loans, resulting in customers being charged excess interest - some customers charged interest rate higher than they should have been according to terms and conditions of their accounts - some customers not given benefit of being linked to an offset account after selecting a particular home loan package or linking an existing home loan to a new home loan package - some customers did not receive the correct interest rate margin discount on their home loan - some offset accounts were not adequately linked to an eligible retail home loan resulting in customer failing to obtain benefit - some customers with certain home loan and commercial lending accounts failed to receive full benefit of offset arrangements 	<ul style="list-style-type: none"> - s.47(1)(a) NCA and s.912A(1)(a) CA – to ensure its activities are engaged in efficiently, honestly and fairly - s.912D CA – to provide a written report to ASIC within 10 business days of becoming aware of errors, which constitute significant breaches of its obligations (under s.47(1)(a) NCA and s.912A(1)(a) CA) - Regulatory Guide 78: “Breach Reporting by AFS licensees” – failing to comply with the expectations of ASIC in relation to breach reporting <p>2. Engaging in conduct that fell below community standards and expectations</p> <ul style="list-style-type: none"> - detection, reporting and remediation of the processing errors <p>3. Cause of misconduct</p> <ul style="list-style-type: none"> - inadequate systems to ensure customers receive their entitlements under their home loan package - inadequate processes for identifying and resolving processing errors; - reliance on manual processes by disparate and separate people within the bank, without overarching controls - failure to invest sufficient resources in the proper resolution of the errors <p>4. Effectiveness of mechanisms for redress</p> <ul style="list-style-type: none"> - adequate mechanisms not in place to provide redress in a timely manner to consumers who suffered detriment as a result of the misconduct - failure to identify the initial errors as systemic until 2010 and adoption of an ‘ad hoc’ response to customer complaints in the years before doing so - remediation was not complete until 2014 and had ongoing delays until the engagement of PwC in 2012
Westpac	Car loans approved by Westpac through dealer intermediaries	<p>1. Misconduct</p> <ul style="list-style-type: none"> - s.47(1)(a) NCA and s.912A(1)(a) CA – to ensure its activities are engaged in efficiently, honestly and fairly

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	<ul style="list-style-type: none"> - Processes in relation to one particular car loan was deficient - Westpac's auto finance policy permits a maximum loan-to-value ratio of 180% - Westpac's policies allow it to finance the purchase of a number of insurance products and the payment of origination fees - Westpac did not impose any maximum cap upon the amount of flex commission that could be charged to a customer 	<ul style="list-style-type: none"> - s.128(a) NCA – not to enter into a credit contract in circumstances where: <ul style="list-style-type: none"> o it had not made reasonable enquiries about a customer's financial situation (s.130(1)(b)) o it had not taken reasonable steps to verify a customer's financial situation (s.130(1)(c)) - s.133 NCA – not to provide a loan that was unsuitable for that customer - cl.27 of the Code – to exercise care and skill of a diligent and prudent banker in selecting and applying credit assessment methods and in forming an opinion about the customer's ability to repay the credit facility <p>2. Engaging in conduct that fell below community standards and expectations</p> <ul style="list-style-type: none"> - allowing flex commissions to be charged resulting in Westpac permitting the existence of a conflict of interest between the dealer intermediaries and its customers <p>3. Effectiveness of mechanisms for redress</p> <ul style="list-style-type: none"> - Westpac did not effectively and adequately respond to the detriment suffered by the customer
ANZ	<p>Provision of car finance to customers under the Esanda Dealer Finance portfolio</p> <ul style="list-style-type: none"> - loan applications submitted by car finance brokers in the name of an individual who did not own or have possession of the vehicle, but who agreed to guarantee the loan - sale of add-on products, such as insurance or warranties, to some borrowers without their knowledge or consent resulting in inflation of borrowed amount and increase of overall interest paid by borrower 	<p>1. Misconduct</p> <ul style="list-style-type: none"> - s.47(1)(a) NCA and s.912A(1)(a) CA – to ensure its activities are engaged in efficiently, honestly and fairly - s.47(1)(b) NCA – to have adequate arrangements in place for the management of conflicts of interest - s.128(d) NCA (read with s.130(1)(c)) – to take reasonable steps to verify the financial situation of affected customers <p>2. Engaging in conduct that fell below community standards and expectations</p> <ul style="list-style-type: none"> - offering insurance products to consumers with claim rates that “were nowhere near an acceptable level or an industry standard”

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	<ul style="list-style-type: none"> - allowed intermediaries to charge flex commissions to customers - on all but two add-on insurance products charged, premiums paid were larger than claims paid out 	<p>3. Causes of misconduct</p> <ul style="list-style-type: none"> - remuneration and incentive structure in respect of Esanda car loan intermediaries - inadequate systems in place to enable it to comply with its responsible lending obligations when assessing whether to approve a car loan
CBA	<p>Responsible lending practices re: credit cards and credit card limit increases</p> <ul style="list-style-type: none"> - Steps not taken to verify customers' living expenses as part of completion of short-form applications by customers for credit cards and credit card limit increases - Customers were pre-assessed for eligibility for a credit limit increase in advance of the customer applying for the credit - credit limit increase approved for a customer who had informed CBA that he has a gambling problem – this was not taken into account in assessing his eligibility for a credit limit increase 	<p>1. Misconduct</p> <ul style="list-style-type: none"> - s.47(1)(a) NCA and s.912A(1)(a) CA – to ensure its activities are engaged in efficiently, honestly and fairly - s.128(b) NCA – not to increase the credit limit of a credit contract in circumstances where: <ul style="list-style-type: none"> o it did not make reasonable enquiries about a customer's financial situation (s.130(1)(b)); o it did not take reasonable steps to verify a customer's financial situation (s.130(1)(c)) - Regulatory Guide 209: 'Credit licensing: Responsible Lending Conduct' – failure to comply with the expectations of ASIC re: responsible lending - cl.27 of the Code – to exercise care and skill of a diligent and prudent banker in selecting and applying credit assessment methods and in forming an opinion about the customer's ability to repay the credit facility <p>2. Engaging in conduct that fell below community standards and expectations</p> <ul style="list-style-type: none"> - failing to take into account that a customer was using his CBA consolidated credit card for gambling, at the point in time that it offered a credit limit increase to the customer <p>3. Cause of misconduct</p> <ul style="list-style-type: none"> - complex and contradictory processes in order to close a customer account - customer's disclosure of gambling problem not captured by CBA's systems

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		<ul style="list-style-type: none"> - letter sent to customer declining request for hardship some months <i>after</i> customer had entered into a payment arrangement with CBA
Westpac	<p>Failure to make reasonable inquiries about or take reasonable steps to verify a customer's financial position re: approval of credit card limit increases</p> <ul style="list-style-type: none"> - automated process performed assessment as to whether credit limit increase was not unsuitable for a customer – Westpac did not seek further information from customers re: employment status, income or non-Westpac debts 	<p>1. Misconduct</p> <ul style="list-style-type: none"> - s.128(b) NCA – not to increase the credit limit of a credit contract in circumstances where: <ul style="list-style-type: none"> o it did not make reasonable enquiries about a customer's financial situation (s.130(1)(b)) o it did not take reasonable steps to verify a customer's financial situation (s.130(1)(c)) - s.133(1)(b) NCA – not to increase the credit limit of a credit contract with a consumer where the contract is unsuitable for the consumer - Regulatory Guide 209: 'Credit licensing: Responsible Lending Conduct' – failure to comply with the expectations of ASIC re: responsible lending <p>2. Engaging in conduct that fell below community standards and expectations</p> <ul style="list-style-type: none"> - ignoring ASIC's expectation of banks to make inquiries about employment status and current income as a minimum before offering a credit limit increase - relying on an automated process to assess suitability of credit card limit increases for customers in circumstances where it was aware, or ought to have been aware, that such a process may not taken into account customer's employment status, current income or current debts - making no attempt to assess whether credit card limit increases met the needs of the customers - not commencing remediation until January 2016 in respect of affected customers from 2012 to 2014 <p>3. Causes of misconduct</p>

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		<ul style="list-style-type: none"> - prioritisation of profitability over recommendations of regulatory and compliance team - inadequacy of policies and automated procedures to ensure credit card limit offers were made in compliance with Westpac's responsible lending obligations - remuneration and incentive scheme, which rewarded bankers for volume of credit card limit increases that they achieved in a given period
Citi International	<p>Failure to adequately disclose to customers that International Transaction Fees would be imposed for Australian dollar transactions where merchant located overseas or where merchant used a foreign bank or entity to process the transaction</p> <ul style="list-style-type: none"> - Customers not informed that international transaction fees would be charged for transactions with an offshore merchant in circumstances where the merchant's website: (a) quoted prices in Australian dollars; (b) used an Australian web address; and (c) otherwise contained no information to indicate that the merchant was located offshore - Customers not informed that international transaction fees could be charged where the merchant was located in Australia but the payment was processed by the merchant overseas 	<ol style="list-style-type: none"> 1. Misconduct <ul style="list-style-type: none"> - s.47(1)(a) NCA and s.912A(1)(a) CA – to ensure its activities are engaged in efficiently, honestly and fairly - cl.3.2 of the Code – to act fairly and reasonably towards customers in a consistent and ethical manner 2. Engaging in conduct that fell below community standards and expectations <ul style="list-style-type: none"> - failing to clearly articulate to customers the nature of, and basis for, the imposition of international transaction fees 3. Cause of misconduct <ul style="list-style-type: none"> - failure to have adequate processes to ensure the disclosure to customers of the circumstances in which international transaction fees would be charged

Round 2 - Summary of Potential Adverse Findings from Case Studies in Financial Advice
(as per closing submissions on 27 April 2018)

Financial Institution	Issue/ Case Study	Potential Findings
Fees for no service		
AMP	<p>BOLR (Buyer of Last Resort) Policy</p> <ul style="list-style-type: none"> Books of financial planning clients purchased by AMP and put in BOLR pool but AMP did not have the resources to provide services to BOLR pool clients Charged fees to clients in circumstances where they did not and could not provide services AMP intended to reduce fees for clients in the BOLR pool but had inadequate systems in place to ensure this occurred AMP failed to undertake regular audits to monitor fees for no service AMP reported the conduct to ASIC but continued to charge fees for no service following this report <p>90 Day Exception</p>	<p>Conduct involved possible contraventions of:</p> <ol style="list-style-type: none"> <i>s 912A(1)(a) Corporations Act 2001 (Cth) (CA)</i> – to ensure services are provided efficiently, honestly and fairly <i>s 912A(1)(ca) CA</i>– must take reasonable steps to ensure representatives would act in accordance with norm of conduct under <i>s 12DI(1),(3) ASIC Act 2001 (Cth) (ASIC Act)</i> <i>s 912A(1)(h) CA</i> – must have adequate risk management systems in place <i>ss 912D(1)(b), 912A(1)(a), 912A(1)(ca), 912(1)(h) CA</i> – to provide a written report to ASIC within 10 business days of becoming aware of breaches or likely beaches <i>s 12CB ASIC Act</i> – unconscionable conduct in relation to the supply of financial services <i>ss 912A(1)(c), 912A(1)(a), 912(1)(ca), 912A(1)(h) CA and ss 12CB, 12DI ASIC Act</i> – failing to comply with financial services law

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	<ul style="list-style-type: none"> • A general rule developed that clients would be charged fees for up to 90 days after they had been moved to the BOLR pool • AMP Financial Planning notified ASIC of the nature and extent of the deliberate 90 day exception however the conduct continued for nearly 2 years after they were aware of the practice <p>Ring Fencing</p> <ul style="list-style-type: none"> • AMP purchased books of clients, placed the group of clients in the BOLR pool and keep the register separate so it could be sold later as a whole ('ring fencing') • Ring-fenced clients would pay fees but received no services for their fees <p>ASIC Reports</p> <ul style="list-style-type: none"> • AMP made 20 false or misleading statements to ASIC regarding their ongoing service fee conduct <p>Clayton Utz Report</p> <ul style="list-style-type: none"> • Report produced by Clayton Utz that was provided to ASIC was labelled as 'external' and 'independent' • Evidence suggested Clayton Utz provided AMP with 25 drafts of the report • AMP Board approved changes to the Clayton Utz report • Mark ups were made by employees and officers of AMP 	<ol style="list-style-type: none"> 7. ss 12DI(1), (3) ASIC Act - acceptance of payment for services where there is belief that they cannot supply the services 8. ss 1308(2), (3), (4), (5) CA – false and misleading statements made to ASIC 9. s 64 ASIC Act – providing false and misleading information to ASIC
<p>CBA (Commonwealth Financial Planning Ltd and</p>	<ul style="list-style-type: none"> • Clients were allocated to a financial planner but the planner did not provide ongoing services 	<p>Conduct involved possible contraventions of:</p> <ol style="list-style-type: none"> 1. s 912A(1)(a) CA – to ensure services are provided efficiently, honestly and fairly

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Count Financial Planning)	<ul style="list-style-type: none"> • CBA entities did not have systems in place to monitor compliance with fees for services • Orphaned clients were not allocated to a financial planner so no advice was provided to them despite being charged fees • CBA entities were aware of fees for no service conduct for at least 18 months before reporting it to ASIC • Mr Costello, counsel assisting, stated that CBA entities would be the “gold medallist if ASIC was handing out medals for fees for no service” 	<ol style="list-style-type: none"> 2. s 912A(1)(d) CA – have available adequate resources to provide the financial services 3. s 12DI(3) ASIC Act – not to accept payment for services where there is a reasonable belief that they cannot supply the services within the period specified 4. ss 912D(1)(b) CA – to provide a written report to ASIC within 10 business days of becoming aware of breaches or likely breaches
Investment Platform Fees		
AMP	<p>WealthView and PortfolioCare</p> <ul style="list-style-type: none"> • No steps were taken to ensure automatic deduction of fees from clients’ accounts only occurred where clients had opted to pay the fees for the services • AMP was aware of clients being placed on two platforms that charged uncompetitive fees and continued to leave clients invested in those platforms <ul style="list-style-type: none"> • No steps were taken to make the platforms cost competitive • AMP platforms were recommended by AMP authorised representatives when they were not the best option for clients 	<p>Conduct involved possible contraventions of:</p> <ol style="list-style-type: none"> 1. s 912A(1)(a) CA – to ensure services are provided efficiently, honestly and fairly 2. s 912A(1)(aa) CA – must have adequate arrangements in place for the management of conflicts of interest

Financial Institution	Issue/ Case Study	Potential Findings
CBA	<ul style="list-style-type: none"> Colonial First State preferred its own interests to those invested in the products through its platforms Colonial First State allowed the deduction of fees from client's accounts where the fees were not owing Colonial First State took no steps to ascertain whether the fees were in fact owing 	<p>Conduct involved possible contraventions of:</p> <ol style="list-style-type: none"> <i>s 912A(1)(aa) CA</i> – must have adequate arrangements in place for the management of conflicts of interest
Inappropriate Financial Advice and Improper Conduct by Financial Advisers		
ANZ (RI Advice Group Pty Ltd and Millennium 3 Financial Services Pty Ltd)	<ul style="list-style-type: none"> Advisers gave recommendations of products not on RI's approved product list Advisers recommended products inappropriate for clients RI failed to take steps to protect customers from receiving inappropriate advice RI failed to expeditiously implement a review and remediation program upon discovering financial advisers giving inappropriate advice Millennium3 failed to take steps to investigate whether clients had suffered loss as a result of a financial adviser's poor advice after they terminated a financial adviser Advisers failed competency test and received poor rankings but were still allowed to provide advice Adviser withdrew funds from clients accounts without their authority 	<p>Conduct involved possible contraventions of:</p> <ol style="list-style-type: none"> <i>s 946A(1) CA</i> – obligation to provide certain types of clients a Statement of Advice <i>s 961B(1) CA</i> – provider must act in best interest of the client when providing advice <i>s 961G CA</i> – provider must give advice that it is appropriate for the client <i>s 1041G CA</i> – engaging in dishonest conduct in relation to financial products/services <i>s 1041H(1) CA</i> – misleading and deceptive conduct in relation to financial product/service <i>s 12DA ASIC Act</i> – misleading and deceptive conduct in relation to financial services <i>s 912A(1)(ca) CA</i> – take reasonable steps to ensure its representatives comply with financial services laws <i>s 912A(1)(a) CA</i> – to ensure services are provided efficiently, honestly and fairly

Financial Institution	Issue/ Case Study	Potential Findings
		9. ss 961L, 961B, 961G CA – take reasonable steps to ensure licensee complies with statutory obligations 10. s 952H CA – take reasonable steps to ensure an authorised representative complies with obligations under Part 7.7 CA 11. s 912A(1)(d) CA – have adequate resources to carry out supervisory arrangements
Westpac (BT Finance Group)	<ul style="list-style-type: none"> • A financial adviser provided poor and inappropriate financial advice to a couple leading to significant losses for the couple <ul style="list-style-type: none"> • Westpac made offers to settle the complaint but did not discipline the adviser until 18 months later • Westpac did not report the adviser's conduct • Westpac failed to report a financial adviser to ASIC as a Serious Compliance Concern following several months of investigations into the adviser • When the financial adviser's new licensee (Dover Financial Services) asked Westpac for information about a financial licensee with a poor history, Westpac did not provide such information • Financial advisers were remunerated on an incentive scheme where the monthly bonus was calculated as a percentage of the revenue they generated above target <ul style="list-style-type: none"> • Advisers were providing inappropriate advice to maximise their bonus 	Conduct involved possible contraventions of: <ol style="list-style-type: none"> 1. s 961B(1) CA – provider must act in best interest of the client when providing advice 2. s 961G CA – provider must give advice that it is appropriate for the client 3. s 912A(1)(aa) CA – must have adequate arrangements in place for the management of conflicts of interest 4. s 912A(1)(ca) CA – take reasonable steps to ensure its representatives comply with financial services laws 5. ss 961L, 961B, 961G CA – take reasonable steps to ensure licensee complies with statutory obligations 6. s 912D CA – to provide a written report to ASIC within 10 business days of becoming aware of breaches or likely breaches
AMP (AMP Financial Planning Pty Ltd, Charter Financial Planning Ltd and	<ul style="list-style-type: none"> • AMP had not remediated a couple for inappropriate financial advice from one of their advisers • Adviser provided advice where they had a direct interest in the investment business 	Conduct involved possible contraventions of: <ol style="list-style-type: none"> 1. s 912B CA – duty to act in best interests of client

Financial Institution	Issue/ Case Study	Potential Findings
Genesys Wealth Advisers Ltd)	<ul style="list-style-type: none"> AMP failed to provide adequate training to financial advisers about the best interests duty and related obligations AMP did not report financial adviser's conduct as a Serious Compliance Concern to ASIC AMP failed to ensure audit standards were of such a level that inappropriate conduct would be detected 	<ol style="list-style-type: none"> <i>s 961G CA</i> – provider must give advice that it is appropriate for the client <i>s 961J CA</i> – give priority to clients' interests where a conflict exists between the adviser's interests and the clients interests <i>s 1041H(1) CA</i> – misleading and deceptive conduct in relation to financial product/service <i>s 12DA ASIC Act</i> – misleading and deceptive conduct in relation to financial services <i>s 912A(1)(ca) CA</i> – take reasonable steps to ensure its representatives comply with financial services laws <i>s 912A(1)(a) CA</i> – to ensure services are provided efficiently, honestly and fairly <i>s 912A(1)(h) CA</i> – must have adequate risk management systems in place <i>ss 961L, 961B, 961G, 961H, 961J CA</i> – take reasonable steps to ensure licensee complies with statutory obligations <i>s 912A(1)(f) CA</i> – failed to ensure representatives were adequately trained and competent
NAB	<ul style="list-style-type: none"> Over 300 staff involved in incorrectly witnessing of beneficiary nomination forms by financial advisers Client services officer also signed forms as a witness even though she was not there for the customers signatures Conduct was not reported to ASIC nor any professional association 	<p>Conduct involved possible contraventions of:</p> <ol style="list-style-type: none"> <i>s 1041H(1) CA</i> – misleading and deceptive conduct in relation to financial product/service <i>s 12DA ASIC Act</i> – misleading and deceptive conduct in relation to financial services <i>s 912A(1)(ca) CA</i> – take reasonable steps to ensure its representatives comply with financial services laws

Financial Institution	Issue/ Case Study	Potential Findings
		4. s 912A(1)(a) CA – to ensure services are provided efficiently, honestly and fairly
The Disciplinary Regime for the Financial Advice Profession		
Financial Planners Association (FPA)	<ul style="list-style-type: none"> • Financial adviser impersonated client on the phone to State Authority Superannuation Scheme • Financial adviser did not conduct research into other funds before making recommendations • Financial adviser gave inappropriate advice which, if relied upon, would have resulted in significant losses for client • Client made complaint to FPA • FPA initiated disciplinary proceedings 	Conduct involved possible contraventions of: <ol style="list-style-type: none"> 1. s 961B CA – provider must act in best interest of the client when providing advice 2. s 961G CA – provider must give advice that is reasonable to conclude that it is appropriate for the client 3. s 961J CA – give priority to clients’ interests where a conflict exists between the adviser’s interests and the clients interests 4. s 952E(1) CA – must not give a defective financial services guide
Dover Group	<ul style="list-style-type: none"> • Dover authorised an adviser to be its representative before making contact with the former licensee where Dover was reasonably aware of matters that would cause them to investigate further before making an authorisation • Dover wrote to a complainant who had made a complaint to the Financial Ombudsman Service (FOS) and stated that making false complaints can give rise to defamation actions • Implementing a “Client Protection Policy” that sought the maximum exclusion of liability possible 	Conduct involved possible contraventions of: <ol style="list-style-type: none"> 1. s 1041H(1) CA – misleading and deceptive conduct in relation to financial product/service 2. s 12DA ASIC Act – misleading and deceptive conduct in relation to financial services 3. s 912A(1)(c) CA – failing to comply with financial services law 4. s 12BF ASIC Act – unfair consumer contracts

Round 3 - Summary of Potential Adverse Findings from Case Studies in Loans to Small and Medium Enterprises
(as per closing submissions on 1 June 2018)

Financial Institution	Issue/ Case Study	Potential Findings
1. Responsible lending to small businesses		
ANZ	<ul style="list-style-type: none"> • ANZ provided a business loan to a couple for the purpose of purchasing a gelato franchise and the couple subsequently made a complaint to the Financial Ombudsman Service (FOS) • FOS made a determination that ANZ relied on overly optimistic projected cash flow forecasts provided by the franchisor <ul style="list-style-type: none"> • Cash flow forecasts were contained in a generic business plan and inconsistencies existed within that plan • When loan was made, three of the four KPI's in ANZ's Incentive scheme focussed on financial targets <ul style="list-style-type: none"> • ANZ promoted the message to their bankers that they were 'relentlessly' to acquire new bank customers 	Conduct involved possible contraventions of: <ul style="list-style-type: none"> • <i>cl 27 Code of Banking Practice 2013 (CPB)</i> – requirement to exercise the care and skill of a diligent and prudent banker

Financial Institution	Issue/ Case Study	Potential Findings
Bank of Queensland (BoQ)	<ul style="list-style-type: none"> • BoQ provided a customer with a conditional letter of offer stating the monthly repayments of a loan would be \$4,420 over 84 months <ul style="list-style-type: none"> • The customer wanted to purchase two Wendy's outlets • After receiving the conditional offer, the customer signed a franchise agreement • BoQ then provided a final letter of offer which stated the monthly repayments would be nearly double the amount stated in the Conditional Letter and the term was 3 years as opposed to 84 months • The customer proceeded with the loan and later found herself in default • A complaint was made to FOS and FOS found BoQ had misled the customer <ul style="list-style-type: none"> • BoQ continued to challenge the complaint despite internally concluding that this was inappropriate lending 	<p>Conduct involved possible contraventions of:</p> <ul style="list-style-type: none"> • <i>cl 27 CBP</i>– requirement to exercise the care and skill of a diligent and prudent banker • <i>cl 3.1B CBP</i> – requirement to promote informed decision making by providing effective and timely disclosure of the repayment amount and the term of a loan • <i>cl 3.2 CBP</i> – requirement to act fairly and reasonably to customers in a consistent and ethical manner
CBA	<ul style="list-style-type: none"> • CBA offered a simple business overdraft (SBO) to existing customers where no assessment was made of the customer's income and expenses and as to whether the customers wanted the overdraft facility • CBA overcharged some overdraft customers – charging customers a 33.93% monthly interest rate instead of 16% • At least 25,000 bank statements were sent to customers that were misleading and false as they misstated the amount of interest payable 	<p>Conduct involved possible contraventions of:</p> <ul style="list-style-type: none"> • <i>s 12DA ASIC Act 2001 (Cth) (ASIC Act)</i> - misleading and deceptive conduct in relation to financial services • <i>s 912D Corporations Act 2001 (Cth) (CA)</i> - to provide a written report to ASIC within 10 business days of becoming aware of breaches or likely breaches • <i>s 12DB(1)(g) ASIC Act</i> – false or misleading representations in relation to the supply of financial services

Financial Institution	Issue/ Case Study	Potential Findings
	<ul style="list-style-type: none"> CBA was aware of the overcharging issue as early as 2013 but did not report the conduct to ASIC until 15 May 2018 	
Westpac	<ul style="list-style-type: none"> A customer received a loan from Westpac despite the customer having received advice from an accountant prior to entering in the loan that indicated potential issues with the business's profitability <ul style="list-style-type: none"> Westpac was also made aware of the advice provided by the accountants prior to providing the loan The customer was unable to make repayments on the loan and the business went into voluntary administration The customer made a complaint to FOS FOS found that the loan should never have been made and ordered that all interest and bank charges be removed but the principal sum remained to be paid In order to repay the loan, one of the guarantors sold her investment property and then made another complaint to FOS FOS made a finding against the guarantor However, FOS did find that Westpac breached FOS's terms of reference because Westpac had sent the guarantor 13 collection notices in the form of text messages while the FOS dispute was occurring 	<p>Conduct involved possible contraventions of:</p> <ul style="list-style-type: none"> <i>cl 3.2 CBP</i> – requirement to act fairly and reasonably to customers in a consistent and ethical manner <i>cl 13.1 FOS Terms of Reference</i> – member of FOS must not try recover a debt while FOS is dealing with a dispute
2. Taking of a Guarantee from a third party for a business loan		
Westpac	<ul style="list-style-type: none"> A blind, ill elderly woman provided a guarantee to Westpac and a mortgage over her home for a business 	<p>Conduct involved possible contraventions of:</p>

Financial Institution	Issue/ Case Study	Potential Findings
	<p>loan obtained by a company established by her daughter and her daughter's partner</p> <ul style="list-style-type: none"> • The blind elderly woman was on a disability pension and was unable to read, also suffers from several serious/chronic health issues • The Westpac banker pre-filled some of the answers on the guarantee forms included pre-signing the witness documentation • The borrowers defaulted and Westpac sought sale of the elderly guarantor's home • NSW Legal Aid assisted the guarantor and submitted a complaint to FOS <ul style="list-style-type: none"> • FOS made a finding not in the guarantor's favour • Eventually, Westpac progressed the hardship request and allowed the guarantor to remain in her house until her death <ul style="list-style-type: none"> • Westpac admitted that they should have progressed the hardship request earlier but still believed they were correct in issuing the loan 	<ul style="list-style-type: none"> • <i>s 12CB ASIC Act</i> - unconscionable conduct in relation to the supply of financial services
3. Customer redress systems		
Suncorp	<ul style="list-style-type: none"> • Suncorp provided a business loan to a customer in 2013/2014 and the customer passed away in 2015, leaving the outstanding loan • In 2017, FOS handed down a decision that Suncorp failed to make proper inquiries into the purpose of the business loan 	<p>Conduct involved possible contraventions of:</p> <ul style="list-style-type: none"> • <i>cl 27 CBP</i> – requirement to exercise the care and skill of a diligent and prudent banker • <i>cl 3.2 CBP</i> – requirement to act fairly and reasonably to customers in a consistent and ethical manner

Financial Institution	Issue/ Case Study	Potential Findings
	<ul style="list-style-type: none"> • FOS stated that the debt should be reduced by the amount of interest paid and Suncorp could not charge further interest • FOS's determination stated that if an agreement between the borrower and Suncorp was not reached within 30 days in relation to recovery of the debt, Suncorp could commence a recovery action • Offers and counteroffers were made. Suncorp proposed full repayment of the loan between 6 and 12 months. • The customer sought further help from FOS. FOS refused to assist. • The customer offered to repay the loan over its original term on an interest free basis but this was refused by Suncorp. 	
4. Bankwest Business lending book		
Bankwest	<ul style="list-style-type: none"> • CBA purchased Bankwest and within 18 months became aware of: <ul style="list-style-type: none"> • problems with the quality of the business loan book; • problems with the diversity of the loan book; • problems with business functions including loan management; and • problems with aspects of the risk management function. 	CBA's conduct involved errors of communication and transparency which are below community standards and expectations

Financial Institution	Issue/ Case Study	Potential Findings
	<ul style="list-style-type: none"> • There was evidence of Bankwest increasing the interest rate margin and offering short facilities to encourage the borrower to exit their facilities <ul style="list-style-type: none"> • This often occurred when Bankwest was wanting to reduce exposure in a particular area of the market • There was evidence of Bankwest placing too much reliance on non-monetary defaults including LVR covenants and shortening the loan period after which a deed of forbearance was executed • Evidence showed that Bankwest failed to provide a copy of a valuation to a borrower when the valuation played a contributing factor in Bankwest's decision not to extend the facility • On one occasion, CBA made a borrower pay for an investigative accountants report when the borrower had not been provided with a copy of the report <ul style="list-style-type: none"> • CBA gave the borrower 7 days to pay costs for the report that the borrower did not receive a copy of • On another occasion, CBA failed to engage in a transparent discussion with the borrower about their intention to sell the borrower's hotel 	
5. Power and Communication		
Bank of Melbourne	<ul style="list-style-type: none"> • Bank of Melbourne (BoM) withheld funds in deposit to correct an error made by the bank • A company obtained two loans from BoM: 	Conduct involved possible contraventions of: <ul style="list-style-type: none"> • <i>cl 3.2 CBP</i> – requirement to act fairly and reasonably to customers in a consistent and ethical manner

Financial Institution	Issue/ Case Study	Potential Findings
	<ol style="list-style-type: none"> 1. Investment property loan to refinance an existing mortgage over an investment property; and 2. A loan to purchase a property. <ul style="list-style-type: none"> • In relation to the second loan, it was for the purchase of a property with a house and business located on it • The bank incorrectly approved the second loan as a residential loan instead of a commercial loan • Upon the sale of the investment property, BoM refused to discharge the mortgage over the investment property unless \$100,000 of the proceeds of sale were deposited and held in the BoM's term deposit account pending restructure of the other loan (from residential to commercial) • A complaint was made to FOS and FOS held that BoM had incorrectly classified the second loan • FOS also held that the bank was entitled to retain part of the sale proceeds but that it was not fair for a bank to do so as the terms of the contract were too complex for a customer to understand 	<ul style="list-style-type: none"> • <i>s 12DA ASIC Act</i> - misleading and deceptive conduct in relation to financial services
NAB	<ul style="list-style-type: none"> • A customer had intentions to sell his property and use some of the proceeds to inject funds into National Music and purchase a smaller property in Melbourne • A NAB employee did not discuss NABs expectations in respect of the sale proceeds with the customer • NAB did not tell the customer that they would require further security if the property was sold • The property was sold and NAB then told the customer that the entire sale proceeds would be retained with the 	<p>Conduct involved possible contraventions of:</p> <ul style="list-style-type: none"> • <i>cl 3.2 CBP</i> – requirement to act fairly and reasonably to customers in a consistent and ethical manner

Financial Institution	Issue/ Case Study	Potential Findings
	<p>funds remaining after repayment of the mortgage to reduce the overall debt position of National Music</p> <ul style="list-style-type: none"> NAB did not have the right to apply the sale proceeds in this manner 	
6. Regulation and self-regulation of the SME lending sector		
ABA ASIC	<p><u>Code of Banking Practice</u></p> <ul style="list-style-type: none"> <i>Code of Banking Practice 2013</i> is currently under review and a revised draft of the code includes sections dealing with small businesses <ul style="list-style-type: none"> ABA's position is that the definition of "small business" should only extend to businesses with a total debt of \$3M or less to all credit providers ASIC's position is that the definition of "small business" should extend to businesses with a total debt of \$5M or less ABA is intending to market test the effect of changes and undertake a 2 year long review which will be supervised by ASIC <p><u>Unfair Contract Terms (UCT)</u></p> <ul style="list-style-type: none"> There has been implementation of UCT provisions in the <i>ASIC Act</i> which were extended to apply to small businesses from November 2016 onwards Suncorp provided evidence that they had amended their standard form business contracts to comply with changes in law but that this process took over 2 years due to the number of credit contracts being reviewed 	N/A

Financial Institution	Issue/ Case Study	Potential Findings
	<ul style="list-style-type: none"><li data-bbox="409 288 1182 352">• The UCT in the ASIC Act relates to financial services and is ASIC's responsibility<ul style="list-style-type: none"><li data-bbox="506 373 1167 437">• The UCT under the Australian Consumer Law is the responsibility of the ACCC<li data-bbox="506 458 1137 555">• Once the amending legislation took place, the ACCC entered into enforcement mode to try ensure compliance in the industry	

Round 4 - Summary of Potential Adverse Findings from Case Studies regarding Agricultural Finance and the Interaction between Aboriginal and Torres Strait Islander People and Financial Services Providers
(as per closing address by Counsel Assisting on 6 July 2018)

Financial Institution	Case Study/Issue	Potential Findings
Agricultural Finance		
ANZ	<p>Landmark Acquisition</p> <ul style="list-style-type: none"> ANZ gave evidence through Ben Steinberg, Head of ANZ Lending Services – Corporate and Commercial in relation to 13 case studies, many of which arose following ANZ's acquisition of Landmark Financial Services on 1 March 2010. The quality of the Landmark loan book was lower than the loan book of ANZ, and by 2014 up to one third of the Landmark book was in distress. 	<p>Counsel Assisting submitted there were numerous instances where ANZ's admitted conduct in dealing with defaulting agricultural borrowers constituted misconduct or fell below community standards and expectations (CSEs) and breached the Code of Banking Practice (CBP).</p>
	<ul style="list-style-type: none"> First, Mr Steinberg acknowledged that ANZ's communication with former Landmark customers, at the time of and immediately following the acquisition of the Landmark loan book, was not always satisfactory. Mr Steinberg acknowledged that this conduct fell below community standards and expectations (CSEs). 	<p>It is open to the Commissioner to make a finding consistent with that acknowledgement.</p>
	<ul style="list-style-type: none"> Second, Mr Steinberg also acknowledged that there were issues associated with the transition of former Landmark 	<p>It is open to the Commissioner to make a finding consistent with that acknowledgement.</p>

Financial Institution	Case Study/Issue	Potential Findings
	<p>customers to ANZ systems. He acknowledged that some former Landmark customers experienced delays in receiving responses from ANZ to information and funding requests following the acquisition. He said that there were also cases where limits were incorrectly loaded on the new system, and interest rates were incorrectly charged, and that some customers experienced difficulties in opening accounts. Mr Steinberg acknowledged that this conduct fell below CSEs.</p>	
	<p><u>The Cheesmans:</u></p> <ul style="list-style-type: none"> • First, ANZ entered into an asset management agreement with the Cheesmans under which, among other things, ANZ gave the Cheesmans less than two months to sell their properties, and ANZ required the Cheesmans to give vacant possession of their properties within seven days of ANZs demand if those properties did not sell at auction. 	<p>It is open to the Commissioner to find that this conduct fell below CSEs.</p>
	<ul style="list-style-type: none"> • Second, ANZ repeatedly refused the Cheesmans' request to delay the sale of the properties on which they lived to see if they could repay their debt without losing their homes. • In circumstances where the Cheesmans had told ANZ that they would have nowhere to live in the homes were sold, and there was a real prospect that the exclusion of the homes from the auction would make no difference to the sale price 	<p>It is open to the Commissioner to find that ANZs conduct in refusing to exclude the homes from the auction fell below CSEs</p>
	<ul style="list-style-type: none"> • Third, after the Cheesmans had sold nearly all of their properties, ANZ repeatedly refused to accept offers made by the Cheesmans to settle their outstanding debt. Mr Steinberg accepted that ANZ rejected those offers because it thought that it could obtain more money if it relied on its security interests. • Mr Steinberg acknowledged that three of the settlement offers made by the Cheesmans, in June, October, and December 	<p>Mr Steinberg accepted that by refusing to accept these offers, ANZ had engaged in conduct that fell below CSEs, and it is open to the Commissioner to make a finding consistent with that acknowledgement.</p>

Financial Institution	Case Study/Issue	Potential Findings
	<p>2012, were reasonable. ANZ declined each of these offers, and Mr Steinberg accepted that each time it did so it put the Cheesmans at risk of losing their remaining property where Reuben and Katrina Cheesman lived.</p>	
	<ul style="list-style-type: none"> It is also open to the Commissioner to find that by refusing to accept the Cheesmans' reasonable settlement offers, ANZ may have engaged in misconduct by breaching its obligation under clause 2.2 of the Code of Banking Practice (CBP) which required ANZ to act fairly and reasonably towards the Cheesmans in a consistent and ethical manner. 	<p>ANZ may have engaged in misconduct by breaching its obligation under clause 2.2 of the CBP which required ANZ to act fairly and reasonably towards the Cheesmans in a consistent and ethical manner</p>
	<p><u>Annexure B customers (subject to a non publication order):</u></p> <ul style="list-style-type: none"> First, Mr Steinberg told the Commission about an occasion in October 2011 when ANZ met with these customers to discuss their debt reduction options but, on the same day, issued them with a default notice. Mr Steinberg accepted that this did not represent consistent communication with the customers. 	<p>By behaving in this inconsistent way, ANZ may have engaged in misconduct by breaching its obligation under clause 2.2 of the CBP. Alternatively, it's open to the Commissioner to find that this conduct fell below CSEs.</p>
	<ul style="list-style-type: none"> Second, Mr Steinberg told the Commission about an occasion in January 2012 when ANZ refused to accept an offer by the customers to settle their outstanding debt to ANZ. In refusing this offer, ANZ did not explain the reasons for its refusal, or invite the customers to enter into further negotiations. This occurred in circumstances where the offer made by the customers was equal to the fair market value of the real property held as security by ANZ 	<p>It's open to the Commissioner to find that by failing to explain the reasons for refusing the settlement offer, ANZ may have engaged in misconduct by breaching its obligation under clause 2.2 of the CBP. Again, alternatively, it's open to the Commissioner to find that this conduct fell below CSEs.</p>
	<p><u>The Hirsts:</u></p> <ul style="list-style-type: none"> Having regard to the cumulative effect of a number of different aspects of ANZs conduct towards the Hirsts between 2011 and 2013, that conduct fell below CSEs. The conduct included not engaging in farm debt mediation with the Hirsts, entering into a 	<p>It is open to the Commissioner to find that by encouraging and granting increased loans to the Hirsts, ANZ may have engaged in misconduct by breaching its obligation under clause 2.2 of the CBP.</p>

Financial Institution	Case Study/Issue	Potential Findings
	<p>deed of settlement and release that involved little or no compromise from ANZ, and increasing the interest rate on the Hirsts' facilities at a time when they were known by ANZ to be under financial stress. Consistently with Mr Steinberg's acknowledgement, it is open to the Commissioner to find that this conduct fell below CSEs.</p>	<p>(this is in addition to the potential findings of ANZ's conduct falling below CSEs)</p>
	<p><u>The Harleys:</u></p> <ul style="list-style-type: none"> First, in September 2013, ANZ entered into a settlement deed with the Harleys. By the time the Harleys entered into that deed, they had made attempts to sell their assets to repay the debt, including putting their flock of sheep and all of their properties up for auction. They were also dealing with the ill health of Mr Harley, who had suffered a heart attack earlier that year. Under the deed, the Harleys were required to repay their debt in full within six months. If they did not, they were required to give ANZ vacant possession of the properties within one day, and ANZ was entitled to obtain immediate judgment against them in the Supreme Court of Western Australia. 	<p>In the circumstances, it is open to the Commissioner to find that by entering into a deed in these terms, providing for immediate enforcement action if the Harleys did not repay their debt by the deadline, ANZ may have engaged in misconduct by breaching its obligation under clause 2.2 of the CBP. Alternatively, this may be characterised as conduct that fell below CSEs.</p>
	<ul style="list-style-type: none"> Second Mr Steinberg said that he did not know whether there was any reason for ANZ to think that agents for a mortgagee in possession could get a better price for the sale of the remaining parcels of land than the Harleys could. Rather, the bank took enforcement action in the interests of certainty, and the properties were sold before spring at a substantial discount to the June 2013 valuations. Mr Steinberg accepted that if the same situation arose today he would have been more likely to give the Harleys some additional time to sell their properties. 	<p>In those circumstances, it's open to the Commissioner to find that ANZs conduct in refusing the extension and taking enforcement action fell below CSEs, and potentially breached clause 2.2 of the CBP.</p>
	<ul style="list-style-type: none"> The third available finding in relation to the Harleys relates to conduct in December 2014 when the Harleys' lawyers asked ANZ to release the Harleys from their obligation to pay the 	<p>In those circumstances, it's open to the Commissioner to find that by refusing the Harleys' request, ANZ may have engaged in misconduct by</p>

Financial Institution	Case Study/Issue	Potential Findings
	<p>outstanding debt, which by that time was around \$309,000. By this time, ANZ had required the Harleys to sell all of their properties, including their home, at a time when Mr Harley was recovering from serious health issues. ANZ had charged the Harleys almost \$60,000 in enforcement costs and left them without their farming business which was their method of generating income. It had also sold the last four of the Harleys properties at a substantial discount to their June 2013 valuations, and had sold them before spring, when the Harleys had told the bank there would be the most interest in their properties.</p>	<p>breaching its obligation under clause 2.2 of the CBP. Alternatively, it's open to characterise this as conduct that fell below CSEs.</p>
	<p><u>The Handleys:</u></p> <ul style="list-style-type: none"> First, the Handleys' lawyers asked ANZ to postpone a mediation on the basis that Mrs Handley had received adverse test results arising from a series of biopsies. ANZ refused this request without seeking more information even though Mrs Handley had, in fact, been diagnosed with cancer and was scheduled for surgery 	<p>Mr Steinberg accepted that this conduct fell below CSEs, and it's open to the Commissioner to make a finding consistent with that acknowledgement</p>
	<ul style="list-style-type: none"> Second, Mr Steinberg told the Commission that ANZ made a series of errors in relation to the overcharging of interest and fees in relation to the Handleys' accounts. As a result of those errors, there was a period when the Handleys did not have access to funds, and several of the cheques that they presented were dishonoured. 	<p>Mr Steinberg accepted that this conduct fell below CSEs, and it's open to the Commissioner to make a finding consistent with that acknowledgement.</p>
	<ul style="list-style-type: none"> Third, Mr Steinberg told the Commission that ANZ had also failed to extend overdraft limits to the Handleys in circumstances where it had agreed to extend those limits, which meant that there was a period when the Handleys were charged default interest when they should not have been. 	<p>Mr Steinberg did not accept that this conduct fell below CSEs, but it is open to the Commissioner to find that it did.</p>

Financial Institution	Case Study/Issue	Potential Findings
	<ul style="list-style-type: none"> Fourth, Mr Steinberg told the Commission that there was an occasion where an ANZ staff member involved with the Handleys signed documents as a witness, even though the staff member had not witnessed the Handleys signing the documents. 	Mr Steinberg accepted that this amounted to misconduct, and it is open to the Commissioner to make a finding consistent with that acknowledgement.
	<p><u>Annexure G customers (non publication order):</u></p> <p>In May 2010 ANZ offered those customers a \$450,000 overdraft facility, but only made a \$350,000 overdraft facility available to them. It wasn't until September 2010 that ANZ made the full facility available.</p>	Mr Steinberg accepted that this conduct fell below CSEs, and it's open to the Commissioner to make a finding consistent with that acknowledgement.
	<p><u>The Phillotts:</u></p> <ul style="list-style-type: none"> First, Mr Steinberg acknowledged that ANZ breached clause 2.2 of the CBP in its dealings with the Phillotts. He accepted that ANZ took responsibility for some of the dealings that Landmark had with Mr Phillott Junior in relation to the original lending to him, and he accepted that after ANZ acquired the Landmark loan book, it failed to work constructively with Mr Phillott Junior to overcome his financial difficulties. Mr Steinberg conceded that the bank had acted in a way that was not fair, not reasonable, and not ethical. Consistently with these acknowledgements, it's open to the Commissioner to find that ANZ engaged in misconduct by breaching its obligation under clause 2.2 of the CBP in relation to the Phillotts. 	ANZ breached clause 2.2 of the CBP in its dealings with the Phillotts. ANZ engaged in misconduct by breaching its obligation under clause 2.2 of the CBP in relation to the Phillotts.
	<ul style="list-style-type: none"> Second, Mr Steinberg acknowledged that ANZ had breached clause 25.2 of the CBP in its dealings with the Phillotts. ANZ failed to try to help Mr Phillott Junior to overcome his financial difficulties, and instead issued a notice terminating the facilities and requesting repayment of the facilities. Consistently with this acknowledgement, it's open to the Commissioner to find 	ANZ breached clause 25.2 of the CBP in its dealings with the Phillotts.

Financial Institution	Case Study/Issue	Potential Findings
	<p>that ANZ engaged in misconduct by breaching its obligation under clause 25.2</p>	
	<p><u>“Other customers” (subject to non-publication orders)</u></p> <ul style="list-style-type: none"> • First, in relation to the customer in the second row of the table in paragraph 43 of Mr Steinberg’s statement, Mr Steinberg acknowledged that ANZ had engaged in poor communication and inconsistent practice in that it had applied the entirety of the secured property sale proceeds to reduce principal, rather than annual principal and interest payments. 	<p>In each of the first three instances, ANZs conduct fell below CSEs. Consistently with that acknowledgement, it is open to the Commissioner to find that in each of those instances it did so fall below CSEs.</p>
	<ul style="list-style-type: none"> • Second, in relation to the customers in the fourth row of the table in paragraph 43 of Mr Steinberg’s statement, Mr Steinberg acknowledged that it – ANZ had failed to honour cheques contrary to a previous commitment to do so. 	
	<ul style="list-style-type: none"> • Third, in relation to the customers in the fifth row of the table in paragraph 43 of Mr Steinberg’s statement, Mr Steinberg acknowledged that it had engaged in poor communication with these customers in relation to the restructure of the customer’s loans. Mr Steinberg acknowledged that in each of these instances, ANZs conduct fell below CSEs. Consistently with that acknowledgement, it is open to the Commissioner to find that in each of those instances it did so fall below CSEs. 	
	<ul style="list-style-type: none"> • Fourth, in relation to the customer in the first row of the table in paragraph 45 of Mr Steinberg’s statement, Cashmore farms Proprietary Limited, Mr Steinberg acknowledged that ANZ made significant variations to the Cashmores’ loan, which was not in monetary default, without also communicating those changes in a clear and transparent way, and that it applied the sale proceeds of a residential property to a long-term loan rather than a short-term loan. 	<p>In both of the fourth and fifth instances, ANZ breached its obligation under clause 2.2 of the CBP.</p>

Financial Institution	Case Study/Issue	Potential Findings
	<ul style="list-style-type: none"> Fifth, in relation to the customers in the third row of the table in paragraph 45 of Mr Steinberg's statement, Mr Steinberg acknowledged that ANZ took guarantees from the customers' mother and siblings without taking all reasonable steps to ascertain if they were suitable to act as guarantors. Mr Steinberg acknowledged that in both of these instances, ANZ had breached its obligation under clause 2.2 of the CBP. Consistently with that acknowledgement, it's open to the Commissioner to make such a finding. 	<p>In both of the fourth and fifth instances, ANZ breached its obligation under clause 2.2 of the CBP.</p>
Rabobank	<p>Wendy and Adrian Brauer</p> <ul style="list-style-type: none"> In the final version of his first statement, Mr James accepted that the contents of the email sent by the bank manager on 22 September 2009 could have caused the Brauers to consider that they had an assurance from Rabobank that further funds would be provided in March 2011 for livestock purchases. He accepted that the terms on which the \$300,000 was provided to the Brauers in August 2011 did not meet an expectation on the part of the Brauers that may have been created by that email, and, therefore, this conduct fell below CSEs. He also accepted that this conduct may also have constituted misconduct in that it may have breached the CBP because it was unfair to the Brauers. In a supplementary statement provided prior to giving his evidence, Mr James made some further acknowledgements. He accepted that the conduct of Rabobank in approving the proposed facility without communicating to the Brauers that it could not be serviced if they ran both properties at full capacity fell below CSEs; he accepted that this conduct could be characterised also as a breach of the CBP in that it was unfair to the Brauers; he accepted that Rabobank's refusal to provide 	<p>This conduct fell below CSEs. This conduct may also have constituted misconduct in that it may have breached the CBP because it was unfair to the Brauers.</p> <p>The conduct of Rabobank in approving the proposed facility.</p> <p>Conduct fell below CSEs.</p> <p>Conduct could be characterised also as a breach of the CBP in that it was unfair to the Brauers.</p> <p>Rabobank's refusal to provide the documents sought by the Brauers, as well as the information sought by the Brauers prior to the farm debt mediation, also fell below CSEs; and he accepted that this conduct could be characterised as misconduct within the meaning of the CBP.</p>

Financial Institution	Case Study/Issue	Potential Findings
	<p>the documents sought by the Brauers, as well as the information sought by the Brauers prior to the farm debt mediation, also fell below CSEs; and he accepted that this conduct could be characterised as misconduct within the meaning of the CBP.</p> <ul style="list-style-type: none"> In the course of his oral evidence, Mr James also conceded that Rabobank had failed to exercise the care and skill of a diligent and prudent banker in selecting and applying its credit assessment methods and in forming its opinion about the Brauers' ability to repay the \$3.7 million loan and had, therefore, breached clause 21 of the CBP. It is open to the Commissioner to find that Rabobank's conduct amounted to misconduct, and conduct falling below CSEs in each of the ways acknowledged by Mr James. It is also open to the Commissioner to find that by acting on each side of the Jamberoo transaction, without disclosing that fact to the Brauers, Rabobank failed to act in an ethical manner as required by clause 2.2 of the CBP and therefore engaged in misconduct It is also open to the Commissioner to find that by failing to inform the Brauers of its policy on hardship in circumstances where the Brauers' operations had been adversely affected by both flood and the live export ban, Rabobank engaged in conduct that fell below CSEs. 	<p>Rabobank failed to exercise the care and skill of a diligent and prudent banker in selecting and applying its credit assessment methods and in forming its opinion about the Brauers' ability to repay the \$3.7 million loan and had, therefore, breached clause 21 of the CBP.</p> <p>Rabobank's conduct amounted to misconduct, and conduct falling below CSEs in each of the ways acknowledged by Mr James.</p> <p>It is also open to find that by acting on each side of the Jamberoo transaction, without disclosing that fact to the Brauers, Rabobank failed to act in an ethical manner as required by clause 2.2 of the CBP and therefore engaged in misconduct.</p> <p>By failing to inform the Brauers of its policy on hardship in circumstances where the Brauers' operations had been adversely affected by both flood and the live export ban, Rabobank engaged in conduct that fell below CSEs.</p>
Bankwest	<p>Melville Ruddy</p> <ul style="list-style-type: none"> First, offering the loan facilities to the Ruddys on the basis of an incorrect valuation. Ms Taylor accepted that by getting the valuation wrong, Bankwest had engaged in conduct that fell below CSEs, but she did not concede that it was misconduct. 	<p>Bankwest may have engaged in misconduct by breaching the obligation in clause 2.2 of the CBP to act fairly and reasonably towards the Ruddys in a consistent and ethical manner, and in each of the ways conceded by Ms Taylor.</p>

Financial Institution	Case Study/Issue	Potential Findings
		<p>Bankwest may have engaged in conduct that fell below CSEs in the following ways:</p> <p>First, Bankwest failed to take adequate care in preparing the original internal valuation of Sunrise in October 2011.</p> <p>In issuing the new letters of variation, Bankwest appears to have been motivated by a concern to increase the Ruddys overdraft sufficiently so that Bankwest could charge the external valuation fees to the account.</p>
	<ul style="list-style-type: none"> The second potential breach of clause 2.2 arises from the failure to take adequate steps to inquire into the bank manager's valuations of the Ruddys properties after Bankwest learned of the bank manager's misconduct, including his misconduct in artificially inflating valuations 	<p>Second, Bankwest failed to have adequate systems in place to detect that the internal valuation was incorrect.</p>
	<ul style="list-style-type: none"> The third way in which Bankwest's conduct may have breached clause 2.2 is the reliance on the loan to value ratio breach occasioned by the 2013 revaluations to renegotiate the terms of the Ruddys' agreement in a way that was disadvantageous to the Ruddys. Ms Taylor accepted that it was not fair for Bankwest to rely on the revised 2013 valuations to trigger a non-monetary default and that this behaviour breached clause 2.2 of the CBP. 	<p>Third, Bankwest's processes were lax in several significant respects as demonstrated by the misstated valuations, the undated guarantees, and separately the guarantees that were signed before the letters of offer. Ms Taylor was unable to explain why the valuation reports completed in 2011 were signed in late 2012, long after the bank manager had left Bankwest.</p>
	<ul style="list-style-type: none"> Fourth, choosing not to inform the Ruddys and the bank manager's other clients of the bank manager's misconduct after it had been detected, Ms Taylor accepted that all of the customers should have been told that there was an issue, and that the failure to inform the bank manager's clients of the issue was a breach of clause 2.2. 	<p>Fourth, when formulating its strategy for dealing with the Ruddys after the receipt of the May 2013 valuations, Bankwest determined that the appropriate course was to declare the May 2013 letters of offer null and void, forbear the Ruddys loan to value ratio breach, and issue new letters of variation.</p>
	<ul style="list-style-type: none"> The fifth way in which the conduct of Bankwest may have breached clause 2.2 of the CBP was the failure to inform the Ruddys that it would charge the fees of the 2013 valuations to 	<p>Fifth, as Ms Taylor accepted, Bankwest did not deal with FOS in a full and frank way in relation to the Ruddys dispute.</p>

Financial Institution	Case Study/Issue	Potential Findings
	<p>their overdraft account prior to doing so. Again, Ms Taylor conceded that this was conduct that fell below CSEs, but did not concede that it was misconduct.</p>	<p>Sixth, the guarantee provided by the Ruddys' son changed multiple times during the life of the facility. Ms Taylor characterised the changes as being "troubling", and accepted that there was no explanation as to why the guarantee wasn't maintained with the facilities.</p>
<p>NAB</p>	<p>Deborah and Kenneth Smith</p> <ul style="list-style-type: none"> • Smiths were affected by both flooding and then drought • Mr Smith also suffered broken ribs and a punctured lung in 2014 	<p>By charging default interest to the Smiths for in excess of five years on one facility and in excess of six years on the other, in circumstances where the Smiths' business was affected by more than one natural disaster, NAB engaged in conduct falling below the standards and expectations of the community.</p> <p>By failing to notify the Smiths of the bank's hardship policy in August 2012, when the Smiths business had suffered as a result of flooding at Oakvale, NAB engaged in conduct falling below CSEs.</p> <p>Default interest used by NAB as a strategic tool to put pressure on borrowers in default.</p>
<p>Bendigo Bank and Rural Bank</p>	<p>Qld Cattle industry customers</p> <p><u>Misconduct</u></p> <ul style="list-style-type: none"> • First, Rural Bank may have breached the obligation to exercise the care and skill of a diligent and prudent banker in selecting and applying credit assessment methods and in forming opinions about customers' ability to repay. It's open to find that Rural Bank may have breached this obligation a number of ways. • First, as KPMG found, Rural Bank staff had engaged in a number of breaches of lending standards in relation to serviceability, including a failure to properly assess serviceability and by suppressing information pertinent to credit and by mis-representing data into the Rural Bank systems. • Second, the five district banking managers referred to the KPMG report had engaged in a significant number of different 	<p>Rural Bank may have engaged in misconduct in a number of ways.</p> <p>First, Rural Bank may have breached the obligation to exercise the care and skill of a diligent and prudent banker in selecting and applying credit assessment methods and in forming opinions about customers' ability to repay. It's open to find that Rural Bank may have breached this obligation a number of ways.</p> <p>The second way in which it's open to find that Rural Bank may have engaged in misconduct relates to a potential breach of the obligations under the CBP to act fairly and reasonably towards its customers in a consistent and ethical manner. It's open to find that Rural Bank may have breached this obligation in a number of ways as well.</p> <p>On the evidence, it's also open to the Commissioner to find that Rural Bank engaged in conduct that fell below CSEs.</p>

Financial Institution	Case Study/Issue	Potential Findings
	<p>types of breaches in respect of loan origination. In respect of the file of the Queensland farmer whose application was approved in circumstances where it was known that \$1 million had been provided by his aunt, that was sourced from a margin loan that created further liabilities, the district banking manager had misrepresented the bank's position to the borrower, had acted dishonestly both towards the bank and towards the customer, and this had led to a loan being originated in circumstances where Rural Bank lacked material information about whether the debt could be repaid.</p> <ul style="list-style-type: none"> • In respect of a Victorian farmer with a livestock mortgage, Rural Bank had loaned this customer more than the value of his security, and the district banking manager responsible for the initial valuation should not have increased the customer's facility in circumstances where the customer had been experiencing significant financial difficulty and there were reasons to doubt the correctness of the valuation upon which the increase was based. • The second way in which it's open to find that Rural Bank may have engaged in misconduct relates to a potential breach of the obligations under the CBP to act fairly and reasonably towards its customers in a consistent and ethical manner. It's open to find that Rural Bank may have breached this obligation in a number of ways as well. • First, Rural Bank failed to act fairly and reasonably towards a number of its customers whose loans were not adequately managed. • Second, as KPMG found, Rural Bank advanced credit to individuals and entities without undertaking a proper serviceability assessment. It was not fair to do this, because 	

Financial Institution	Case Study/Issue	Potential Findings
	<p>this placed those individuals in a position that – where they were unlikely to be able to fulfil their obligations under the loan.</p> <ul style="list-style-type: none"> • Third, after identifying customers who had been affected by internal issues within Rural Bank, including the misconduct of the district banking managers, Rural Bank failed to communicate with those customers about those internal issues, which was not fair or reasonable. • On the evidence, it's also open to the Commissioner to find that Rural Bank engaged in conduct that fell below CSEs. • First, the conduct, policies and procedures of Rural Bank materially contributed to the 62 loans becoming non-performing. In her statement, Ms Gartmann accepted that five aspects of Rural Bank's conduct – which contributed to the issues relating to securities and valuations, loan serviceability and loan management fell below CSEs. • Second, from recommendations made by APRA, Rural Bank should have been on notice from at least 2009, if not from 2006, of potential systemic issues within its loan serviceability policies and practices. Rural Bank failed to adequately engage with these warning signals to recognise the issues as systemic and to take prompt steps to fix the issues. • Third, in 2010, a decision was made to give priority to generating new business and additional lending to existing clients over no increase annual reviews. This was not fair and reasonable to existing Rural Bank clients who were entitled to expect standard and careful loan management. 	
CBA	<p>Failure to apply Fee waivers</p> <ul style="list-style-type: none"> • CBAs failure to apply fee waivers and ongoing package benefits to eligible AgriAdvantage Plus package customers. 	<p>It is open to the Commissioner to find that CBA breached its statutory obligations under s 912A(1)(a) of the Corporations Act to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently and fairly.</p>

Financial Institution	Case Study/Issue	Potential Findings
		It is open to the Commissioner to find that CBA breached its obligations under cl 3.2 of the CBP, which obliged it to act fairly and reasonably towards its customers in a consistent and ethical manner.
Aboriginal and Torres Strait Islander interaction with Financial Service Providers		
ACBF	ACBF's interactions with indigenous customers regarding its funeral insurance offering constituted misconduct in a number of ways.	<p>First, it's open to find that ACBF may have breached its obligations under:</p> <ul style="list-style-type: none"> • section 12DA of the ASIC Act to not engage in conduct that is misleading or deceptive, or is likely to mislead or deceive, and • section 12DF subsection (1) of the ASIC Act which prohibits a person from engaging in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose, or the quantity of any financial services. <p>Counsel Assisting's submissions in support of this finding:</p> <p>Most significantly, ACBF represents that it uniquely provides a product and service tailored to meet the needs of Australia's Aboriginal and Torres Strait Islander people, and that its policies are beneficial for Aboriginal and Torres Strait Islander people</p> <p>It is open to find that ACBFs products and services, the sale of which is targeted to Aboriginal and Torres Strait Islander people are not, in fact, tailored to meet the needs of these people, or beneficial for those people for a number of reasons.</p>
	First , ACBFs health classification system may result in Aboriginal and Torres Strait Islander people paying more than they would if they obtained funeral insurance from another insurer.	
	Second , until very recently, ACBF policies did not pay out for suicide, despite the high rates of suicide in the Aboriginal and Torres Strait Islander community.	

Financial Institution	Case Study/Issue	Potential Findings
	<p>Third, as ASIC found in its 2015 report, ACBF is the only insurer with significant numbers of persons insured under 30 for whom premiums are being paid</p>	
	<p>Fourth, ACBF is not an Aboriginal organisation, nor is it affiliated with any Aboriginal or government organisation</p>	
	<p>Fifth, the ACBF policy is an expenses only policy. This is not sufficiently clear from some of ACBFs promotional and marketing material. The policy is unlikely to cover all aspects of sorry business</p>	
	<p>Sixth, unlike some other policies available in the market, it is a design feature of the ACBF Plan that any policy holder may pay more in premiums than they will ever be entitled to receive.</p>	
		<p>Separately, ACBFs current advertising materials, even with the disclaimer which has not always been used, may induce consumers into thinking that it's an Aboriginal-owned company. Its materials use colours, red, yellow and orange, associated with Aboriginal culture and use imagery which is significant in Aboriginal and Torres Strait Islander culture. The name of the plan includes the word "Aboriginal", the promotional material includes references to ACBF having spent over 20 years working in the Aboriginal community, and the plan is described as Australia's only funeral insurance plan dedicated to the Aboriginal community.</p>
		<p>It is open to find that ACBF plays on the cultural significance of funerals to Aboriginal and Torres Strait Islander people, and indigenous mortality statistics, to actively sell its policies to children and young people in those communities, in circumstances where they have little need for the product.</p>

Financial Institution	Case Study/Issue	Potential Findings
		<p>Some of ACBFs advertising material failed to include the disclaimer that ACBF is a privately-owned company with no government or Aboriginal community affiliations.</p> <p>That is the first way in which we say it's open to the Commissioner to find that ACBF may have engaged in misconduct.</p>
		<p>The second is that it's open to the Commissioner to find that ACBF may have breached section 12DB subparagraph (e) of the ASIC Act which prohibits the making of a false or misleading representation that services have sponsorship approval, performance characteristics, use of benefits. ACBFs marketing materials as a whole, and specifically ACBFs statements about its dedication to the Aboriginal community, convey a representation that ACBF has the approval or endorsement of the Aboriginal community in a general sense.</p>
		<p>On the evidence, it's also open to the Commissioner to find that ACBF engaged in conduct that fell below CSEs.</p> <ul style="list-style-type: none"> • First, contrary to ASICs recommendations, ACBF fails to adequately warn its policyholders that they may pay more under their policies than they will ever be entitled to receive by way of payout.
		<ul style="list-style-type: none"> • Second, again contrary to ASICs recommendations, ACBF fails to provide an upfront estimate of the total cost of the policy.
		<ul style="list-style-type: none"> • Third, ACBF actively seeks to sell its policies to children and to young people in circumstances where they are unlikely to receive any benefit from the policy.
		<ul style="list-style-type: none"> • Fourth, ACBF generally refuses to credit payments made towards a plan holder's previous plan if the plan holder reinstates a plan after cancellation. ACBF does this despite understanding that there is a very high rate of cancellations for non-payment of premiums across its policyholders.

Financial Institution	Case Study/Issue	Potential Findings
		<ul style="list-style-type: none"> • Fifth, ACBF fails to adequately disclose its waiting period to plan holders, and at least historically provided confusing information to its plan holders about the completion of their waiting periods.
		<ul style="list-style-type: none"> • Sixth, the product provided by ACBF is a very low value product when understood in light of the claims paid as a percentage of premiums received.
		<ul style="list-style-type: none"> • Seventh, ACBF has breached the orders made by the Federal Court in 1999 in failing to consistently utilise the required disclaimer in its advertising materials
Select AFSL	<ul style="list-style-type: none"> • First, in the course of selling the funeral insurance policies to Ms Marika in September 2015, Select breached section 952C of the Corporations Act by providing personal advice to Ms Marika. The sales representative advised Ms Marika that she could have more than one funeral insurance policy in place at one time and suggested that she would cease to be covered by her existing funeral insurance policy when she stopped working. Mr Howden accepted that the representative was not authorised or licensed to provide personal advice, and that the representative had probably contravened section 952C of the Corporations Act. 	<p>On the evidence, it's open to the Commissioner to find that Select may have engaged in misconduct in the following ways:</p> <ul style="list-style-type: none"> • In the course of selling the funeral insurance policies to Ms Marika in September 2015, Select breached s 952C of the Corporations Act by providing personal advice to Ms Marika
	<ul style="list-style-type: none"> • Second, in the course of selling the funeral insurance policies to Ms Marika in September 2015, Select breached section 992A subsection (3) subparagraph (e) of the Corporations Act by providing an oral product disclosure statement to Ms Marika without expressly obtaining her consent. Mr Howden accepted that Ms Marika was not asked for consent. It's unclear whether this breach occurred on other occasions in relation to other customers, but it appears likely given that Select's sales scripts at that time did not include any prompt to request the customers express consent to provision of a PDS orally. 	<ul style="list-style-type: none"> • In the course of selling the funeral insurance policies to Ms Marika in September 2015, Select breached s 992A(3)(e) of the Corporations Act by providing an oral product disclosure statement to Ms Marika without expressly obtaining her consent

Financial Institution	Case Study/Issue	Potential Findings
	<ul style="list-style-type: none"> Third, by selling funeral insurance to Ms Marika, Select engaged in unconscionable conduct contrary to sections 12CA, or 12CB of the ASIC Act. Mr Howden accepted that in all of the circumstances, including Ms Marika's expressed wish not to purchase the insurance, and her lack of understanding about the product that she was purchasing and the consequences of the purchase, it was unconscionable for Select to have sold the policies to Ms Marika. 	<ul style="list-style-type: none"> By selling funeral insurance to Ms Marika, Select engaged in unconscionable conduct contrary to ss 12CA or 12CB of the ASIC Act
	<ul style="list-style-type: none"> Fourth, the two sales representatives to which Select principally attributed the spike in 2015 funeral insurance sales also engaged in unconscionable conduct contrary to sections 12CA or 12CB of the ASIC Act. Those representatives used Select's referral program to actively target Aboriginal and Torres Strait Islander people for potential sales. In the termination letters that Select provided to those two representatives, Select told the representatives that there was no doubt in the company's mind that they had failed to act in the utmost good faith by taking advantage of people in the postcodes with high proportions of indigenous clients. 	<ul style="list-style-type: none"> The two sales representatives to which Select principally attributed the spike in 2015 funeral insurance sales engaged in unconscionable conduct contrary to ss 12CA or 12CB of the ASIC Act;
	<ul style="list-style-type: none"> Fifth, Select failed to notify ASIC under section 912D of the Corporations Act that by the actions of its employees, it had engaged in significant breaches of its obligations under section 912A of that Act. Amongst other things, it had failed to ensure that it did all things necessary to ensure that the financial services it provided were provided honestly and fairly. It failed to have in place adequate arrangements for the managements of conflicts of interest between the interests of its policyholders or potential policyholders and the interests of its sales representatives, and it failed to take reasonable steps to ensure 	<ul style="list-style-type: none"> Select failed to notify ASIC under s 912D of the Corporations Act that by the actions of its employees, it had engaged in significant breaches of its obligations under s 912A of the Corporations Act

Financial Institution	Case Study/Issue	Potential Findings
	<p>that its representatives complied with the financial services laws.</p>	
	<ul style="list-style-type: none"> Sixth, it's open to the Commissioner to find that the actions of the two Select representatives also constituted a breach of section 13 of the Insurance Contracts Act. Upon the termination of their employment, Select told the employees that there was no doubt in the company's mind that they had failed to act in the utmost good faith by taking advantage of people in the postcodes with high proportions of indigenous clients. 	<ul style="list-style-type: none"> The actions of the two Select representatives constituted a breach of s 13 of the Insurance Contracts Act 1984.
	<ul style="list-style-type: none"> On the evidence, it's also open to the Commissioner to make the following findings of conduct falling below CSEs in relation to Select. 	<p>On the evidence, it's also open to the Commissioner to find that Select's identified conduct fell below CSEs.</p>
	<ul style="list-style-type: none"> First, it was deeply inappropriate for the Select sales representative to induce Ms Marika to provide the names and contact details of a significant number of family and friends during the phone call on 10 September 2015. Mr Howden accepted that this conduct was unreasonable and that it represented a gross abuse of Select's referral program. 	
	<ul style="list-style-type: none"> Second, when coupled with Select's sales culture and Select's remuneration and KPI arrangements, the referral program used by Select clearly carried a risk that Select representatives would mis-sell funeral insurance policies. It fell below CSEs for Select to use such a program in circumstances where it had not put in place adequate safeguards to ensure that the program would not be abused 	
	<ul style="list-style-type: none"> Third, it was also inappropriate for a Select representative to dissuade Ms Marika from cancelling her policies a week after she took them out by offering her one month's free coverage in circumstances where Ms Marika had expressed serious concerns about affordability. The representative dissuaded Ms Marika from cancelling her policies in circumstances where Ms 	

Financial Institution	Case Study/Issue	Potential Findings
	<p>Marika had a statutory right to cancel her policy in writing for 14 days, and the product disclosure statement that was applicable to her policy afforded her 30 days to cancel her policy.</p>	
	<ul style="list-style-type: none"> • Fourth, contrary to ASICs recommendation, Select also fails to provide an upfront estimate of the total costs of its policies. 	
<p>ANZ (Katherine, Northern Territory)</p>	<p>Counsel Assisting submitted that it is open to the Commission to find that:</p> <ul style="list-style-type: none"> • ANZ failed to make information available in an accessible manner to the customer about banking services that may have been relevant to her; and • after ANZ received a request to find details of appropriate accounts available for the customer, ANZ failed to provide details of accounts which were suitable to the customer's needs 	<p>Breach of clauses 8(a) and (b) of the CBP and also conduct falling below CSEs</p>
	<p>Counsel Assisting submitted that it is open to the Commission to find that ANZ:</p> <ul style="list-style-type: none"> • failed to adequately assist the customer and her sister in meeting identification requirements by failing to notify them of the differing ways in which the identification requirements could be met, in breach of clause 8(c) of the CBP; and • failed to meet CSEs in that it "failed to help [the customer] meet identification requirements over the phone" and failed to take into account geographic barriers that made it difficult for the customer to attend the branch to verify her identity 	<p>Breach of clause 8 subparagraph (c) of the CBP.</p>
	<ul style="list-style-type: none"> • It is open for the Commission to find that ANZ failed to appropriately train its staff, who were regularly dealing with Aboriginal and Torres Strait Islander customers, to be culturally aware 	<p>Breach of clause 8 subparagraph (d) of the CBP resulting in misconduct</p>

Financial Institution	Case Study/Issue	Potential Findings
	<ul style="list-style-type: none"> To the extent that this is not already misconduct, the ANZ staff member in the Katherine branch was not effectively trained to assist Aboriginal and Torres Strait Islander customers. Mr Tapsall's evidence was that staff members in branches with higher concentrations of indigenous customers are not given any specific training in assisting Aboriginal and Torres Strait Islander customers. 	Misconduct or in the alternative falling below CSEs
	<ul style="list-style-type: none"> The questions asked in the A to Z review were not appropriate for somebody with limited English and limited financial literacy, and the security questions posed for Ms Do's client for internet banking were also inappropriate. 	Conduct falling below CSEs
	<ul style="list-style-type: none"> It's open for the Commissioner to make findings of conduct that fell below CSEs arises from the multiple occasions on which ANZ failed to open the appropriate account or to assist Ms Do's client to change her account type over the phone after a less appropriate account was opened. 	Conduct falling below CSEs
ANZ	<p>Groote Eylandt Case Study – informal overdrafts</p> <ul style="list-style-type: none"> It's open to the Commissioner to find that ANZ engaged in misconduct by failing to comply with the code of operation, which is a widely adopted benchmark for conduct to which ANZ is a signatory. Specifically, Mr Tapsall conceded that ANZ's current policies and procedures in respect of its so-called 90 per cent arrangements do not conform with the code of operation. Contrary to the code, ANZ places the onus on its customers to opt in to the 90 per cent arrangements. Further, ANZ has inadequate internal systems because, although the Code anticipates that customers who received a defined benefit and have an overdrawn account should be 	Misconduct by failing to comply with the code of operation

Financial Institution	Case Study/Issue	Potential Findings
	placed on the 90% arrangements, ANZ has no systems for monitoring people who are eligible for those arrangements	
	<p>It is also open to the Commissioner to find that ANZ may have engaged in misconduct by:</p> <ul style="list-style-type: none"> • failing to provide effective disclosure of information relating to the attachment of informal overdrafts to transaction accounts, and the fees and interest charges applicable to informal overdrafts; and • failing to make that information available in an accessible manner to customers who are members of remote indigenous communities 	This conduct may be in breach of clauses 3.1(b)(1) and 8(a) of the CBP
	<ul style="list-style-type: none"> • ANZ continued to charge clients high fees for informal overdrafts in circumstances where the overdraft was not sought by the client and the fees and charges applicable to the informal overdraft were not readily ascertainable. 	It is open to the Commissioner to find that ANZ may have engaged in misconduct by breaching the obligation in clause 3.2 of the CBP to act fairly and reasonably towards its clients.
	<ul style="list-style-type: none"> • ANZs provided informal overdrafts with high rates of interest and high fees to customers with low incomes on an opt-in rather than opt-out basis 	Conduct falling below CSEs
	By granting informal overdrafts to customers on an opt-out rather than an opt-in basis, ANZ prioritised its own position over that of some of its customers	It is open to the Commission to find that ANZ is insufficiently concerned with placing customers in the most appropriate product and more concerned with revenue enhancement