

26 October 2018

The Secretariat

Royal Commission into Misconduct in the Banking and Financial Services Sector

Via online submission system

Dear Commission Hayne

Submission in response to the Interim Report

Please find attached our submission on policy issues raised in your Interim Report for your consideration. Our submission speaks to the issue of the interface between misconduct and conduct below community expectations and standards. In doing so, we submit that human rights are an important and useful prism through which to view this conduct. Our submission outlines what we call “A Human Rights Policy Framework for Finance”. From this framework we submit the following five points can assist you in your deliberations on policy options

1. ***Human rights laws apply to financial services entities***, both as binding domestic laws, and as standards of responsible business behaviour in international law. What is more, Australian banks themselves explicitly recognise their commitment to human rights, at both levels.
2. ***The human rights obligations and responsibilities of banks and other financial services entities are not matters that apply only to their overseas operations. They apply also to their operations inside Australia.*** Indeed, the legal demands and expectations in the domestic realm are, or ought to be, higher and more stringently enforced.
3. ***Financial services misconduct is not a victimless crime.*** If there ever was a belief that financial fraud and deception was just about the fortunes of paper money rather than the fate of human beings, the evidence tendered to the Royal Commission over the past eight months has thoroughly confounded it. Above all else it has demonstrated graphically ***the impact financial skulduggery can have on people and their human rights.***
4. Community expectations tolerate neither misconduct (legal breaches), nor poor conduct (unfair or unethical, but not necessarily illegal) in financial services. An important reason ***why these community expectations are so demanding and strongly held is precisely because they reflect the fundamental principles upon which human rights are based - namely, to be treated with respect, dignity, fairness and equality such that one's security and welfare are protected and promoted.***
5. Breaches by financial services entities of relevant laws, including human rights laws, cannot be used as bargaining chips in settlements, undertakings or special pleadings negotiated with ASIC, or other financial regulatory bodies. ***When such breaches involve adverse impacts on people's human rights protections, the rights of remedy and redress for victims must be paramount.***

We are willing to support this submission with further written information or by way of an oral submission.

Yours sincerely

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Community Expectations: Putting people before profit means taking human rights seriously

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Introduction

Misconduct in financial services and behaviour that fails to meet community expectations are not just matters of legality and professional ethics: they concern infringements of peoples' basic human rights. The revelations of Banking and Financial Services Royal Commission Interim Report have illustrated the often raw human consequences of malfeasance by our banks, insurers, super funds and financial advisers, which, we argue, run deeper than transgressions of relevant corporate or commercial laws. Such conduct frequently undermines established human rights laws and standards.

In a project begun before the commencement of the Royal Commission, we set out to collect data on how the policies and actions of Australia's financial services entities impact on human rights and thereby to develop a benchmark to measure the levels of these beneficial or adverse effects. In order to gain a better understanding of what sorts of human rights are at stake, we chose to analyse 314 cases of misconduct or poor conduct pursued by ASIC over the period from 1 January 2017 to 3 September 2018. As ASIC is the principal conduct regulator of financial services in Australia, its enforcement activities provide a valuable insight into both misconduct and poor conduct across a wide range of financial services.¹

The human rights perspective

In this paper we reveal the initial results of this analysis by detailing which human rights are adversely impacted, how so, and why that matters. We detected adverse impacts across **four categories** of human rights:

- (i) rights to privacy and protection against misuse or abuse of personal information, and the provision of misleading information or the withholding of information such that it would materially impair a person's informed "consent"² [**Privacy and Information rights**]
- (ii) rights against discrimination on illegitimate grounds such as gender, race or disability³ [**Anti-discrimination rights**]
- (iii) rights to economic security, such that the "quality" of goods and services necessary for the enjoyment of basic economic, social and cultural rights (including the "continuous improvement of living conditions" such as housing, health care and education), when provided by the private sector, is "not sacrificed for the sake of increasing profits"⁴ [**Economic security rights**]
- (iv) rights to appropriate means of redress or "effective remedy" when human rights standards are violated or infringed.⁵ [**Right to remedy**]

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¹ We explain our methodology for collecting and analysing the data of financial services conduct, together with more information on the results obtained thus far in the Appendix to this submission.

² As per the Australian Privacy Principles (APPs) enumerated in Schedule 1 to the *Privacy Act 1988* (Cth). Specifically, the APPs require entities (including banks and other financial organisations) to manage people's personal information in an open and transparent manner (APP1); and to obtain people's consent when collecting solicited personal information (APP3) when using or disclosing such information (APP 6), including in direct marketing activities (APP 7).

³ As per *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), and the *Disability Discrimination Act 1992* (Cth).

⁴ As per the *International Covenant on Economic, Social and Cultural Rights 1976*. Words in quotations are taken from the UN Committee on Economic, Social and Cultural Rights, General Comment 24 (2017), on *State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, para. 22, except for "continuous improvement of living conditions" which is stipulated in Article 11 of the Covenant. Australia ratified the ICESCR in 1975.

⁵ As per the *International Covenant on Civil and Political Rights 1976*, Article 2(3), from which the words "effective remedy" are drawn. Australia ratified in the ICCPR in 1980. The right to remedy is also stipulated or implied in other international human rights instruments to

Our results show that **in all cases** involving relationships between a financial services entity and its customers or clients, at least one, and in most instances more than one, of the above four categories of human rights categories were adversely affected.⁶

In some instances, we examined cases also reviewed by the Royal Commission. However, many of the cases we examined cover strikingly similar subjects and situations to the case studies from Rounds 1 to 4 of the Royal Commission. We note further the Counsel Assisting have argued that it is open to the Commissioner to find misconduct in relation to breaches of numerous financial services laws. Our analysis shows that when misconduct by financial service providers constitutes legal breaches, or their poor conduct reflects a failure of professional ethics, there can follow a cascade of harmful consequences for the protection of people's human rights.

Human rights impact case studies

We provide here six cases chosen from our ASIC media release study to illustrate how a human rights perspective provides additional conduct considerations beyond the concept of legal misconduct reported in ASIC's media releases.

CASE 1 - IMPACT ON PRIVACY AND INFORMATION RIGHTS; ECONOMIC SECURITY RIGHTS⁷

Madhvan Nair, a former mortgage broker with AHL Investments Pty Ltd (trading as Aussie Home Loans), was involved in home loan fraud. Nair provided documents in support of eighteen loan applications knowing they contained false or misleading information. The applications contained letters which purported to be from the applicant's employer. These documents were false and in most instances the loan applicant had never worked for the particular employer.

The impact of this behaviour was that the lender couldn't correctly assess the credit risk. The customers, therefore, potentially entered into loans they could not afford (there is no suggestion that they provided the false documentation: that was the work of Nair). Nair, through his employer Aussie Home Loans, received up front and trailing commissions based on the levels of sales, with a minimum level of sales expected each month. Nair's case was also discussed in the Royal Commission during the Round 1 Hearings.⁸

CASE 2 - IMPACT ON PRIVACY AND INFORMATION RIGHTS; ECONOMIC SECURITY RIGHTS⁹

Melbourne-based companies (Wealth and Risk Management Pty Ltd; Yes FP Pty Ltd (in liq); and Jeca holdings Pty Ltd (trading as Yes FS) (in liq) offered and gave cash payments to financially vulnerable clients in connection with the provision of financial advice. The business advertised 'fast cash' to consumers with poor credit histories seeking loans; required customers to receive and implement financial advice recommending switching their super and taking out 'high end' insurance; charged advice fees paid out of customers' super funds and received upfront and trailing insurance commissions; used the upfront commission to provide a 'cash rebate' to clients. The process often caused a substantial erosion of the clients' superannuation balances.

which is Australia is party and is generally provided in domestic laws that establish the Australian Human Rights Commission, state and territory anti-discrimination boards and other human rights bodies, and in the many laws that establish and govern our courts and tribunals. In the specific case of financial services entities, ASIC and the Financial Ombudsman Service are examples of remedial agencies.

⁶ See Figure A-5 in the Appendix for a breakdown of the numbers of cases across the four categories.

⁷ ASIC 17-016 MR. Mr Nair was convicted on eighteen charges relating to home loan fraud. On each charge Nair released upon entering a recognisance of \$1, 000 with the condition he be of good behaviour for three years. He was also permanently banned from providing financial services. This conduct breached *National Consumer Credit Protection Act 2009*, ss 47, 160D, with banning orders effected under s 80.

⁸ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Interim Report* (2018), Volume 2, 32-42 [3.1-3.3.4]

⁹ ASIC 18-033MR. Companies required to pay penalties totalling \$7, 150, 000. Joshua Fucco ordered to pay \$650, 000 and restrained from providing financial services for period of 10 years and to pay \$100, 000 towards ASIC's costs of investigating and conducting the court proceedings. "Failure consider suitability for credit: Pt 3-2, ss 116, 128, 129, 139, 151, 152 NCCPA; ASIC RG 209, Terms of insurance contracts: Pt 8 ss 143, s 145 NCC, Best interests: ss 961, 961B, 961G, 761G CA 2001, Unfair contract terms: ss 12BF(1), 12DBAA ASIC Act, Unconscionable/unjust transactions: ss 991A CA 2001; ss 76, 78 NCC; s 12CB ASIC Act.

CASE 3 - IMPACT ON ANTI-DISCRIMINATION RIGHTS; PRIVACY AND INFORMATION RIGHTS; ECONOMIC SECURITY RIGHTS¹⁰

Jackson Temi Anni, former director of FDRA Pty Ltd and then Eagle Ventures Pty Ltd, targeted Aboriginal people at Darwin hospital, associated hostels and remote surrounding communities, who were often sick or facing addictions, and did not speak English as a first language. Anni took advantage of Aboriginal persons wanting access to items assisting them to engage in modern life and in their community. Entering agreements for computer tablets and offering cash loans, Anni obtained consumers' online banking log-in details as a payment method which he then used to transfer himself money far greater than the agreed sum.

CASE 4 - IMPACT ON RIGHTS TO REMEDY; PRIVACY AND INFORMATION RIGHTS¹¹

Citibank misstated its obligations around unauthorised transactions on customers' accounts. Citibank replied to customer requests to investigate unauthorised transactions in a letter claiming the requests were made outside the time period permitted under Visa and MasterCard scheme chargeback protections and that the customers' only options were to approach the merchant or a fair trading agency. Affected customers made reports to Citibank about 'card not present' unauthorised transactions (eg, internet transactions), where a payment was made using the card details. The letter would likely have misled customers about their protections under the ePayments Code. The ePayments Code provides protections to consumers for unauthorised transactions (separate to the Visa/MasterCard protections). Customers thus did not have their claims considered in accordance with Citibank's contractual obligations with those customers under the ePayments Code.

CASE 5 - IMPACT ON RIGHTS TO REMEDY; PRIVACY AND INFORMATION RIGHTS; ECONOMIC SECURITY RIGHTS¹²

CBA sold 'CreditCard Plus' insurance for credit card repayments, to 65,000 customers unlikely to meet the employment criteria who would thus be unable to claim the insurance. CBA also over-insured around 10,000 customers for Home Loan Protection consumer credit insurance taken out with a CBA home loan, resulting in the over-charging of premiums. CBA's case was also discussed in the Royal Commission during the Round 1 Hearings.¹³

CASE 6 - IMPACT ON ALL FOUR RIGHTS¹⁴

Lindsay Gordon Kobelt engaged in unconscionable conduct in providing book up services, and engaged in unlicensed credit activity when selling motor vehicles on book up. Kobelt was the owner and operator of Nobby's Mintabie General Store (Nobby's). Kobelt provided a form of credit 'book up' allowing customers to buy goods now and pay for them later (usually an informal arrangement with no set repayment dates nor formal documentation). Book up is commonly used in Indigenous communities. ASIC was concerned that Nobby's book up practices were exploitative as consumers were required to provide their debit cards, PINs and details of their income to Kobelt who used the information and cards to withdraw all or nearly all of the customer's money from their bank account on or around the day they were paid. As his credit activity was unlicensed, his customers did not have access to EDR to hear and determine their disputes.

¹⁰ ASIC 18-025 MR. Anni Pleaded guilty to number of offences including stealing and received sentence of 18 months imprisonment. He was also disqualified from managing corporations for five years following his release. Criminal deception and stealing: ss 227, 322, 323 Schedule 1 *Criminal Code* (NT).

¹¹ ASIC 17-376MR. Refund \$1m to ~4, 000 customers (current and former). ePayment Code, s 17 (particularly s 17.5).

¹² ASIC 17-268MR. CBA refunding ~\$10m to the > 65, 000 customers sold unsuitable consumer credit insurance (those who were unemployed or students between 2011 and 2015). Also refunding ~\$586, 000 in premiums to the ~10, 000 over-insured Home Loan Protection customers. *Corporations Act 2001* (Cth), s 912A (provide services efficiently, honestly and fairly).

¹³ *Interim Report*, Volume 2, 51-62 [5.2.1]-[5.3.5].

¹⁴ ASIC 17-115MR.

Relevance of rights to community expectations and standards

The Royal Commission is required to investigate not only misconduct in financial services, but also conduct that fails to meet community expectations – in other words poor conduct. Our study confirms the significance of both misconduct and poor conduct by financial services entities in terms of impacts on human rights. While the legal infractions identified by ASIC and the Royal Commission constitute the high-water mark of misconduct, the evidence of widespread poor conduct throughout the sector also reflects affronts to what might be called the essence or spirit of human rights – that is, *the setting of fundamental standards of respect and decency by which human beings treat one another*. Thus, when financial institutions show disrespect, betrayal and contempt for customers and clients in their perpetration of frauds and deceptions, or even just reckless disregard or incompetence, they assail people's integrity and endanger their financial security and all that flows from that. They reflect, in other words, failures to meet community expectations of behaviour in our social and economic relations with each other.

Do banks believe in human rights?

Yes, apparently. In fact, the four human rights categories identified in our study are at the heart of what Australia's leading financial services entities themselves proclaim to be their human rights responsibilities.

Thus, for example –

- ANZ's [Our Approach to Human Rights](#) declares: "ANZ's Approach to Human Rights, guide the way we treat our employees, promote a culture of respect with our customers and suppliers, and contribute to the communities in which we operate."
- CBA's [Human Rights Position Statement](#) declares: "Our approach to human rights is integral to the Commonwealth Bank Group's vision to excel at securing and enhancing the financial wellbeing of people, businesses and communities, in line with the values of integrity, collaboration, excellence, accountability and service."
- NAB's [Group Human Rights Policy](#) states: "NAB will conduct business in a way that respects the rights and dignity of people, and avoids complicity in human rights abuses, while complying with legal and regulatory requirements which incorporate the protection of human rights."
- Westpac's [Human Rights Position Statement and 2020 Action Plan](#), declares: "At the Westpac Group we respect and advance human rights. Respecting and advancing human rights helps us to achieve our vision to help our customers, communities and people to prosper and grow and reflects the belief that all people are entitled to basic rights and freedoms no matter where they are from, their religion, gender, race or any other status."

Further, in each of these human rights documents the relevant bank commits itself to upholding the [UN Guiding Principles on Business and Human Rights \(2003\)](#)¹⁵ which include that:

- "Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved." [GP 11]
- "In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed." [GP 17]
- "Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes." [GP 22]

¹⁵ The Thun Group of Banks (comprising mainly major Europe-based banks) issued two "Discussion Papers" (in 2013 and 2017) on whether and how the UN Guiding Principles apply to banks and other financial institutions. See [here](#) for access to the Discussion Papers and the critical responses they have attracted.

Precisely which human rights the Big Four banks believe they are committing themselves to in these statements and policies, and precisely how they consider themselves bound by them, are open questions. For while each bank, to varying degrees, refers explicitly to its commitment to human rights as enumerated in a wide array of international instruments, including foundational UN human rights treaties and related instruments, ILO treaties, OECD Guidelines, and the global industry sector's Equator Principles, these instruments are either addressed directly to states (and therefore only indirectly, through states, to private entities like banks), or they are exhortatory and non-binding on businesses.

In fact, the banks' explicit references to these international instruments in their public statements tend to support the view that the banks consider their human rights responsibilities to be wholly or mainly concerns for their overseas operations. This is a fallacy.

First and foremost, Australia-based banks and other private sector financial businesses owe human rights duties under relevant commonwealth, state and territory laws, including explicitly human rights laws like the various anti-discrimination statutes and the commonwealth *Privacy Act*, and implicitly in tort and consumer protection laws. This is indeed what international human rights treaties require of state parties – namely, that states implement their international human rights obligations through domestic laws that apply both to public agencies and to all private actors within their territory or jurisdiction.¹⁶

It is, of course, clearly important that states ensure that corporations domiciled in their territory respect human rights in their overseas operations (so-called extra-territorial obligations), but this is still a new and developing area of law with, presently, limited application.¹⁷ The intra-territorial obligations of states, on the other hand, are much clearer and more firmly established, both in terms of what is expected of states (that they enact relevant laws of domestic application) and that what is expected of corporations, including banks (that they comply with those duly enacted laws). In short, therefore, while the overseas human rights responsibilities of our banks are clearly a matter of concern,¹⁸ so are their domestic human rights responsibilities, even if hitherto they have been unrecognised and neglected.

What can be said with some certainty is that if these human rights statements and policies of the banks are to mean anything - and are not simply a cynical public relations exercise – then they must convey a commitment to meeting community expectations of the behaviour of banks toward their customers and clients. In other words, a commitment to treating people with respect, dignity, fairness and equality, to help them obtain or maintain basic human rights standards of individual safety, security, health and welfare.

These everyday qualities of life – what, indeed, we all strive to achieve on a daily basis – are not the sole or separate preserve of 'human rights', they are in fact the everyday concerns of our financial capability. This is clearly the thinking behind the Australian Government's 2018 [National Financial Capability Strategy](#), which aims to "encourage all Australians to seek out resources in their communities to build their financial capabilities and to be in control of their

¹⁶ The nature of this obligation in the context of regulating businesses (including in the finance sector) is neatly summed up by the UN Committee on Economic, Social and Cultural Rights, General Comment 24 (2017), para.54: "States parties should make use of a wide range of administrative and quasi-judicial mechanisms, many of which already regulate and adjudicate aspects of business activity in many States parties, such as labour inspectorates and tribunals, consumer and environmental protection agencies and financial supervision authorities. States parties should explore options for extending the mandate of these bodies or creating new ones, with the capacity to receive and resolve complaints of alleged corporate abuse of certain Covenant rights, to investigate allegations, to impose sanctions and to provide for and enforce reparations for the victims."

¹⁷ See, for example, the UN Committee on the Elimination of Racial Discrimination, *Concluding Observations in Respect of Australia* (27 August 2010), para.13, which notes "with concern the absence of a legal framework regulating the obligation of Australian corporations at home and overseas whose activities, notably in the extractive sector, when carried out on the traditional territories of Indigenous peoples, have had a negative impact on Indigenous peoples' rights to land, health, living environment and livelihoods".

¹⁸ See for example the recent report from Australia's National Contact Point regarding ANZ's failure to comply both with its own human rights policies, and with the human rights provisions in the OECD Guidelines on Multinational Enterprises regarding an investment in a Cambodia sugar plantation: [Final Statement](#) (27 June 2018).

financial lives. The document underlines both the importance and prevalence of financial services in our lives noting that “[e]very day, people are engaging in the financial system.... sometimes in sophisticated and complex ways, but most often simply through the common tasks of everyday living.” As such it argues, “[c]ollaboration across the government, business, community, education and research sectors to support strong financial capabilities in individuals, families and in communities makes a difference.”

The 2017 [Ramsay Review of the Financial System External Dispute Resolution and Complaints Framework](#) expresses much the same sentiments when it proclaims that “the financial system plays a vital role in raising the living standards of all Australians”, while stressing the “critical” importance of access to redress when things go wrong. “The impact of financial disputes on the lives of individuals and their families can be devastating”, the Report notes.¹⁹

Peter Kell, the Deputy Chair of ASIC, sums up this perspective as a “human centred approach” to financial services, which he says is essential precisely because “what’s at stake is often much greater for all of us.”²⁰ Kell warns that if we don’t adopt such an approach “and the products or advice works against our interests, it can have an absolutely devastating impact” on our lives.

The very foundations of consumer protection law – encompassing tortious and contractual protections as well as that provided under civil and criminal statutes - are premised on the notion of individual rights to safety, security and fairness when engaging in commercial transactions of any sort. Their proximity to individual human rights protections, while not explicit, is certainly implied. This is evident, for example in the UN Conference on Trade and Development’s 2016 [Guidelines on Consumer Protection](#) which stipulate the following as “legitimate needs” that the *Guidelines* are intended to meet:

- the protection of vulnerable and disadvantaged consumers;
- the promotion and protection of the economic interests of consumers;
- access by consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
- the protection of consumer privacy; and
- availability of effective consumer dispute resolution and redress.²¹

A human rights policy framework for finance

Our analysis of a sample caseload of 314 ASIC investigations shows clearly the human rights impacts of financial services misconduct or poor conduct, in a way that hitherto not been recognised nor understood. The revelations of the Royal Commission have drawn upon very similar cases in terms of law, facts and regulatory oversight, so it is fair to say that they too exhibit widespread and sometimes profound human rights impacts. As such, we believe there are **five conclusions** to be drawn that might benefit the Commissioner in his deliberations on policy options. Together these constitute what we call a “Human Rights Policy Framework for Finance.” The conclusions are:

1. Human rights laws apply to financial services entities, both as binding domestic laws, and as standards of responsible business behaviour in international law. What is more, Australian banks themselves explicitly recognise their commitment to human rights, at both levels.
2. The human rights obligations and responsibilities of banks and other financial services entities are not matters that apply only to their overseas operations. They apply also to their operations inside Australia. Indeed, the legal demands and expectations in the domestic realm are, or ought to be, higher and more stringently enforced.

¹⁹ Ian Ramsay, *Review of the Financial System External Dispute Resolution and Complaints Framework* (2017), 7.

²⁰ Peter Kell, [Why a Human Centred Approach Matters](#), viewed 25 October 2018.

²¹ UN Conference on Trade and Development, *Guidelines on Consumer Protection* (2016), [5].

3. Financial services misconduct is not a victimless crime. If there ever was a belief that financial fraud and deception was just about the fortunes of paper money rather than the fate of human beings, the evidence tendered to the Royal Commission over the past eight months has thoroughly confounded it. Above all else it has demonstrated graphically the impact financial skulduggery can have on people and their human rights.
4. Community expectations tolerate neither misconduct (legal breaches), nor poor conduct (unfair or unethical, but not necessarily illegal) in financial services. An important reason why such community expectations are so demanding and strongly held is precisely because they reflect the fundamental principles upon which human rights are based - namely, to be treated with respect, dignity, fairness and equality such that one's security and welfare are protected and promoted.
5. Breaches by financial services entities of relevant laws, including human rights laws, cannot be used as bargaining chips in settlements, undertakings or special pleadings negotiated with ASIC, or other financial regulatory bodies. When such breaches involve adverse impacts on people's human rights protections, the rights of remedy and redress for victims must be paramount.

Appendix

This appendix reports the methodology and summary findings of an empirical study on Australian financial services entities' human rights behaviours. This study is part of a larger project to develop a benchmark indicator of financial services entities' human rights performance. To be able to benchmark this performance, we needed to identify examples of financial institution conduct. We examined reports from the Financial Services Ombudsman as well as the Ramsay Review but were not able to obtain the granular details necessary to be able to devise a set of human rights impacts. Using ASIC media releases had several advantages: it obviated the need for a separate search of decisions in courts and at the Administrative Appeals Tribunal and the Enforceable Undertakings Register. These media releases include a summary of the key facts, describing both the conduct and the outcome of that conduct from a financial services law perspective.

ASIC's media releases cover a broad range of issues and topics, so not all media releases were relevant to our study. A media release was only included in the sample if it

- (i) was released between 1 January 2017 and 3 September 2018
- (ii) indicated that regulatory action in relation to financial services was or would be taken against named holders of an Australian Financial Services Licence (**AFSL**), an Australian Credit Licence (**ACL**), or auditors of SMSFs, or
- (iii) it mentioned persons engaging in unlicensed activities.

As a result, our initial sample is 318 media releases over this 20-month period.

Media releases were then analysed to identify the conduct (facts) and the relevant breaches of financial services law. At this stage we identified four media releases that covered the same conduct at the same entity (but provided an update on litigation) and removed these duplicates. We were then left with our final sample of 314 media releases of specific cases. Each of these cases was then coded using conduct descriptions (rather than the concepts used in the financial services law) to enable us to identify what human rights were at stake. The conduct descriptions used in this coding process are summarised as follows:

CODE	CONDUCT DESCRIPTION
A	Providing inadequate information to regulator, shareholders, or investors; failing to properly disclose required information or not properly collecting/monitoring required information.
B	Failing to inform customers/clients about the real cost of the product, or the nature of the product. Not being properly licensed to sell a certain consumer or financial product. Concealing the real charges/costs for which the customer/client will be liable.
C	Imposing unfair contract terms on a customer/client - including terms that make the customer/client liable for exorbitant charges, open them up to personal liability for unfair charges, or otherwise are unreasonable in the context of the transaction or the position of the customer/client.
D	Providing false or misleading information to the regulator, investors, clients, lenders, or customers, either for the purpose of securing an advantage for self or others.
E	Unfair dealing, including actual theft, fraud, misappropriation of funds or misleading and deceptive conduct. Acting in one's own interest to the detriment (often financial) of another.

Figure A-1: Conduct descriptions

The sample was then segmented into conduct that wasn't related to conduct towards a client, such as ASIC cancelling an AFSL as the licensee had failed to lodge financial reports for two years (**regulator conduct segment**) and conduct that directly involved a client (**client conduct segment**). There were 59 cases in the regulator conduct segment. The remaining 255 cases fell into the client conduct segment. All cases in the client conduct segment were then reviewed against the four categories of human rights shown in Figures A-2 below and coded accordingly where human rights impacts were evident.

CATEGORY	DESCRIPTION OF RIGHTS INCLUDED IN THIS CATEGORY
PRIVACY AND INFORMATION	Rights to privacy and protection against misuse or abuse of personal information, and the provision of misleading information or the withholding of information such that it would materially impair a person's informed "consent"
ANTI-DISCRIMINATION	Rights against discrimination on illegitimate grounds such as gender, race or disability
ECONOMIC SECURITY	Rights to economic security, such that the "quality" of goods and services necessary for the enjoyment of basic economic, social and cultural rights (including the "continuous improvement of living conditions" such as housing, health care and education), when provided by the private sector, is "not sacrificed for the sake of increasing profits;
REMEDY	Rights to appropriate means of redress or "effective remedy" when human rights standards are violated or infringed

Figure A-2: Human rights categories

Impacts on only one of the human rights categories were found. The following two case conduct examples illustrate an impact on only one rights category.

CASE EXAMPLE A1 IMPACT ON PRIVACY AND INFORMATION RIGHTS	CASE EXAMPLE A2 IMPACT ON ECONOMIC SECURITY RIGHTS
WAW Credit Union Co-Operative Ltd is an unlisted public company operating as a credit union. Its deposit account customers are all entitled to vote in board elections. WAW held electronic elections between 4 November and 18 November 2015 to fill two vacant board positions. Neil John Evans, a financial planner, <i>allegedly misused ~499 WAW members' personal details, which he obtained for ostensible purposes of marketing his financial planning services, to cast ballots in the election</i> . ASIC alleged that directors were elected who should not have been, due to Evans' conduct. ASIC 18-129MR	The Commonwealth Bank attempted to engage in unconscionable conduct in relation to the Bank Bill Swap Rate. CBA attempted to affect where the BBSW was set on five occasions in 2012. CBA also failed to ensure that they provided financial services honestly and fairly and that its traders were adequately trained. ASIC 18-210MR

Figure A-3: Case examples of impact on one rights category

In most cases, more than one human rights impact code was assigned to a case, as illustrated by the six cases studies provided in the body of our submission (at pages 3-5) and further, by the following four additional case conduct examples:

CASE EXAMPLE A3 IMPACT ON PRIVACY AND INFORMATION RIGHTS AND ECONOMIC SECURITY RIGHTS Financial adviser Lawrence Toledo failed to act in best interests of his clients when advising them to establish self-managed super funds to purchase properties. Toledo failed to: properly identify what it was that his clients wanted advice on, and to reasonably investigate what financial products would best suit their needs; understand what was required of him to comply with the best interests duty; and provide advice that was appropriate to the clients. Toledo had been an authorised representative of Sentinel Private Wealth ty Ltd since March 2014. ASIC 17-304MR	CASE EXAMPLE A4 IMPACT ON PRIVACY AND INFORMATION RIGHTS, ECONOMIC SECURITY RIGHTS, ANTI-DISCRIMINATION RIGHTS The Rental Guys failed to make proper inquiries, conduct verification and carry out unsuitability assessments when entering certain customers into new contracts between November 2013 and January 2014. Customers were mainly from regional Indigenous communities in NSW. The customers were charged higher rates and gave up their rights to own goods, which they had under their original contracts with Country Rentals. ASIC 17-243MR
CASE EXAMPLE A5 IMPACT ON ANTI-DISCRIMINATION RIGHTS AND RIGHTS TO REMEDY Second hand car dealer William Barry Young dealt with Indigenous customers while no longer a member of an ASIC approved External Dispute Resolution scheme. Young was thereby ineligible to hold a credit licence. Previously, Young failed to pay membership fees to the Credit and Investments Ombudsman, who in turn cancelled his membership on 28/3/2017. ASIC 17-361MR	CASE EXAMPLE A6 IMPACT ON RIGHTS TO REMEDY AND ECONOMIC SECURITY RIGHTS Virginia Surety Company, Inc, a general insurer between 18/6/2013 and 31/12/2015 sold consumer credit insurance (bundled add-on insurance products including general and life insurance cover) to customers taking out loans at car yards mainly in QIs and NSW. ASIC found Virginia had stated the life cover in the add-on policy was underwritten by TAL Life Ltd, without TAL's permission. This means there was a risk that consumers would have their life claim rejected even though they paid for the policy. ASIC 17-189MR

Figure A- 4: Case examples on impact on multiple human rights categories

Figure A-5 below reports the frequency and pattern of human rights impacts in the client conduct segment.

RIGHTS IMPACTED (EITHER SINGLE RIGHTS CATEGORY OR COMBINATIONS)	NUMBER OF CASES
ECONOMIC SECURITY combined with PRIVACY AND INFORMATION	140
ECONOMIC SECURITY	45
ECONOMIC SECURITY combined with PRIVACY AND INFORMATION and REMEDY	27
ECONOMIC SECURITY combined with REMEDY	10
ECONOMIC SECURITY combined with PRIVACY AND INFORMATION and ANTI-DISCRIMINATION	8
ALL 4 CATEGORIES OF RIGHTS IMPACT	7
PRIVACY AND INFORMATION	7
PRIVACY AND INFORMATION combined with REMEDY	6
ECONOMIC SECURITY combined with ANTI-DISCRIMINATION	4
ANTI-DISCRIMINATION combined with REMEDY	1

Figure A-5: Frequency and types of human rights impacts

From this figure it is possible to draw the following conclusions

- **Economic and security rights** impacts were the most frequently coded impact, showing up in 241 cases, including 45 cases where it was the only rights category impacted.
- **Privacy and information rights** impacts were the second most frequently coded impact, found in 185 cases, including only 7 cases where it was the only rights category impacted.
- **Anti-discrimination rights** impacts were only detected in 20 cases, and then always in combination to at least one other rights category impact.
- **Rights to remedy** impacts were detected in 41 cases, and was usually found in combination with a breach of economic security rights.

Turning to the 59 cases in the regulator conduct segment, while we could not explicitly code these for human rights impacts (as no conduct towards customers or clients was identified in the accompanying media release), we believe there is potential for some of the entities mentioned in these media releases to have engaged in conduct towards their customers or clients that raises the same types of human rights impacts identified in our client conduct segment. Our belief is based on three observations

1. Our conduct descriptions in Figure A-1 incorporate conduct towards the regulator in relation to information ('A': providing inadequate information to the regulator'; 'D': providing false or misleading information to the regulator). Intuition suggests that a financial entity with a tendency to exhibit this conduct (providing inadequate information or false or misleading information) won't necessarily treat its customers or clients any differently.
2. Where ASIC cancelled the AFSL or ACL on the basis of breaches of the license conditions (but without naming specific client conduct), it could do so on a range of different grounds that suggest behaviours of conduct which, if directed towards a customer or clients, would impact on one or more of our identified human rights categories:
 - a. failing to be a member of an approved external dispute resolution service (customers or clients would not have access to this forum to seek a remedy but would instead have to rely upon court proceedings)
 - b. failing to adequately train staff (the services or advice provided might impact on the economic security of its customers or clients; the personal information of customers or clients could be susceptible to misuse)
 - c. Lying about qualifications (lack of regard for truth and honesty)
 - d. Failing to lodge annual financial statement and auditor's reports over multiple years (lack of attention to record keeping requirements)
3. Some cases in this segment identified compliance failings around transaction reporting or systems. The culture within the organisation may be one that does not take seriously compliance obligations, such as those relating to its customers/clients, which thereby could impact across a number of human rights categories.