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Amanda Fairbairn, Policy Lawyer  
The Behavioural Unit  
Australian Securities and Investments Commission  
GPO Box 9827  
Brisbane QLD 4001

By email only: [remediation@asic.gov.au](mailto:remediation@asic.gov.au)

Dear Ms Fairbairn,

**ASIC Consultation Paper 335: Consumer remediation – Update to RG 256 - ANZ Response**

ANZ thanks the Australian Securities and Investments Commission (**ASIC**) for the opportunity to comment on the proposals in Consultation Paper 335 (**CP 335**). We understand that this is the first part of a two-part consultation process to update and expand Regulatory Guide 256 Client review and remediation conducted by advice licensees (**RG 256**) and the proposals are only an indication of the approach ASIC may take.

ANZ is supportive of ASIC's overall proposal to extend the regulatory guidance to all licensees, rather than it applying only to advice licensees providing personal advice. We think that clear regulatory guidance on remediation is important and will benefit both consumers and licensees by ensuring consistent principles are applied by all licensees.

Our responses to ASIC's proposals and questions are contained in the **attached** table. We would be happy to answer any questions that ASIC has on our submission.

Should you have any questions or require clarification on any aspect of our response, please contact [redacted] via email at [redacted].

Yours sincerely,

[Redacted signature block]

Head of Operational Risk & Compliance  
Australia

Portfolio Lead, Responsible Banking

QUESTION	ANZ RESPONSE
	<p><b>When to initiate a remediation</b></p> <p><b>B1</b> We propose to provide guidance on a two-tiered approach to initiating a remediation:</p> <ul style="list-style-type: none"> <li>• Tier 1—a remediation must be initiated when a licensee has engaged in a misconduct, error or compliance failure that has caused one or more consumers to have suffered potential or actual loss, detriment or disadvantage (loss) as a result; and</li> <li>• Tier 2—given the broad nature of the obligations on them, licensees should also turn their mind to whether a remediation is warranted when a failure causing loss has breached certain standards, expectations and/or values.</li> </ul>
<p><b>B1Q1</b> Do you agree with our proposed two-tiered approach to initiating remediation? If not, why not?</p>	<p><b>‘Tier 1’ v ‘Tier 2’ failures</b></p> <p>ANZ understands ASIC’s desire to encourage financial institutions to take a broader, rather than strictly legalistic approach when determining whether a remediation should be initiated. However, we consider that the proposed two-tiered approach may result in unintended consequences and a lack of certainty for financial institutions as they seek to define and operationalise concepts such as ‘standards and expectations’ which are inherently vague and ambiguous. ANZ submits that existing legal concepts such as unconscionability and misleading and deceptive conduct are appropriate to address the types of conduct that would be of concern to ASIC. Further, there are existing mechanisms for the law to reflect community standards either through changes by the legislature or the way in which the existing law is applied by the courts.</p> <p><b>Systemic failures v failures affecting one customer</b></p> <p>We agree that financial institutions should compensate customers who suffer loss due to misconduct, error or compliance failures, irrespective of whether the issue affects one customer or many. However, we note that there is existing regulatory guidance on the handling of individual complaints (RG 271) and that the processes used by financial institutions to efficiently and fairly handle complaints are typically different from the processes that are used to remediate systemic failures.</p> <p>Failures that affect only one customer will generally be resolved via complaints handling processes. We believe that it would be confusing and potentially counter-productive to apply RG 256 to the resolution of these matters. This is because:</p> <ul style="list-style-type: none"> <li>• The boundaries between RG 271 and RG 256 would be unclear. It would be beneficial if the guidance is very clear about the intersection between complaints handling and remediation and keeps the two regimes separate where possible, including by retaining a threshold of greater than one customer for initiating a remediation.</li> <li>• It may create an expectation that the same processes, standards and governance structures should apply irrespective of whether the matter affects a single customer or many customers.</li> <li>• The approach may require further process changes within the complaints handling function to comply with the updated RG 256.</li> </ul>

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	<ul style="list-style-type: none"> <li>• It may result in delays to the resolution of individual complaints, and reduce some of the flexibility employed in resolving complaints expeditiously which can result in less favourable and less efficient outcomes for customers.</li> </ul> <p>For these reasons, we recommend that RG 256 should adopt a narrower scope than proposed, specifically that:</p> <ul style="list-style-type: none"> <li>• RG 256 should be limited to failures that impact more than one customer; and</li> <li>• RG 256 should be limited to 'Tier 1' failures.</li> </ul>
<b>B1Q2</b> Are there any practical problems associated with this approach? Please give details.	<p>Refer to B1Q1.</p>
<b>B1Q3</b> What is your current policy and procedure for initiating a remediation? How do you describe the standard of conduct required in your organisation for initiating a remediation?	<p><b>The standard of conduct required to initiate a remediation</b></p> <p>At ANZ, the term 'remediation' is typically used to refer to activities that respond to systemic 'Tier 1' type failures.</p> <p>As a general principle, a remediation program is initiated when ANZ identifies a systemic issue that has adversely impacted customers. The customer impact may be monetary (e.g. financial compensation where we have incorrectly applied an interest rate or overcharged fees), non-monetary (e.g. updating terms and conditions to provide a disclosure not previously given), or a combination of both.</p> <p>In ANZ's Australia Retail and Commercial (AR&amp;C) Remediation Framework (<b>Remediation Framework</b>), which is the primary remediation program policy document for AR&amp;C, the standard of conduct required for remediation is contained in the definition of 'Systemic Issue':</p> <p><i>...a class of customers is impacted by an incident which arises as a result of either a regulatory breach or error by ANZ (or its representatives) or a potential regulatory breach or error by ANZ (or its representatives) or a breach of a requirement of a relevant external dispute resolution scheme such as the AFCA.</i></p>

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	<p>In ANZ's 'Wealth' businesses, the remediation framework specifically focusses on remediation activities where systemic issues are identified as a result of adviser misconduct, errors or compliance failures.</p>
<p><b>The review period for a remediation</b></p>	
<p><b>C1</b> We propose to provide guidance that, as a starting point, the relevant period for a remediation should begin on the date a licensee reasonably suspects the failure first caused loss to a consumer.</p>	
<p><b>C1Q1</b> Do you agree with this proposal? If not, why not?</p>	<p>When considering the relevant period for a remediation ANZ considers that the <i>starting point</i> for licensees is to understand their legal obligations. This is helpful in setting a minimum baseline for the licensee's response. It is then appropriate for licensees to have regard to a range of factors such as, the circumstances of the failure and its discovery, and the availability of data on active systems, including where a remediation involves an historical period, whether the retrieval and curation of the historical data is likely to be possible.</p> <p>ANZ submits that a flexible approach to ASIC's guidance should be adopted to allow licensees to respond to the factual differences of the particular remediation and determine the approach to be taken where there are practical or operational challenges that arise, particularly in relation to remediations that relate to historical periods. For example, data issues (availability, decommissioned systems, completeness, usability and accuracy) present particular challenges for the remediation of historical periods. As a general rule, the more historic the period, the more difficult and time consuming it becomes to identify and remediate affected accounts.</p>
<p><b>C1Q2</b> Are there any practical problems associated with this proposal? Please give details.</p>	<p><b>The importance of returning money to customers quickly</b></p> <p>ANZ has separately raised with ASIC a proposal in relation to historical data in the context of seeking to accelerate remediations. There are areas of complexity and difficulty which can significantly add to the timeframes for finalising remediations and making payments to customers. There are a few key factors that impact remediation timeframes, one very important factor being the processes involved in the sourcing and curation of historical data. These complexities and difficulties are greatest the further back a remediation period is required to extend.</p> <p>We can expand on these difficulties should it assist ASIC. In summary they include data sets being stored across multiple systems in different formats, decommissioning of systems at the end of their asset life or when a business or product is sold, accessing data from</p>

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	<p>third parties and retrieving information from the likes of back up tapes. This can be compounded by the fact that 'data' required for a remediation is rarely just one data attribute. Multiple data attributes, across multiple data tables and multiple systems are often required to be sourced and curated to determine the customer accounts impacted, how those accounts are impacted and the refund to be paid.</p> <p>One way forward is to balance the objective of accelerating customer remediation payments with the fair treatment of customers. ANZ proposes the following process where historical data is involved:</p> <ul style="list-style-type: none"> <li>• The availability of historical data previously obtained or prepared for other remediations is to be confirmed, including determining whether it is sufficient and complete for the particular remediation at hand (case by case approach).</li> <li>• Where the historical data is not already available from previous remediations, ANZ is to make an assessment (in accordance with an appropriate governance process and documentation requirements) as to whether the process to source and curate the historical data is expected to take more than 6 months. Where this is the case, ANZ proposes that the effort to source and curate the historical data is not pursued.</li> <li>• ANZ would concurrently (if appropriate) explore whether assumptions may be used to address gaps in the required data attributes to either identify impacted customers and/or calculate a remediation payment.</li> </ul>
<p><b>C1Q3</b> Are there any other matters that we should consider to help us provide appropriately scalable guidance?</p>	<p>Refer above.</p>



QUESTION	ANZ RESPONSE
<b>Using beneficial assumptions</b>	
<p><b>D1</b> We propose to provide guidance that, overall, licensees should only use assumptions in a remediation if they are beneficial assumptions. In particular, this guidance would cover what a beneficial assumption is and set out what should be considered when using assumptions, including for specific types of assumptions.</p>	
<p><b>D1Q1</b> Do you agree with our proposal for assumptions to be beneficial and that they should satisfy certain considerations? If not, why not?</p>	<p>We support the inclusion of guidance on the use of assumptions, and agree that care should be taken so that the use of assumptions does not disadvantage affected customers overall.</p> <p>We note ASIC's intention to provide a framework for licensees to confidently apply assumptions in their remediations. ANZ welcomes this guidance and framework and believes it will provide licensees with greater certainty and facilitate consistency across the industry. ANZ believes that it is important that licensees have certainty that they have acted reasonably if they follow ASIC's framework.</p> <p>We recommend that the guidance on 'beneficial assumptions' should be adjusted to have regard to the following considerations:</p> <p><b>'Logical' or 'reasonable' assumptions v assumptions that are necessarily 'beneficial'</b></p> <p>We consider the term 'beneficial assumptions' itself may set an expectation that assumptions should aim to always achieve a degree of overcompensation. It may be more appropriate to refer to 'logical' or 'reasonable' assumptions that do not intend to 'disadvantage' the customer in terms of restoring them as closely as possible to the position they would have otherwise been in, within the remediation period.</p> <p><b>Practical problems with 'monitoring' assumptions</b></p> <p>ASIC's proposed definition of a beneficial assumption (para 48 of CP 335) includes that assumptions should be '<i>monitored to ensure the assumption continues to achieve the goal...</i>'. While ANZ's current practice for remediation activities often involves documenting assumptions applied and re-assessing the appropriateness of some assumptions prior to making remediation payments (e.g. forecast interest rates), we do not routinely monitor assumptions after payments are made. We understand from our discussions with ASIC that this is not ASIC's intent. It would be helpful if ASIC could make that clear in the guidance.</p>

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	<p><b>Remediations that involve many assumptions</b></p> <p>Where a remediation involves multiple assumptions, it is appropriate to review the impact of assumptions in aggregate rather than considering each assumption in isolation. Multiple individual assumptions that would each result in slight overcompensation may have a compounding effect and result in excessive compensation to customers, and vice versa.</p>
<p><b>D1Q2</b> Is it appropriate to use assumptions that result in a partial refund for some affected consumers or that involve a discount for a consumer's 'use' of the product? If not, why not?</p>	<p><b>Assumptions that result in a partial refund may be appropriate in some circumstances</b></p> <p>ANZ is of the view that this would need to be assessed on a case by case basis. Our intent, within the bounds of the remediation period, is to put the customer back in the position they would have otherwise been in had the remediation issue not occurred. If the customer has obtained some benefit as well as suffered some detriment as a result of the remediation issue, in those circumstances netting the benefit off against the detriment suffered would be appropriate if that is how the product should have worked in practice.</p>
<p><b>D1Q3</b> Is it appropriate to use an assumption based on an average (e.g. in calculating loss, using the average premium or the average fees charged over a relevant period)? If not, why not?</p>	<p><b>Assumptions based on an average may be appropriate in some circumstances</b></p> <p>While our practice is to err for the benefit of the customer rather than using, for example, average fees or premiums, the use of an assumption based on an average may possibly be appropriate if it can be demonstrated that the assumption is reasonable in the circumstances.</p>
<p><b>D1Q4</b> Have you used an assumptions-based approach in remediations? Please provide details, including evidence of how the assumptions benefited the</p>	<p><b>Additional examples from ANZ can be provided on request</b></p> <p>ANZ has met with ASIC on several occasions to share examples of remediations that have involved the use of logical assumptions (a 'principles based' approach), a number of which look to have been included as case studies in the CP 335 consultation paper (numbers 1, 4 and 5). We would be happy to provide additional examples at ASIC's request.</p>

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<p>consumer and if you have used an average that resulted in a good consumer outcome.</p>	
<p><b>D2</b> We propose that licensees should apply beneficial assumptions if they need to make up for absent records, especially if absent records may be considered a breach of their record-keeping obligations.</p>	
<p><b>D2Q1</b> Do you agree with our proposal that beneficial assumptions should be used to make up for absent records? If not, why not?</p>	<p><b>Absent records resulting from a breach of record-keeping obligations</b></p> <p>ANZ agrees that the use of assumptions should be considered by licensees to address gaps in data. We note there may be some practical difficulties in applying assumptions in some instances (see D2Q2 below) so flexibility should be retained for licenses in the guidance.</p>
<p><b>D2Q2</b> Are there any practical problems associated with this proposal? Please give details.</p>	<p><b>Beneficial assumptions may not be able to ‘fill all gaps’ in data</b></p> <p>In circumstances where there are significant or total data gaps it may be difficult or impossible for a licensee to use assumptions to bridge the gap, for example, if affected customers cannot be identified at all. Further, in some cases it may not be possible to determine the appropriate assumptions to apply that will allow the licensee to move forward with the remediation. It would be helpful for ASIC to clarify its expectations in these circumstances, including the ability for licensees to make and document decisions not to remediate.</p> <p><b>Potential for proposal D2 to compound the practical problems associated with proposal C1</b></p> <p>Proposal D2 may have the effect of compounding the practical problems associated with proposal C1 (the review period for a remediation). For example, if a licensee was to identify a historical issue and could not identify when the failure first caused loss, the proposed guidance on beneficial assumptions (proposal D2) may create further uncertainty about what is required in practice to demonstrate compliance with RG 256. In particular, uncertainty may arise if there is no information to enable logical or reasonable assumptions to be developed to ‘fill all gaps’ in data for historical periods.</p>



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	<p>Again we understand from our discussions with ASIC that this is not ASIC's intent. It would be helpful for ASIC to clarify this in the guidance.</p>
<p><b>D2Q3</b> Are there any other matters that we should consider to help us provide appropriately scalable guidance?</p>	<p><b>Data capabilities and resources for big v small firms</b></p> <p>Paragraph 60 of the CP 335 states '<i>... we do not expect a small financial advice firm will have the same capabilities or resources as a larger firm.</i>' In our view the same standards of remediation should apply to all organisations, otherwise this could create a disincentive for firms to invest in data management or resources to support remediation.</p>
<p><b>D3</b> We propose that in certain circumstances it may be appropriate to use beneficial assumptions to increase the efficiency of a remediation.</p>	
<p><b>D3Q1</b> Do you agree with this proposal? If not, why not?</p>	<p><b>Using beneficial assumptions to increase efficiency can be appropriate for some remediations</b></p> <p>ANZ agrees with proposal D3.</p>
<p><b>D3Q2</b> In what circumstances do you think it is appropriate to use assumptions to increase the efficiency of a remediation? Please give reasons.</p>	<p><b>Examples of circumstances where it may be appropriate to use assumptions to increase efficiency</b></p> <p>ANZ considers that it may be appropriate to use assumptions to increase the efficiency of a remediation in scenarios including, but not limited to the following:</p> <ul style="list-style-type: none"> <li>• Where a manual investigation of individual client files or records would be required to establish whether or not an account has been impacted by an issue, and we have other evidence to assist in forming an assumption about the customer's position (such as the results of a sample of file review);</li> <li>• Where the dollar amount and range of refunds to be paid to customers is small, we consider it appropriate if the licensee elects to pay all customers, for example, at the top end of the range;</li> <li>• Where frequency of advised investment switches within a portfolio is excessive and it becomes impractical to examine every individual switch (in the context of advice remediation).</li> </ul>

QUESTION	ANZ RESPONSE
<p><b>D3Q3</b> Have you applied beneficial assumptions to increase the efficiency of a remediation? Please provide details, including any relevant data and documentation.</p>	<p><b>Examples of circumstances where it may be appropriate to use assumptions to increase efficiency</b></p> <p>As noted in response to D1Q4, ANZ has met with ASIC on several occasions to share examples of remediations that have involved the use of assumptions (including where assumptions have been used to increase efficiency).</p> <p>Further examples of ANZ’s use of assumptions to increase remediation efficiency include:</p> <ul style="list-style-type: none"> <li>• In one remediation, we applied an approach that assumed the maximum interest rates over a period of time for a calculation rather than seeking to identify the particular rate that applied to each customer, which typically involves historical record acquisition and review. This allowed us to complete the remediation more quickly.</li> <li>• In a matter concerning commercial overdraft facilities where an error with the calculation of daily interest occurred intermittently across the period December 2017 to November 2019. ANZ decided it was more efficient to remediate all ANZ customers who held the overdraft facility during that time period, rather than seeking to identify specific customers impacted by the error.</li> </ul>
<p><b>Calculating foregone returns or interest</b></p> <p><b>E1</b> We propose to revise our current guidance on calculating foregone returns or interest by setting out a three-step framework that involves:</p> <ul style="list-style-type: none"> <li>• Step 1—licensees should attempt to calculate actual foregone returns or interest rates, without the use of any assumptions, if it is appropriate to do so in the circumstances;</li> <li>• Step 2—if it is not appropriate, possible or reasonably practical to find out the actual rates, licensees should consider whether beneficial refund assumptions can be made if an evidence-base supports it; and</li> <li>• Step 3—if there is no evidence base to support a beneficial assumption, licensees should apply a fair and reasonable rate that compounds daily and is:             <ul style="list-style-type: none"> <li>(i) reasonably high;</li> <li>(ii) relatively stable; and</li> <li>(iii) objectively set by an independent body.</li> </ul> </li> </ul>	
<p><b>E1Q1</b> Do you agree with this proposal to set out a three-step framework for calculating returns or</p>	<p><b>Step 1: Calculate actual foregone returns or interest rates &amp; Step 2: Consider using beneficial refund assumptions</b></p> <p>For large and complex customer remediations, ANZ will often complete ‘Step 1’ and ‘Step 2’ of the proposed framework concurrently. That is to say, we do not exhaust attempts to calculate actual returns/rates before moving on to an approach that involves the use of</p>

QUESTION	ANZ RESPONSE
<p>interest? If not, why not?</p>	<p>certain assumptions. Rather, we will consider the merit of both actual data and assumptions from the outset to determine a methodology that is efficient and reasonable. We have discussed this with ASIC and suggested ASIC consider revising the first two steps of the guidance to reflect that such a concurrent approach may be appropriate.</p> <p><b>Step 3: Apply a fair and reasonable default rate</b></p> <p><b><i>Distinguishing between investment returns and interest on banking products</i></b></p> <p>ANZ recommends that RG 256 should distinguish between rates that will be appropriate when calculating investment returns and returns on banking products. For example, for the purposes of 'Step 3', the 'RBA cash rate plus 6%' (set out as an example in the guidance) would not generally be an appropriate reference rate in banking product remediations, since it is materially higher than the interest rate on banking products such as deposit accounts and term deposits. To improve the clarity of the proposed guidance, we recommend clarifying that different rates would be reasonable to calculate foregone investment returns as compared to foregone interest on banking products (e.g. deposit accounts). Any examples in the guide should also reflect this distinction.</p>
<p><b>E1Q2</b> Are there any practical problems associated with this proposal? Please give details.</p>	<p>Refer to E1Q1.</p>
<p><b>E1Q3</b> Should our guidance clarify whether the rate compounds (and at what interval) or whether it should be based on simple interest? Please give reasons.</p>	<p>ANZ questions the rationale for applying a compounded daily rate, given that there are very few products in the market that offer such return. We consider licensees should have flexibility to apply a rate that is fair and reasonable in light of the particular product and circumstances, and that this could result in the application of either a compounding rate or a rate based on simple interest depending on the circumstances.</p>

QUESTION	ANZ RESPONSE
<b>How to approach finding and automatically paying consumers</b>	
<b>F1</b> We propose to provide guidance that licensees should apply best endeavours to find and automatically pay consumers, and that cheques should generally be issued as a last resort.	
<b>F1Q1</b> Do you agree with our proposal? If not, why not?	<p><b>ANZ is generally supportive of proposal F1, but notes that cheque use should not be unduly restricted</b></p> <p>ANZ agrees with the proposal in principle and we are already undertaking a number of initiatives to minimise the use of cheques. However, we note that in some circumstances, despite 'best endeavours', it may not be possible to automatically pay customers. Sometimes the option of using direct payment is impractical and payment by cheque is the only, or the most appropriate option. Therefore, we suggest that the use of cheques to remediate customers not be unduly restricted by the guidance.</p> <p>An example of where cheques are required/more appropriate is provided below:</p> <ul style="list-style-type: none"> <li>To effect direct payment to advice fee remediation customers (where customers have moved out of accumulation phase, for example) extensive resources and time are required to engage clients and obtain completed Account Nomination Forms, so we have found that a greater number of customers can be remediated expediently by issuing cheques. Adopting the approach of using direct payment as a first step would impede the pace of compensating clients due to the time required to successfully contact and engage each client.</li> </ul>
<b>F1Q2</b> What has been your experience in finding and contacting consumers? What challenges have you faced?	<p><b>Examples of challenges in finding and contacting consumers</b></p> <p>In ANZ's experience, it can be challenging to find and contact some consumers. Some of the challenges ANZ has faced include:</p> <ul style="list-style-type: none"> <li>Consumers who no longer have a relationship with ANZ: It is generally more difficult to find and pay customers who have closed their ANZ accounts and no longer have a relationship with the bank. While we make use of address matching services by external providers to validate customer addresses or obtain a more appropriate alternative address, we observe low match rates. Currently, no industry-level solutions exist to enable easy retrieval of customer contact details for customers who no longer bank with ANZ. ANZ would welcome an industry solution that enables the efficient confirmation of up to date contact</li> </ul>

QUESTION	ANZ RESPONSE
	<p>details for former customers for the purposes of making remediation payments. We think that an efficient method would be to use credit bureau data to improve customer matching rates as the infrastructure already exists to do this. If not permissible under the Privacy legislation, a legislative change would need to be sought. ANZ is working with the Australian Banking Association to explore possible options to access credit bureau data for use in remediation programs.</p> <ul style="list-style-type: none"> <li>• Joint account customers without eligible ANZ accounts: Additional challenges can be encountered where an impacted account was jointly held by two or more customers, and where the remediation payment cannot be directly credited into an eligible ANZ account with the same ownership structure.</li> <li>• Overseas customers without eligible ANZ accounts: It can be particularly difficult to find and issue payments to customers who currently reside overseas.</li> <li>• Business customers: It is typically more difficult to identify alternative accounts and/or alternative payees for commercial customers as compared to individual consumers. For example:             <ul style="list-style-type: none"> <li>◦ Particular requirements apply where businesses are de-registered or no longer active;</li> <li>◦ There can be significant complexity in business structures (e.g. partnerships with multiple partners / changing ownership over time, organisational structures that involve multiple companies and trusts).</li> </ul> </li> <li>• Record purging: Privacy obligations and associated record-purging practices mean that it is more challenging to contact and pay customers on longer-dated issues.</li> <li>• Remote outback communities with no fixed address (a community centre which collects mail &amp; relies on community members collecting the mail).</li> <li>• Lower literacy levels in some Aboriginal or Torres Strait Islander communities means written communication methods may not always be appropriate for trying to contact these customers.</li> <li>• Prevalence of hoax calls &amp; emails from scam agents creates distrust from customers – particularly if they are no longer existing account holders – making consumers suspicious and avoidant of contact.</li> </ul>



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<p><b>F1Q3</b> What strategies have you employed to successfully reach all affected consumers? Please give examples of your experiences, including what has and has not worked and any lessons learnt.</p>	<p><b>Use of multiple communication channels</b></p> <p>ANZ uses a number of channels to contact customers (including post mail, mobile, landline, SMS and email) and contacts them on different days and times of the week. We also check multiple internal systems to identify the possible contact details and engage a third party vendor to search for further contact details if necessary.</p> <p><b>Initiatives to improve our ability to find and pay customers</b></p> <p>ANZ has undertaken a number of initiatives to improve our ability to find and pay customers in large and complex banking product remediations, including:</p> <table border="1"> <thead> <tr> <th>Scenario</th><th>Strategies adopted</th></tr> </thead> <tbody> <tr> <td>Cheques are not received by customers</td><td> <ul style="list-style-type: none"> <li>Review/improve internal address validation options</li> <li>Include additional data fields in External provider validation for retail customers</li> <li>Build external address validation solution for commercial customers</li> <li>Investigate feasibility of using credit bureau data</li> </ul> </td></tr> <tr> <td>Minimise cheque use*</td><td> <ul style="list-style-type: none"> <li>Develop Customer Refund Portal and communications for consumers who no longer bank with ANZ to provide account details for other financial institutions</li> <li>Develop SMS / email solution to prompt customers to use Customer Refund Portal to claim compensation</li> </ul> </td></tr> <tr> <td>Customers fail to deposit cheques</td><td> <ul style="list-style-type: none"> <li>Develop customer contact process to proactively contact customers with large dollar refunds via SMS/email solution to prompt customers to present cheques</li> </ul> </td></tr> </tbody> </table> <p>*Not applicable to ANZ Wealth.</p>	Scenario	Strategies adopted	Cheques are not received by customers	<ul style="list-style-type: none"> <li>Review/improve internal address validation options</li> <li>Include additional data fields in External provider validation for retail customers</li> <li>Build external address validation solution for commercial customers</li> <li>Investigate feasibility of using credit bureau data</li> </ul>	Minimise cheque use*	<ul style="list-style-type: none"> <li>Develop Customer Refund Portal and communications for consumers who no longer bank with ANZ to provide account details for other financial institutions</li> <li>Develop SMS / email solution to prompt customers to use Customer Refund Portal to claim compensation</li> </ul>	Customers fail to deposit cheques	<ul style="list-style-type: none"> <li>Develop customer contact process to proactively contact customers with large dollar refunds via SMS/email solution to prompt customers to present cheques</li> </ul>
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QUESTION	ANZ RESPONSE
<b>F1Q4</b> Do you agree that cheques should be paid as a last resort? If not, why not?	<p>ANZ agrees that the use of cheques should be minimised and our current practices align with this approach. However, as outlined in response to F1Q1 above, we consider there are circumstances where payment via cheque may be more appropriate and efficient than other methods.</p>
<b>F1Q5</b> What has been your experience in finding a consumer's bank account details and making a direct payment? Please give details.	<p><b>Examples of challenges in finding account details and making direct payments</b></p> <p>ANZ has experienced the following challenges in finding a customer's bank account details and making a direct payment:</p> <ul style="list-style-type: none"> <li>• Customers' suspicion of phishing / scams – some customers may be reluctant to provide account information due to fears that the remediation is a hoax.</li> <li>• Unsuitable account types: In some scenarios, even though a customer has an account with ANZ, it may not be appropriate to make the remediation payment into that account. For example:             <ul style="list-style-type: none"> <li>○ dormant accounts or account types where the customer might be disadvantaged if a remediation is paid into the account, such as a fixed rate loan account, and</li> <li>○ for superannuation-related remediation, the payment must be made to a superannuation account which may be with a third party.</li> </ul> </li> <li>• Refer to F1Q2 for other challenges outlined by ANZ.</li> </ul> <p>For banking product remediations, ANZ looks to apply a 'payment hierarchy' approach to determine the priority for payment treatments, e.g. our preference is to directly pay to the impacted account, otherwise to an account owned by the same individual, otherwise to an account that is held by the individual jointly with other(s), etc.</p>
<b>F1Q6</b> If you are a third-party licensee for a superannuation fund or RSA, what challenges do you have in remediating members of that fund? Please give details.	<p><b>Experience in remediating members of a superannuation fund</b></p> <p>In our experience, in the course of remediating inappropriate advice and advice service fee failures where refunds are to be placed into the clients' 3rd party superannuation accounts, the main challenges have been:</p> <ul style="list-style-type: none"> <li>• Negotiating an agreement with the 3rd party superannuation funds to accept fee refunds into the members' superannuation accounts as an adjustment. As part of this step organisations frequently request the execution of deeds/attestations between the 3rd party superannuation fund and ANZ, which are not feasible. This is an area where additional support is required from</li> </ul>

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	<p>ASIC, APRA and the ATO to make provision for such refund payments and mandate a consistent approach to affecting these payments.</p> <ul style="list-style-type: none"> <li>• Reliance on the 3rd party superannuation funds to place the refunds into the members' accounts once the funds are transferred by ANZ to the superannuation trustee. Ideally, the regulator would direct that all 3rd parties advise in writing once all monies have been transferred to the members' accounts, noting the date this was actioned. This would provide licensees a clear record if contacted by the client. Also regulator direction for transfer of payments to affected clients' accounts within a reasonable timeframe (such as within 10 days of receipt of payment from the licensee) would ensure that clients are not further disadvantaged.</li> <li>• Delays in payments to members who have since rolled out of the superannuation fund (to another fund, or have met a condition of release), and the associated operational challenges / delays to work with superannuation funds to track these movements.</li> </ul>
<p><b>F1Q7</b> If you are a superannuation trustee, what challenges do you have in accepting and/or facilitating remediation payments from third-party licensees? Please give details.</p>	<p>N/A</p>

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<p><b>F2</b> We propose to remove the low-value compensation threshold in current RG 256 and instead provide guidance that:</p> <ul style="list-style-type: none"> <li>(a) the starting position should be to return all consumers as closely as possible to the position they would have otherwise been in regardless of value;</li> <li>(b) it is up to licensees to decide how they will treat their unresponsive or lost consumers, and if applying a compensation threshold, what low value is fair and appropriate in line with their obligations; and</li> <li>(c) if applicable, the reasons for the decision to apply a low value threshold should be well documented and appropriately justified.</li> </ul>	
<p><b>F2Q1</b> Do you agree with our proposal? If not, why not?</p>	<p><b>ANZ supports proposal F2</b></p> <p>ANZ supports ASIC's proposal to remove the \$20 low-value compensation threshold and to instead provide the guidance outlined in proposal F2.</p>
<p><b>F2Q2</b> Do you think that any licensee using a low-value compensation threshold should have to disclose it? If not, why not?</p>	<p><b>ANZ would not object to disclosing information about its use of a low-value compensation threshold</b></p> <p>ANZ does not object to disclosing this information and considers it would be appropriate for relevant information to be disclosed on a licensee's website.</p>
<p><b>Remediation money that cannot be returned to consumers</b></p> <p><b>G1</b> We propose to clarify current guidance for when remediation money cannot be returned to consumers. That is, if a licensee cannot, despite best endeavours, find consumers to pay them compensation (including when cheques remain uncashed):</p> <ul style="list-style-type: none"> <li>(a) the licensee must not profit from the failure (see the current RG 256 at RG 256.135);</li> <li>(b) the residual funds should be sent to a relevant state or federal unclaimed money regime if available; and</li> <li>(c) if the licensee is unable to lodge money with an unclaimed money regime, as a last resort, the money should be paid as a residual remediation payment to a charity or not-for-profit organisation registered with the Australian Charities and Not-for Profits Commission.</li> </ul>	
<p><b>G1Q1</b> Do you agree with our proposal? If not, why not?</p>	<p>ANZ agrees with the proposal in principle subject to the points ANZ has outlined in C1Q1 and D2Q1.</p>

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	<p>If proposal C1 and D2 are implemented as proposed, this would potentially require licensees to conduct remediations for historical issues with long remediation time periods. In these circumstances, there are likely to be increased challenges finding consumers to pay them compensation, so an increased proportion of remediation amounts may end up being paid to an unclaimed money regime or charity.</p>
<p><b>G1Q2</b> Is it appropriate for ASIC to provide guidance that any money that cannot be directly returned to consumers be lodged in an unclaimed money regime? If not, why not?</p>	<p><b>ANZ agrees that it is appropriate to provide guidance on the use of unclaimed money regimes</b></p> <p>ANZ agrees that it is appropriate for ASIC to provide guidance that money that cannot be directly returned to consumers should be lodged in an unclaimed money regime. However, the \$500 minimum payment amount for ASIC's unclaimed money regime is a barrier to the use of this regime for our remediation programs, as a significant volume of remediation payments are below \$500. In the absence of this guidance, ANZ has a structured process which pools together unclaimed monies that are below \$500 to contribute to community organisations to improve the financial wellbeing of Australians. This process is overseen by ANZ's Ethics and Responsible Business Committee, chaired by the CEO, and ANZ directed \$8.4 million of this type of remediation monies to key community partners in 2020.</p> <p>If ASIC was able to accept small amount unclaimed monies below \$500, we think this would assist as follows:</p> <ul style="list-style-type: none"> <li>• Customer outcomes – funds would be registered against their rightful owner and the database is searchable by the public without time limit. This is to be contrasted with the current situation where a consumer would need to know that they may have a claim against ANZ and approach us directly.</li> <li>• The infrastructure already exists at ASIC to manage unclaimed monies. This involves the maintenance of a register recording the details of the rightful owner, functionality to allow consumers to search via the MoneySmart website, allowing consumers to make a claim as well as be paid interest on their funds.</li> </ul> <p>We recognise this may be a significant drain on ASIC's resources and would involve considerable administrative burden. We raise it only as it might see ASIC play a significant role in centralising payments from potentially multiple financial institutions.</p>



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<p><b>G1Q3</b> What challenges are there in lodging unclaimed money? Please give details.</p>	<p><b>Challenges in lodging unclaimed money include (i) the minimum payment amount and (ii) the frequency with which money can be lodged into the regime, and (iii) strict information requirements</b></p> <p>The primary challenge in lodging unclaimed money relates to the \$500 minimum payment amount for ASIC's unclaimed money regime. Other challenges relate to the frequency of, and information requirements for, lodgement of unclaimed money:</p> <ul style="list-style-type: none"> <li>• The process is currently only performed on an annual basis, and there can be up to a twelve month timeframe from the time the funds are submitted internally within ANZ, to the transmission to ASIC. We encourage ASIC to consider a more frequent remit (such as quarterly) in allowing customers to more readily access funds.</li> <li>• ASIC have strict information requirements around the lodging of unclaimed money which may prevent or delay licensees from lodging money where they cannot obtain and supply all of the required information.</li> </ul>
<p><b>G1Q4</b> Do you think any licensee making a residual remediation payment to a charity or not-for-profit organisation should have to clearly disclose it? If not, why not?</p>	<p><b>ANZ would not object to publishing details about its residual remediation payments</b></p> <p>ANZ is not opposed to guidance that licensees should publish details about their processes for issuing residual payments to charity or not-for-profit organisations. It would be beneficial if the guidance is clear on where and how this information should be disclosed, so there is consistency across the industry.</p>
<p><b>G1Q5</b> Do licensees have evidence of consumers requesting that they be remediated after the finalisation of the remediation? How common is this?</p>	<p><b>These requests are received infrequently</b></p> <p>We have observed minimal instances of customers requesting that they be remediated after finalisation of remediation.</p> <p><b>ANZ's process for managing requests for remediation after the finalisation of the remediation</b></p> <p>ANZ's approach is that if a customer does contact ANZ to claim compensation after a remediation has been finalised, the refund will be issued to them even where a charity payment has already been made, or where applicable (for payments &gt;\$500) the customer will be guided to claim a payment that has been sent to an unclaimed money regime.</p>

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	<p>We note that there have been occasions when customers contact ANZ to contest their compensation offer or remediation outcome after receiving an outcome letter. These requests are investigated and resolved taking into consideration any additional information the customer can supply to further inform the review. Outcomes of these reviews may include a further compensation offer or a validation of the original offer/outcome.</p>
<p><b>Settlement deeds</b></p> <p><b>H1</b> We propose to clarify our guidance about if and when using settlement deeds and relying on implied consent may or may not be appropriate as part of a remediation.</p>	
<p><b>H1Q1</b> In what circumstances, if any, are settlement deeds essential to protect your legitimate interests? Please provide examples or other supporting evidence.</p>	<p><b>Settlement deeds are used infrequently, except in relation to financial advice remediations</b></p> <p>Settlement deeds are used infrequently by ANZ teams conducting remediation, except for ANZ's Advice Review Team in relation to compensation payments that arise from a personal advice review. Personal advice remediation is different to most other forms of remediation the bank performs because it involves a detailed investigation of the customer's needs and circumstances at the point in time when the advice was provided and then testing whether the advice provided was appropriate to the customer's needs and circumstances. This is a complicated and time intensive activity.</p> <p><b>The value of settlement deeds in remediation</b></p> <p>A key value of settlement deeds is that they finalise the matter between the customer and ANZ. This finality provides ANZ with certainty that the matter has been addressed which allows us to confidently re-deploy resources dedicated to the remediation elsewhere, which helps improve the efficiency of ANZ's remediation programs more generally.</p>