



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission by:

Australia and New Zealand Banking Group Limited
ACN 005 357 522
Level 9, 833 Collins Street
Docklands, Victoria 3008

1. Definitions

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

Acceptance Date means the date this undertaking is accepted by ASIC

AFSL means Australian financial services licence as that term is defined in section 761A of the Corporations Act

ANZ means Australia and New Zealand Banking Group Limited ACN 005 357 522

ASIC means the Australian Securities and Investments Commission

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth)

A-Z Review means the process set out at paragraph 2.5.1

Corporations Act means the *Corporations Act 2001* (Cth)

FUM means funds under management

General Advice has the meaning given to it under section 766B of the Corporations Act

Independent Expert means the person, firm or company required to be appointed under paragraph 3.9

Needs-Based Discussion means any discussion with a retail client regarding their financial situation and needs which is similar in substance to an A-Z Review

OnePath means OnePath Custodians Pty Limited ACN 008 508 496

Personal Advice has the meaning given to it in section 766B of the Corporations Act

Recommendation (including "recommending") means "recommendation" within the meaning of the term in section 766B(1) of the Corporations Act

Smart Choice Super means the retail superannuation product known as ANZ Smart Choice Super and Pension

Smart Choice Super or any other Superannuation Product means a Superannuation Product of a specific nature, including Smart Choice Super, and does not include general references to superannuation

Superannuation Product means a beneficial interest in a superannuation entity as defined by the *Superannuation Industry (Supervision) Act 1993* (Cth)

2. Background

ASIC's role

- 2.1 Under s1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

Details of Conduct

- 2.2 ANZ holds an AFSL (no. 234527) and operates a financial services business within the meaning of Chapter 7 of the Corporations Act.
- 2.3 Smart Choice Super is a superannuation product issued by OnePath, a wholly owned subsidiary of ANZ, and distributed by ANZ.
- 2.4 From about 2012, ANZ has distributed Smart Choice Super to retail clients through its retail branch network. Smart Choice Super is offered to retail clients by branch staff members who are authorised to provide General Advice to retail clients about Smart Choice Super and to assist retail clients to apply for a Smart Choice Super account.
- 2.5 One particular process ANZ has developed and implemented in its branch network for the distribution of Smart Choice Super to retail clients has involved the following steps:
- 2.5.1 First, the branch staff member undertaking a process with a retail client in branch called an A-Z Review, which involves the branch

staff member asking questions concerning the retail client's financial situation and a discussion about the retail client's financial needs;

- 2.5.2 Secondly, at the conclusion of the A-Z Review, the branch staff member asking the retail client whether he or she would like to be provided with information about Smart Choice Super;
- 2.5.3 Thirdly, if the retail client agrees to be provided with information about Smart Choice Super, the branch staff member providing a General Advice warning to the retail client;
- 2.5.4 Fourthly, the branch staff member proceeding to provide the retail client with a number of documents including a product disclosure statement and a brochure in relation to Smart Choice Super and reading aloud certain sections of that brochure regarding various product features, including the capacity to consolidate funds from other superannuation accounts into the Smart Choice Super account; and
- 2.5.5 Fifthly, the branch staff member assisting the retail client to apply for a Smart Choice Super account if so instructed.

ASIC's investigation and analysis

- 2.6 In late 2014, ASIC commenced a surveillance of ANZ and its branch sales of Smart Choice Super.
- 2.7 In May 2015, ASIC commenced an investigation under section 13(1) of the ASIC Act into suspected contraventions of the Corporations Act and the ASIC Act by ANZ in relation to branch sales of Smart Choice Super.
- 2.8 ASIC's investigation has identified the following conduct in relation to the branch sales of Smart Choice Super by ANZ:
 - 2.8.1 by virtue of the conduct of an A-Z Review, ANZ branch staff members may have considered, or it is possible that a reasonable person in the position of a retail client might expect that ANZ branch staff members have considered, information obtained from the client during the A-Z Review; and
 - 2.8.2 ANZ branch staff members may have made a Recommendation in relation to Smart Choice Super, during the process described in paragraphs 2.5.2 to 2.5.5 above, that may have been intended to, or could reasonably be regarded as being intended to, influence retail clients.

ASIC's concerns

- 2.9 ASIC is concerned that, as a result of the matters referred to in paragraphs 2.2 to 2.8 above:

2.9.1 ANZ branch staff members may have provided Personal Advice to retail clients in relation to Smart Choice Super and, in so doing, may have influenced those clients:

- i. to apply to open a Smart Choice Super account; and
- ii. in some instances, to roll over FUM in one or more existing superannuation accounts into Smart Choice Super;

2.9.2 ANZ may have failed to comply with its obligations under the Corporations Act in relation to its branch sales of Smart Choice Super, specifically:

- i. Section 912A(1)(a), which requires a financial services licensee to do all things necessary to ensure that the financial services covered by its licence are provided efficiently, honestly and fairly;
- ii. Section 912A(1)(c), which requires a financial services licensee to comply with the financial services laws;
- iii. Section 946A, which requires a providing entity to give a client a Statement of Advice if the providing entity gives the client Personal Advice; and
- iv. Section 961K, which provides that an AFSL holder contravenes the section if, among other things, its representative contravenes section 961B, which requires a representative to act in the best interests of the client.

2.9.3 there is a risk that the branch sales of Smart Choice Super by ANZ branch staff in the circumstances outlined at paragraphs 2.2 to 2.8 above may not have allowed informed decision making by the retail client in that the retail client may not have appreciated that the ANZ branch staff were not considering the risks specific to the retail client of acquiring an interest in Smart Choice Super or disposing of existing superannuation interests.

Acknowledgement of ASIC's concerns

2.10 ANZ acknowledges that the concerns expressed by ASIC in paragraph 2.9 above are reasonably held and has offered an enforceable undertaking in the terms of paragraphs 3.2 to 3.19 below.

3. Undertakings

3.1 Under s93AA of the ASIC Act, ANZ has offered, and ASIC has agreed to accept as an alternative to pursuing court action or administrative action in respect of the matters referred to in paragraphs 2.2 to 2.9 above, the undertakings in paragraphs 3.2 to 3.19 below.

Sale of Smart Choice Super

- 3.2 ANZ undertakes that its staff members or representatives will cease performing the steps described in paragraphs 2.5.2 to 2.5.5 above, and otherwise offering or recommending Smart Choice Super or any other Superannuation Product to retail clients, immediately before, during, or immediately after, or in conjunction with, or in a manner that might be perceived by a reasonable person to be in conjunction with an A-Z Review or Needs-Based Discussion conducted with a retail client.
- 3.3 ANZ undertakes to ensure that if it develops and implements a new process by which ANZ staff or representatives distribute Smart Choice Super or any other Superannuation Product to retail clients, such process of distribution will not include ANZ staff and representatives offering or recommending Smart Choice Super or any other Superannuation Product immediately before, during, or immediately after, or in conjunction with, or in a manner that might be perceived by a reasonable person to be in conjunction with an A-Z Review or Needs-Based Discussion conducted with a retail client other than where they are providing Personal Advice.

For the avoidance of doubt, nothing in this enforceable undertaking prevents ANZ staff members or representatives from:

- 3.3.1 referring retail clients for Personal Advice in circumstances where:
- i. the requirements contained in the Corporations Act in relation to the provision of Personal Advice are met by the subsequent ANZ staff member or representative who receives the referral; and
 - ii. the referral by the ANZ staff member or representative does not refer to Smart Choice Super or any other Superannuation Product and does not in any way constitute or contain a Recommendation in relation to Smart Choice Super or any other Superannuation Product; and
- 3.3.2 offering Smart Choice Super online or through other digital means where those offers:
- i. comply with the Corporations Act;
 - ii. do not involve branch or call centre staff or representatives; and
 - iii. are not made in conjunction with an A-Z Review or Needs-Based Discussion.
- 3.4 ANZ undertakes to ensure that any ANZ staff member or representative, other than a person who provides Personal Advice, who is to offer Smart Choice Super or any other Superannuation Product in a discussion with a client:

- 3.4.1 will not be authorised to access information obtained from that client during an A-Z Review or Needs-Based Discussion at around the time of such discussion; and
- 3.4.2 prior to offering Smart Choice Super or any other Superannuation Product to a retail client, will clarify with the client that they will not have regard to the information provided by the client in any A-Z Review or Needs-Based Discussion.
- 3.5 ANZ undertakes that any new process it implements by which ANZ staff or representatives provide factual information or General Advice about Smart Choice Super or any other Superannuation Product to retail clients will incorporate a compliant warning appropriate to the relevant sales model that expressly describes the nature of the information or advice being provided.
- 3.6 ANZ undertakes to, upon the Acceptance Date, take immediate steps to ensure that within 45 days of the Acceptance Date (or such other date as may be agreed to by ASIC and ANZ) ANZ staff and representatives will comply with the steps outlined in paragraphs 3.2 to 3.5 above and paragraph 3.7 below.
- 3.7 ANZ undertakes that any new process it implements by which ANZ staff or representatives provide factual information or General Advice in relation to Smart Choice Super or any other Superannuation Product to retail clients by telephone will include a system by which the telephone call will be recorded.

Community Benefit Payment

- 3.8 ANZ undertakes that it will make, within 30 days of the Acceptance Date (or such other date as may be agreed to by ASIC and ANZ), a community benefit payment in the total amount of \$1.25 million to one or more organisations to be nominated by ASIC following good faith consultation with ANZ as to the identity of the recipients. The funds are to be used for the purpose of promoting the confident and informed participation of investors and consumers in the financial system.

Engagement of Independent Expert

- 3.9 ANZ undertakes that within three months of the Acceptance Date (or such other date as may be agreed to by ASIC and ANZ) ANZ will request ASIC to approve:
- 3.9.1 the appointment of an Independent Expert that meets the criteria in paragraph 3.11 below; and
- 3.9.2 draft terms of engagement for that expert that meet the requirements of this enforceable undertaking.

- 3.10 If ASIC approves the draft terms of engagement and the Independent Expert following a request by ANZ under paragraph 3.9, ANZ undertakes to appoint the approved Independent Expert on the terms approved by ASIC, within 10 business days of receiving ASIC's approval, or within such longer period as may be agreed by ASIC and ANZ.
- 3.11 ANZ undertakes to nominate, under paragraph 3.9 above, an Independent Expert who, in ANZ's opinion:
- 3.11.1 has the necessary expertise, experience and operational capacity to perform the role contemplated by this enforceable undertaking;
and
 - 3.11.2 is independent of ANZ, its related bodies corporate and its officers at the time of the appointment, and who will at all material times be capable of exercising objective and impartial judgement.
- 3.12 ANZ undertakes to ensure the terms of the Independent Expert's engagement provided to ASIC for approval under paragraph 3.9:
- 3.12.1 include a statement to the effect that the work of the Independent Expert is being carried out for ANZ and ASIC, and acknowledging that ASIC is relying on the work of the Independent Expert;
 - 3.12.2 include a statement that upon request by ASIC, ASIC is to be copied into all or some communications between ANZ and the Independent Expert;
 - 3.12.3 require the Independent Expert to notify ASIC where a conflict of interest arises during the engagement or when the Independent Expert becomes aware of information that adversely affects its ability to exercise objective and impartial judgment;
 - 3.12.4 include an acknowledgement that in relation to the written reports to be provided to ASIC and ANZ as described in paragraphs 3.12.6 to 3.12.10 ASIC may from time to time, subject to paragraph 4.2, publicly refer to the content of the reports, and may make a summary of the content of the reports or a statement that refers to the content of the reports public;
 - 3.12.5 require the Independent Expert to conduct a review of ANZ's compliance with paragraphs 3.2 to 3.7 of this enforceable undertaking, including but not limited to an audit of sample client transactions and/or conversations where factual information or General Advice about Smart Choice Super or any other Superannuation Product has been purportedly provided;
 - 3.12.6 require the Independent Expert, within 60 days of engagement (or such other date as may be agreed to by ASIC) to provide a report to ANZ clearly specifying any deficiencies identified by the Independent Expert in ANZ's compliance with paragraphs 3.2 to

3.7 of this enforceable undertaking, and to make recommendations for remedying those deficiencies (**Compliance Report**);

3.12.7 require the Independent Expert to provide ASIC with a copy of the Compliance Report within 7 days of ANZ receiving it from the Independent Expert;

3.12.8 require the Independent Expert to conduct a further review of ANZ's compliance with paragraphs 3.2 to 3.7 of this enforceable undertaking during the period of 12 months following the completion of the Compliance Report, but not before:

- i. a period of three months has elapsed following the provision of the Compliance Report to ASIC; and
- ii. any Action Plan prepared in accordance with paragraph 3.13 below has been implemented;

and prepare a written report (**Second Compliance Report**) of the further review;

3.12.9 require the Independent Expert to clearly specify in the Second Compliance Report any deficiencies identified by the Independent Expert in ANZ's compliance with paragraphs 3.2 to 3.7 of this enforceable undertaking and make recommendations for remedying those deficiencies; and

3.12.10 require the Independent Expert to provide ASIC with a copy of the Second Compliance Report of the further review within 7 days of ANZ receiving it from the Independent Expert.

3.13 If the Compliance Report identifies any non-compliance with paragraphs 3.2 to 3.7 of this enforceable undertaking, ANZ undertakes to:

3.13.1 consider the recommendations made by the Independent Expert to remedy those deficiencies and then provide to ASIC a plan (**Action Plan**) setting out the action it proposes to take to rectify those deficiencies and specifying the time in which this action will be taken;

3.13.2 provide the Action Plan to ASIC within 45 days of the date that the Compliance Report is provided to ASIC;

3.13.3 implement the Action Plan within the time specified in the Action Plan; and

3.13.4 if ASIC requests any reasonable modifications to the Action Plan, implement the Action Plan as modified within the time specified by ASIC.

3.14 If the Second Compliance Report identifies any non-compliance with paragraphs 3.2 to 3.7 of this enforceable undertaking, ANZ undertakes to:

- 3.14.1 consider the recommendations made by the Independent Expert to remedy those deficiencies and then provide to ASIC a plan (**Second Action Plan**) setting out the actions it proposes to take to rectify those deficiencies and specifying the time in which those actions will be taken;
 - 3.14.2 provide the Second Action Plan to ASIC within 30 days of the date that the Second Compliance Report was provided to ASIC;
 - 3.14.3 implement the Second Action Plan within the time specified in the Second Action Plan; and
 - 3.14.4 if ASIC requests any reasonable modifications to the Second Action Plan, ANZ must implement the Second Action Plan as modified within the time specified by ASIC.
- 3.15 ANZ undertakes that it will not vary the terms of engagement of the Independent Expert without the prior written approval of ASIC.
- 3.16 ANZ undertakes to:
- 3.16.1 permit the Independent Expert, to the extent that it is reasonable having regard to the requirements of this enforceable undertaking, to have access to its books and to interview current employees; and
 - 3.16.2 give the Independent Expert any information, or explanation of any matter, reasonably requested by the Independent Expert in any way connected with the reports required to be prepared by the Independent Expert under this enforceable undertaking.

For the avoidance of doubt, ANZ is not required to provide the Independent Expert or ASIC with any document or information that is the subject of a valid claim by ANZ of legal professional privilege.

Other undertakings

- 3.17 ANZ undertakes that it will pay the costs of its compliance with this enforceable undertaking.
- 3.18 ANZ undertakes to provide all documents and information requested by ASIC from time to time for the purpose of assessing ANZ's compliance with the terms of this enforceable undertaking (except for material over which there is a claim by ANZ of legal professional privilege).
- 3.19 ANZ undertakes to notify ASIC as soon as reasonably practicable and in any event within ten business days of becoming aware of any failure by it to comply with a term of this enforceable undertaking.

4. Acknowledgements

- 4.1 ANZ acknowledges that ASIC:

- 4.1.1 may issue a media release on execution of this enforceable undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - 4.1.2 will from time to time publicly report about compliance with this undertaking;
 - 4.1.3 will make this enforceable undertaking available for public inspection;
 - 4.1.4 subject to paragraph 4.2 below:
 - i. may issue a media release referring to the content of the Compliance Report and Second Compliance Report;
 - ii. may from time to time publicly refer to the content of the Compliance Report and Second Compliance Report; and
 - iii. will make available for public inspection a summary of the content of the Compliance Report and Second Compliance Report, or a statement that refers to the content of the Compliance Report and Second Compliance Report.
- 4.2 ASIC acknowledges that it will not refer to any information from an expert report that:
- 4.2.1 consists of personal information of an identified natural person whose acts or omissions are not the subject of, or a concern mentioned in, the enforceable undertaking;
 - 4.2.2 ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of ANZ or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking;
 - 4.2.3 ASIC is satisfied should not be released because it would be against the public interest to do so; or
 - 4.2.4 ANZ has asked not to be released if ASIC is satisfied:
 - i. it would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of the ANZ otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking; or
 - ii. it should not be released because it would be against the public interest to do so.
- 4.3 Further, ANZ acknowledges that:
- 4.3.1 ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil

order in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;

4.3.2 this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.

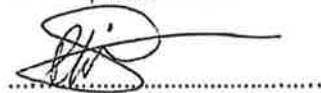
4.4 ANZ acknowledges that this undertaking has no operative force until accepted by ASIC, and ANZ and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

EXECUTED for and on behalf of)

**AUSTRALIA AND NEW ZEALAND)
BANKING GROUP LIMITED**)

ABN 11 005 357 522 under Power of Attorney)
dated 18/11/2002, and registered in Victoria)
Permanent Order Book No 277 Page 19 Item 7,)
by Alexis Ann George who certifies that she)
is a Senior Executive and that she has not)
received notice of revocation of that Power)
in the presence of:)


Signature of Attorney


Signature of Witness

111 EAGLE ST

BRISBANE QLD 4000
Address of Witness

Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act by its duly authorised delegate:



Name: Tim Mullaney

Delegate of Australian Securities and Investments Commission

Date: 5/7/2018

