

Investigation CX18157

| | |
|-------------------------|--|
| Investigation | CX18157 |
| Subscriber | Australia and New Zealand Banking Group (ANZ) |
| Code obligations | 2019 Banking Code of Practice, paragraphs 190-191(a) |
| Date finalised | 20 June 2024 |

Summary

1. We found that ANZ, in managing deceased estates, breached obligations in paragraphs 190 and 191(a) of the [2019 Banking Code of Practice](#) (the Code) in a serious and systemic manner. We determined that ANZ:
 - a. Failed to identify, stop and refund relevant fees on deceased estate accounts, as required in paragraph 190(a)–(c) of the Code.
 - b. Failed to act on instructions from or provide information to authorised parties within 14 days, as required in paragraph 190(d) and 191(a) of the Code.
2. In response to these serious and systemic breaches of the Code, we sanctioned ANZ by naming them and publishing the details of their non-compliance on our website.

Background

3. In June 2023, we published our [Deceased Estates Report](#) which examined how six banks complied with the deceased estate obligations in Chapter 45 of the Code. As a result of the report's findings, we opened investigations into three banks, including ANZ.
4. We assessed ANZ's compliance with paragraphs 190 and 191(a) of the Code:

Paragraph 190

Once notified of a customer's death we will:

- a) *identify any fees that are for products and services that can no longer be provided, or will not be provided to the deceased's estate;*
- b) *stop charging those fees;*
- c) *if any fees referred to in paragraph (a) have already been charged since the customer's death – refund those fees; and*
- d) *act on instructions concerning a deceased's account from a person named in a grant of probate or letters of administration within 14 days of receiving the necessary information.*

Paragraph 191

Prior to probate or letters of administration being granted, if we receive a request from a person authorised by a will, a person identified as a next of kin in the death certificate or other official document acceptable to us, or a person who has applied for letters of

administration, and on providing a copy of the death certificate, we will, within 14 days of receiving the necessary information:

- a) *provide access to information about the deceased's account including relevant ongoing fees;*

Process

5. We requested information from ANZ on:
 - a. The findings of an internal audit it conducted on its management of deceased estates in September 2022.
 - b. The corrective actions it took to address the issues it identified in the audit.
 - c. Its remediation efforts for estates affected by issues identified in the audit.

ANZ's response

Corrective actions

6. ANZ took action to address the root causes of the issues found in the audit, including:
 - a. On 27 June 2023, ANZ released a new automated tool to waive fees after ANZ receives a notification of the death of a customer.
 - b. On 15 May 2023, ANZ launched a new daily report to track its compliance with the Code's 14-day timeframe obligations.
 - c. Between December 2022 to November 2023, ANZ updated processes and provided staff training and feedback to ensure that requests and documents are forwarded to the Deceased Estates team promptly.
 - d. It implemented several monitoring controls, including a daily 'sample check' to ensure fees were stopped for accounts identified by the automated tool, and an end-to-end quarterly quality assurance review to assess Code compliance.

Customer remediation for fees

7. Between 1 July 2019 to 30 September 2023, ANZ charged fees and interest to deceased estate accounts in error.
8. To remediate, ANZ will pay approximately \$3,253,646 to 18,852 impacted estates. This amount includes estimated 'time value of money' payments of \$391,486 which is compensation for the period of time that estates did not have use of the funds. It also includes customer beneficial assumptions, such as payments for amounts that may already have been refunded and for amounts that it considered it was entitled to charge.

Customer remediation for delays

9. In February 2022, ANZ identified a backlog of 7,329 delayed cases of deceased estates.
10. ANZ advised it would need to manually review each case to identify those that breached the Code's 14-day obligations. As individual manual reviews were impractical, ANZ adopted a proxy measure of potential breaches by identifying deceased estate cases that were awaiting action for longer than 90 days.
11. ANZ will send approximately 10,604 apology letters to representatives of these estates affected by potential delays. For up to 1,421 of these cases, ANZ will pay financial compensation of around \$667,915.
12. Overall, ANZ's remediation program included considerations, such as:
 - a. Reimbursing fees and interest charges it considers it was entitled to charge under the Code, as well as 'time value of money' compensation.
 - b. Recognising that communications relating to a deceased estate may cause distress and therefore remediating at an estate-level rather than an account-level to reduce the number of letters sent to the representative of an estate.
 - c. Dedicating 18 full-time staff to expedite remediation efforts and hiring 24 new staff to ensure the Deceased Estates team is adequately resourced moving forward.

Findings

Fee-related breaches of Code paragraph 190(a)–(c)

13. We found that ANZ breached its obligations in paragraph 190(a)–(c) of the Code as it charged fees it did not intend to charge to deceased estates between 1 July 2019 and 30 September 2023.
14. ANZ could not accurately quantify which of these instances breached the fee obligations under the Code. The difficulty in quantifying breaches may in part be compounded by a lack of clarity on the type of fees that should and should not be charged.
15. We considered ANZ's customer remediation, which at its completion will consist of payments of approximately \$3,253,646 to 18,852 impacted estates. We acknowledge ANZ's position that it took a broad approach to remediation, including making payments for amounts that may already have been refunded and for amounts that it considered it was entitled to charge.

ANZ considers that *“more than ~90% of the fees and charges that ANZ has remediated to date are not categories of fees and charges which could, in most circumstances, be reasonably characterised as being prohibited by the Code”*.

This leaves 10% that do not fall into this category and includes instances where fees prohibited under the Code were charged.

16. We found these breaches to be serious because:

- a. ANZ's inability to accurately quantify breaches of its fee obligations in the Code calls into question the adequacy of its compliance frameworks and its ability to effectively monitor and comply with its Code obligations.
- b. ANZ could have acted more quickly to fix the issue and remediate customers. Despite first identifying the issue in April 2022, customer remediation started in February 2024 and is due to be completed in July 2024, almost two years later.
- c. Receiving a belated remediation letter may cause emotional distress for representatives managing the estate of a friend or family member.

Delay-related breaches of Code paragraph 190(d) and 191(a)

17. We found ANZ breached its obligations under paragraph 190(d) and 191(a) of the Code as it reported in 2022 that up to 7,329 deceased estates were affected by delays. This was largely due to a backlog of 7,113 deceased estate cases identified in February 2022.

18. ANZ could not specify which of these delayed cases were breaches of the 14-day obligations in paragraph 190(d) and 191(a) of the Code. A manual review of 50 sample cases confirmed 28 were non-compliant, showing that the issue was systemic.

19. In May 2023, ANZ developed a daily report to track compliance with the 14-day Code obligations. It found that ANZ averaged 170 breaches per month from May to October 2023. Although ANZ stated the report may contain false positives, we are satisfied this is evidence of systemic and continued breaches of the Code's 14-day obligations.

20. We found these breaches to be serious because:

- a. ANZ's inability to accurately quantify breaches of the Code's 14-day obligations raises serious concerns about its ability to effectively monitor and comply with these obligations.
- b. ANZ could have acted more quickly to prevent further breaches and reduce customer detriment. Non-technical fixes, such as updated internal templates, knowledge articles and staff training, were implemented 8 to 14 months after the September 2022 audit and only after we commenced our investigation.
- c. ANZ could have remediated more quickly. Despite first identifying the backlog of cases in February 2022, customer remediation will be completed in July 2024, more than two years later. Receiving a belated remediation letter may cause further emotional distress for representatives managing the estate of a loved one.

- d. ANZ's delays in responding to estate representatives' requests may have exacerbated the stress and time spent managing the estate of a friend or family member. In our view, ANZ could have done better to support its bereaved customers and representatives during a difficult time.

Outcome

Sanction

- 21. Paragraph 214 and 215 of the Code give us the power to apply sanctions to a Code-subscribing bank when we find a serious or systemic breach of the Code.
- 22. In this instance, we decided to apply a sanction to name ANZ and publish details of its non-compliance on our website and in our Annual Report.

Reasons for sanction

- 23. We carefully considered a range of factors, including ANZ's responses and the corrective actions it took to address the breaches and remediate impacted customers.
- 24. We decided to apply the naming sanction to ANZ for the following reasons:
- 25. Financial and non-financial customer impacts:
 - a. ANZ's remediation payments of over \$3.25 million to 18,852 estates to correct instances where it had charged fees and interest to deceased estate accounts.
 - b. ANZ's letters to approximately 10,604 estates to apologise for its delays in responding to requests for information or action. Of these, up to 1,421 estates will receive financial compensation estimated at \$667,915.
 - c. ANZ's delay in responding to deceased estate representatives may have caused distress during a difficult time. Furthermore, deceased estate representatives may also experience further distress upon receiving belated remediation letters.
- 26. ANZ's actions:
 - a. ANZ has had ample time to address these concerns and ensure it meets Code obligations and customer expectations.
 - b. The specific issues central to our investigation were first self-identified by ANZ in early 2022. It has been slow to address the issues as:
 - i. It introduced system tools and controls to prevent further breaches in mid-2023, more than a year after first identifying the issues.
 - ii. It aims to complete customer remediation by July 2024, more than two years after first identifying the issues.

- c. These are not new issues and earlier action by ANZ may have reduced the number of breaches and the overall detriment to customers.

27. Inadequate compliance frameworks:

- a. ANZ could not accurately quantify the number of times it had breached the relevant Code obligations.
- b. ANZ's monitoring frameworks lacked the necessary granularity to allow it to comprehensively identify and understand problems, which in turn prevented it from sufficiently safeguarding consumer interests.

28. Public interest:

- a. It is in the public interest to bring transparency to ANZ's non-compliance its Code commitments.
- b. Consumers should carefully consider and potentially question fees applied to the accounts of deceased estates.

Good practice guidance

- 29. When we find non-compliance with the Code, we issue good practice guidance to set out our expectations for how banks should comply with the Code in future.
- 30. For guidance in relation to this investigation, banks should refer to our Deceased Estates Report, particularly recommendations 2, 3, 4, 5 and 6.

Appendix

BCCC functions and powers

- 31. The Banking Code Compliance Committee (BCCC) is an independent compliance monitoring body established under paragraph 207 of the [2019 Banking Code of Practice](#). Our purpose is to monitor and drive best practice Code compliance.
- 32. The BCCC's role, powers and functions are set out paragraph 211, and 214 and 215 of the Code and in the [BCCC Charter](#).
- 33. The BCCC's [Operating Procedures](#) outline the procedure for conducting investigations, including the process for making a finding and imposing sanctions.
- 34. The BCCC's [Guidance Note No.1](#) outlines the factors that the BCCC will consider when determining whether a breach is serious or systemic.