



## Media Release

For Release: 11 February 2014

### **ANZ CPS1 (ANZPB) – Amendments to terms**

ANZ today announced that it has amended the terms of the convertible preference shares issued in September 2008 (**CPS1**). The amendments have been made to facilitate the Reinvestment Offer for ANZ Capital Notes 2. Specifically, the changes permit the payment of a Pro Rata Dividend to Eligible CPS1 Holders who elect to reinvest their CPS1 in ANZ Capital Notes 2. Payment of a Pro Rata Dividend will be subject to the payment tests in the CPS1 terms (including that the Board resolves to pay the relevant dividend).

Further details about the offer of ANZ Capital Notes 2, the Reinvestment Offer and the Pro Rata Dividend are set out in a prospectus that was lodged with ASX and the Australian Securities and Investments Commission today (**Prospectus**).

The amendments to the CPS1 terms are highlighted in the attachment and take effect from today. The amendments have been approved by the Australian Prudential Regulation Authority.

Defined terms referred to in this announcement have the meaning given to them in the Prospectus.

**For investor enquiries about the amendments to the CPS1 terms, ANZ Capital Notes 2 and the Reinvestment Offer please call the ANZ Information Line on 1800 113 399 (Australia) or +61 3 9415 4010 (international).**

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# CPS Terms

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## **1 CPS**

### **1.1 CPS**

CPS are fully paid mandatorily convertible preference shares in the capital of ANZ (**CPS**). They are issued, and may be Redeemed, Converted, or Resold, according to these CPS Terms. The CPS are designated the “September 2008 CPS” for identification purposes.

CPS are not deposit liabilities of ANZ.

### **1.2 Issue Price**

The issue price of each CPS (**Issue Price**) is \$100.

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## **2 Title and transfer**

### **2.1 Title**

Title to a CPS passes when details of the transfer are entered in the Register.

### **2.2 Register conclusive as to ownership**

Entries in the Register in relation to a CPS constitute conclusive evidence that the person so entered is the absolute owner of the CPS subject to correction for fraud or error.

### **2.3 Non-recognition of interests**

Except as required by law and as provided in this clause 2.3, ANZ must treat the person whose name is entered in the Register as the CPS Holder in respect of a CPS as the absolute owner of that CPS.

No notice of any trust, Encumbrance or other interest in, or claim to, any CPS will be entered in the Register. Neither ANZ nor the Registrar need take notice of any trust, Encumbrance or other interest in, or claim to, any CPS, except as ordered by a court of competent jurisdiction or required by law, and no trust, Encumbrance or other interest in, or claim to, any CPS will in any way affect any provision of these CPS Terms (including without limitation any Resale).

This clause 2.3 applies whether or not a payment has been made when scheduled on a CPS and despite any notice of ownership, trust or interest in the CPS.

### **2.4 Dealings in whole**

At all times, the CPS may be held or transferred only in whole CPS.

### **2.5 Transfer in accordance with Constitution**

The Constitution contains provisions relating to the transfer of shares and the relevant provisions apply with all necessary modifications to a transfer of CPS.

## 2.6 Refusal to register

The Constitution contains provisions allowing the Directors to refuse to register transfers and the relevant provisions apply with all necessary modifications to refusals to register transfers of CPS in those circumstances.

## 2.7 Transferor to remain holder until registration

The Constitution contains provisions relating to the effect of registration on a transfer and the relevant provisions apply with all necessary modifications to a transfer of CPS.

## 2.8 Transmission of CPS

The Constitution contains provisions relating to the transmission of shares in certain circumstances (including without limitation on the death of a holder) and the relevant provisions apply with all necessary modifications to the transmission of CPS in those circumstances.

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# 3 Dividends

## 3.1 Dividends

Subject to these CPS Terms, each CPS entitles the CPS Holder on a Record Date to receive on the relevant Dividend Payment Date a dividend (**Dividend**) calculated according to the following formula:

$$\text{Dividend} = \frac{\text{Issue Price} \times \text{Dividend Rate} \times N}{365}$$

where:

**Dividend Rate** (expressed as a percentage per annum) is calculated according to the following formula:

$$\text{Dividend Rate} = (\text{Bank Bill Rate} + \text{Margin}) \times (1 - \text{Tax Rate})$$

where:

**Bank Bill Rate** (expressed as a percentage per annum) means, for a Dividend Period, the average mid-rate for bills of a term of 90 days which average mid-rate is displayed on Reuters page BBSW (or any page which replaces that page) on the first Business Day of the Dividend Period or if there is a manifest error in the calculation of that average mid-rate or that average mid-rate is not displayed by 10.30am (Melbourne time) on that date, the rate specified in good faith by ANZ at or around that time on that date having regard, to the extent possible, to:

- (a) the rates otherwise bid and offered for bills of a term of 90 days or for funds of that tenor displayed on Reuters page BBSW (or any page which replaces that page) at that time on that date; or
- (b) if bid and offer rates for bills of a term of 90 days are not otherwise available, the rates otherwise bid and offered for funds of that tenor at or around that time on that date.

**Margin** (expressed as a percentage per annum) means the margin determined under the Bookbuild; and

**Tax Rate** (expressed as a decimal) means the Australian corporate tax rate applicable to the franking account of ANZ as at the relevant Dividend Payment Date; and

**N** means in respect of:

- (a) the first Dividend Payment Date, the number of days from (and including) the Issue Date until (but not including) the first Dividend Payment Date; and
- (b) each subsequent Dividend Payment Date, the number of days from (and including) the preceding Dividend Payment Date until (but not including) the relevant Dividend Payment Date.

### 3.2 Franking adjustments

If any Dividend is not franked to 100% under Part 3-6 of the Tax Act (or any provisions that revise or replace that Part), the Dividend will be calculated according to the following formula:

$$\text{Dividend} = \frac{\mathbf{D}}{1 - [\text{Tax Rate} \times (1 - \mathbf{F})]}$$

where:

**D** means the Dividend calculated under clause 3.1;

**Tax Rate** has the meaning given in clause 3.1; and

**F** means the applicable Franking Rate.

### 3.3 Payment of a Dividend

Each Dividend (including an Optional Dividend) is subject to:

- (a) the Directors, at their absolute discretion, resolving to pay that Dividend on the relevant Dividend Payment Date; and
- (b) no APRA Condition existing in respect of the relevant Dividend Payment Date.

Subject to this clause 3.3, the Directors, at their absolute discretion but with the prior written approval of APRA, may determine an Optional Dividend to be payable on any date.

### 3.4 Dividends are non-cumulative

Dividends are non-cumulative. If all or any part of a Dividend is not paid because of clause 3.3 or because of any applicable law, ANZ has no liability to pay the unpaid amount of the Dividend and, notwithstanding the Directors' discretion to pay an Optional Dividend under clause 3.3, CPS Holders have no claim or entitlement in respect of such non-payment and such non-payment does not constitute an event of default. No interest accrues on any unpaid Dividends or Optional Dividends and the CPS Holders have no claim or entitlement in respect of interest on any unpaid Dividends or Optional Dividends.

### 3.5 Dividend Payment Dates

Subject to this clause 3, Dividends (other than Optional Dividends) in respect of a CPS will be payable in arrears on the following dates (each a **Dividend Payment Date**):

- (a) each 15 March, 15 June, 15 September and 15 December commencing on 15 December 2008 until (but not including) the date on which a Redemption or Conversion of that CPS occurs in accordance with these CPS Terms; ~~and~~
- (b) each date on which:
  - (i) a Conversion or Resale of that CPS occurs; and
  - (ii) subject to clause 8.3(a)(iii), a Redemption of that CPS occurs, in each case in accordance with these CPS Terms; and
- (c) in respect of Reinvestment CPS, the Reinvestment Date.

If a Dividend Payment Date is a day which is not a Business Day, then the Dividend Payment Date will be the next day which is a Business Day.

### 3.6 Record Dates

- (a) A Dividend is only payable on a Dividend Payment Date to those persons registered as CPS Holders on the Record Date for that Dividend.
- (b) An Optional Dividend is only payable on the date of payment determined by the Directors to those persons registered as CPS Holders on the Record Date for that Optional Dividend.

### 3.7 Deductions

- (a) ANZ may deduct from any Dividend payable the amount of any withholding or other tax, duty or levy required by law to be deducted in respect of such amount. If any such deduction has been made and the amount of the deduction accounted for by ANZ to the relevant revenue authority and the balance of the Dividend payable has been paid to the relevant CPS Holder, then the full amount payable to such CPS Holder shall be deemed to have been duly paid and satisfied by ANZ.
- (b) ANZ shall pay the full amount required to be deducted to the relevant revenue authority within the time allowed for such payment without incurring any penalty under the applicable law and shall, if required by any CPS Holder, deliver to that CPS Holder a copy of any relevant receipt issued by the revenue authority (to the extent issued) without delay after it is received by ANZ.

### 3.8 Restrictions in the case of non-payment

If for any reason a Dividend has not been paid in full within 21 Business Days of the relevant Dividend Payment Date, ANZ must not, without approval of a Special Resolution:

- (a) declare or pay a dividend or make any distribution on any capital instruments of ANZ which rank equally with or junior to CPS for distributions; or

- (b) redeem, buy back or reduce capital on any capital instruments of ANZ which rank equally with or junior to CPS for a return of capital in a winding up,

unless:

- (i) consecutive Dividends scheduled to be payable on CPS on the Dividend Payment Dates falling during the 12 months after the Dividend Payment Date of the Dividend that has not been paid have been paid in full;
- (ii) with the prior written approval of APRA, an optional dividend (**Optional Dividend**) has been paid to CPS Holders equal to the aggregate unpaid amount of any unpaid Dividends which were scheduled to be paid in the 12 months prior to the date of payment of the Optional Dividend; or
- (iii) all CPS have been Redeemed or Converted.

### **3.9 Exclusions from restrictions in case of non-payment**

The restrictions in clause 3.8 do not apply to:

- (a) *pro rata* payments on the CPS and any Equal Ranking Instruments;
- (b) repurchases (including buy-backs), redemptions or other acquisitions of ANZ Shares in connection with:
  - (i) any employment contract, employee share scheme, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants of ANZ or any Controlled Entity;
  - (ii) a dividend reinvestment or bonus option plan or shareholder share purchase plan; or
  - (iii) the issuance of ANZ Shares, or securities convertible into or exercisable for such shares, as consideration in an acquisition transaction entered into prior to non-payment of the Dividend;
- (c) an exchange, redemption or conversion of any class or series of ANZ Shares, or any securities of a Subsidiary or of any other entity whose financial results are required to be consolidated with ANZ's financial statements, for any class or series of ANZ Shares, or of any class or series of ANZ's indebtedness for any class or series of ANZ Shares;
- (d) the purchase of fractional interests in ANZ Shares under the conversion or exchange provisions of the shares or the security being converted or exchanged;
- (e) any payment, distribution or declaration of a dividend in connection with any shareholder's rights plan, or the issuance of rights, shares or other property under any shareholder's rights plan, or the redemption or repurchase of rights pursuant to the plan;
- (f) any dividend in the form of shares, warrants, options or other rights where the dividend shares or the shares issuable upon exercise of such warrants, options or other rights are the same class or series of shares as those on which the dividend is being paid or rank equal or junior to those shares; or

- (g) a capital raising by way of a rights or entitlement issue made to holders of one or more capital instruments of ANZ.

Nothing in these CPS Terms prohibits ANZ or a Controlled Entity from purchasing ANZ Shares (or an interest therein) in connection with transactions for the account of customers of ANZ or customers of entities that ANZ Controls or in connection with the distribution or trading of ANZ Shares in the ordinary course of business. This includes (for the avoidance of doubt and without affecting the foregoing) any acquisition resulting from:

- (a) taking security over ANZ Shares in the ordinary course of business; and
- (b) acting as trustee for another person where neither ANZ nor any entity it Controls has a beneficial interest in the trust (other than a beneficial interest that arises from a security given for the purposes of a transaction entered into in the ordinary course of business).

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## 4 Mandatory Conversion

### 4.1 Mandatory Conversion

Subject to clauses 4.5 and 4.7, on the Mandatory Conversion Date ANZ must Convert all (but not some) CPS on issue at that date into Ordinary Shares in accordance with clause 7 and this clause 4.

### 4.2 Mandatory Conversion Date

The **Mandatory Conversion Date** will be the earlier of:

- (a) 16 June 2014 (the **Initial Mandatory Conversion Date**); and
- (b) the first Dividend Payment Date after the Initial Mandatory Conversion Date (a **Subsequent Mandatory Conversion Date**),

(each a **Relevant Date**) on which the Mandatory Conversion Conditions are satisfied.

### 4.3 Mandatory Conversion Conditions

The Mandatory Conversion Conditions for each Relevant Date are:

- (a) the VWAP on the 25th Business Day immediately preceding (but not including) the Relevant Date (the **First Test Date**, provided that if no trading in Ordinary Shares took place on that date, the First Test Date is the first Business Day before the 25th Business Day immediately preceding (but not including) the Relevant Date on which trading in Ordinary Shares took place) is greater than 56.00% of the Issue Date VWAP (the **First Mandatory Conversion Condition**);
- (b) the VWAP during the period of 20 Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the Relevant Date (the **Second Test Period**) is greater than 51.28% of the Issue Date VWAP (the **Second Mandatory Conversion Condition**); and
- (c) no Delisting Event applies in respect of the Relevant Date (the **Third Mandatory Conversion Condition** and, together with the First Mandatory Conversion Condition and the Second Mandatory Conversion Condition, the **Mandatory Conversion Conditions**).

#### 4.4 Non-Conversion Notices

If:

- (a) the First Mandatory Conversion Condition is not satisfied in relation to a Relevant Date, ANZ will notify CPS Holders between the 25th and the 21st Business Day before the Relevant Date; or
- (b) the Second Mandatory Conversion Condition or the Third Mandatory Conversion Condition is not satisfied in relation to a Relevant Date, ANZ will notify CPS Holders on or as soon as practicable after the Relevant Date unless it has given a Resale Notice or a Redemption Notice,

in either case that Mandatory Conversion will not (or, as the case may be, did not) occur on the Relevant Date (a **Non-Conversion Notice**).

#### 4.5 Redemption where Mandatory Conversion Conditions are not satisfied

If:

- (a) the First Mandatory Conversion Condition is not satisfied in relation to a Relevant Date, ANZ may, subject to APRA's prior written approval, elect to Redeem all (but not some) CPS on the Relevant Date in accordance with clause 8 by giving a notice (a **Redemption Notice**) no later than 10 Business Days prior to the Relevant Date; or
- (b) the Second Mandatory Conversion Condition or the Third Mandatory Conversion Condition is not satisfied in relation to a Relevant Date, ANZ may, subject to APRA's prior written approval, elect to Redeem all (but not some) CPS on a date no later than 30 Business Days after the Relevant Date (the **Deferred Redemption Date**) by giving a Redemption Notice no later than 10 Business Days prior to the Deferred Redemption Date.

A Redemption Notice once given is irrevocable.

#### 4.6 Contents of Redemption Notice

A Redemption Notice must specify:

- (a) the details of the Mandatory Conversion Condition to which the Redemption Notice relates;
- (b) the date on which Redemption is to occur (the **Redemption Date**), which must be the Relevant Date in the case of a Redemption under clause 4.5(a) and the Deferred Redemption Date in the case of a Redemption under clause 4.5(b);
- (c) whether the Redemption Price is payable by way of redemption, buy-back or reduction of capital (or a combination of these methods); and
- (d) whether any Dividend or any amount under clause 8.3(a)(iii) will be paid on the Redemption Date.

#### 4.7 Resale on the Relevant Date

Whether or not the Mandatory Conversion Conditions are satisfied in relation to a Relevant Date, ANZ may elect to Resell all (but not some) CPS on the Relevant Date in accordance with clause 9 by giving a notice (a **Resale Notice**) no later

than 21 Business Days prior to the Relevant Date. A Resale Notice once given is irrevocable.

#### **4.8 Contents of Resale Notice**

A Resale Notice must specify the identity of the Nominated Purchaser or Nominated Purchasers for that Resale.

#### **4.9 Election between Resale and Redemption**

ANZ may only give a Resale Notice or a Redemption Notice in respect of a Relevant Date where permitted to do so by clause 4.5 or clause 4.7 (as the case may be) and may not give both a Resale Notice and a Redemption Notice in respect of a Relevant Date.

If, notwithstanding this clause 4.9, more than one notice is given, the Resale Notice will be deemed never to have been given and the Redemption Notice will prevail.

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## **5 Optional Exchange by ANZ**

### **5.1 Optional Exchange by ANZ**

ANZ may by notice to CPS Holders (an **Exchange Notice**) elect to Exchange:

- (a) all or some CPS on an Exchange Date following the occurrence of a Tax Event or a Regulatory Event; or
- (b) all (but not some only) CPS on an Exchange Date following the occurrence of an Acquisition Event.

An Exchange Notice once given is irrevocable.

### **5.2 Contents of Exchange Notice**

An Exchange Notice must specify:

- (a) the details of the Acquisition Event, Tax Event or Regulatory Event to which the Exchange Notice relates;
- (b) the date on which Exchange is to occur (the **Exchange Date**), which:
  - (i) in the case of an Acquisition Event:
    - (A) if the Exchange Notice provides that CPS are to be Converted, is the Business Day prior to the date reasonably determined by ANZ to be the last date on which holders of Ordinary Shares can participate in the bid or scheme concerned or such other earlier date as ANZ may reasonably determine having regard to the timing for implementation of the bid or scheme concerned; or
    - (B) otherwise, must be no later than 35 Business Days after the date on which the Acquisition Event occurred,

or in either case such later date as APRA may require; or

- (ii) in the case of a Tax Event or a Regulatory Event, will be the last Business Day of the month following the month in which the Exchange Notice was given by ANZ unless ANZ determines an earlier Exchange Date having regard to the best interests of CPS Holders as a whole and the relevant event;
- (c) the Exchange Method;
- (d) if less than all outstanding CPS are subject to Exchange, which CPS are subject to Exchange;
- (e) if the Exchange Notice provides that CPS are to be Redeemed, whether the Redemption Price is payable by way of redemption, buy-back or reduction of capital (or a combination of these methods);
- (f) if the Exchange Notice provides that CPS are to be Resold, the identity of the Nominated Purchaser or Nominated Purchasers for that Resale; and
- (g) whether any Dividend or any amount under clause 8.3(a)(iii) will be paid on the Exchange Date.

### 5.3 Exchange Method

If ANZ elects to Exchange CPS in accordance with this clause 5, it must, subject to clause 5.4, elect which of the following (or which combination of the following) it intends to do in respect of CPS (the **Exchange Method**):

- (a) subject to APRA's prior written approval, Convert CPS into Ordinary Shares in accordance with clause 7;
- (b) subject to APRA's prior written approval, Redeem CPS in accordance with clause 8; or
- (c) Resell CPS in accordance with clause 9.

If ANZ issues an Exchange Notice to Exchange only some CPS, ANZ must endeavour to treat CPS Holders on an approximately proportionate basis, but may discriminate to take account of the effect on holdings which would be Non-marketable Parcels and other considerations (including the circumstances described in clause 9.6).

### 5.4 Conditions to election by ANZ of Conversion as Exchange Method

ANZ may not elect Conversion as the Exchange Method in respect of an Exchange if:

- (a) on the second Business Day before the date on which an Exchange Notice is to be sent by ANZ (or, if trading in Ordinary Shares did not occur on that date, the last Business Day prior to that date on which trading in Ordinary Shares occurred) (the **Optional Conversion Test Date**) the VWAP on that date is less than or equal to 56.00% of the Issue Date VWAP (the **First Optional Conversion Condition**); or
- (b) a Delisting Event applies in respect of the Optional Conversion Test Date (the **Second Optional Conversion Condition** and, together with the First Optional Conversion Condition, the **Optional Conversion Conditions**).

## 5.5 Conditions to Conversion occurring once elected by ANZ

If ANZ has given an Exchange Notice in which it has elected Conversion as the Exchange Method but, if the Exchange Date were a Relevant Date for the purposes of clause 4, either the Second Mandatory Conversion Condition or the Third Mandatory Conversion Condition would not be satisfied in respect of that date, then, notwithstanding any other provision of these CPS Terms:

- (a) the Exchange Date will be deferred until the first Dividend Payment Date on which the Mandatory Conversion Conditions would be satisfied if that Dividend Payment Date were a Relevant Date for the purposes of clause 4 (the **Deferred Conversion Date**);
- (b) ANZ must Convert the CPS on the Deferred Conversion Date (unless (without prejudice to clause 9.6) the CPS are earlier Exchanged in accordance with these CPS Terms); and
- (c) until the Deferred Conversion Date, all rights attaching to the CPS will continue as if the Exchange Notice had not been given.

ANZ will notify CPS Holders on or as soon as practicable after an Exchange Date in respect of which this clause 5.5 applies that Conversion did not occur on that Exchange Date (a **Deferred Conversion Notice**).

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## 6 Early Exchange on Change of Control Event

### 6.1 Notice of Change of Control Event

ANZ must notify CPS Holders of the occurrence of a Change of Control Event as soon as practicable after becoming aware of that event (a **Change of Control Event Notice**).

### 6.2 Exchange on occurrence of Change of Control Event

If a Change of Control Event occurs, ANZ must, subject to obtaining the prior written approval of APRA, Exchange all (but not some only) CPS on the Change of Control Exchange Date by notice to CPS Holders (a **Change of Control Exchange Notice**) in accordance with this clause 6 and clause 7 or clause 8 (as the case may be).

### 6.3 Contents of Change of Control Exchange Notice

A Change of Control Exchange Notice must specify:

- (a) the details of the Change of Control Event to which the Change of Control Exchange Notice relates;
- (b) the date on which Exchange is to occur (the **Change of Control Exchange Date**), which must be:
  - (i) if the Exchange Notice provides that CPS are to be Converted, the Business Day prior to the date reasonably determined by ANZ to be the last date on which holders of Ordinary Shares can participate in the bid or scheme concerned or such other earlier date as ANZ may reasonably determine having regard to the timing for implementation of the bid or scheme concerned; or
  - (ii) otherwise, no later than 35 Business Days after the date on which the Change of Control Event occurred,

or in either case such later date as APRA may require;

- (c) the Exchange Method, which, subject to clause 5.4, must be either Conversion in accordance with clause 7 or Redemption in accordance with clause 8 as elected by ANZ;
- (d) if the Change of Control Exchange Notice provides that CPS are to be Redeemed, whether the Redemption Price is payable by way of redemption, buy-back or reduction of capital (or a combination of these methods); and
- (e) whether any Dividend or any amount under clause 8.3(a)(iii) will be paid on the Change of Control Exchange Date.

#### **6.4 Where Change of Control Exchange Notice not required**

Notwithstanding any other provision of clause 6.2 or clause 6.3, if APRA does not approve Redemption as the Exchange Method and ANZ is prevented from electing Conversion as the Exchange Method by clause 5.4, ANZ is not required to give a Change of Control Exchange Notice and the provisions of clause 6.5 will apply.

#### **6.5 Deferred Exchange on Change of Control Event**

If clause 6.4 applies or ANZ has given a Change of Control Exchange Notice in which it has elected Conversion as the Exchange Method but, if the Change of Control Exchange Date were a Relevant Date for the purposes of clause 4, either the Second Mandatory Conversion Condition or the Third Mandatory Conversion Condition would not be satisfied in respect of that date, then, notwithstanding any other provision of these CPS Terms:

- (a) the Change of Control Exchange Notice, if given, is taken to be revoked and Exchange will not occur on the Change of Control Exchange Date specified in the Change of Control Event Notice;
- (b) ANZ will notify CPS Holders as soon as practicable that Exchange will not (or, as the case may be, did not) occur (a **Deferred Change of Control Exchange Notice**); and
- (c) ANZ must, unless clause 6.4 then applies, give a Change of Control Exchange Notice (or, as the case may be, a new Change of Control Exchange Notice) on or before the 25th Business Day prior to the Dividend Payment Date immediately succeeding the date on which the Deferred Change of Control Exchange Notice was given.

The Change of Control Exchange Notice given in accordance with paragraph (c) above must:

- (a) specify the Exchange Method, which, subject to clause 5.4, must be either Conversion in accordance with clause 7 or Redemption in accordance with clause 8 as elected by ANZ; and
- (b) otherwise comply with clause 6.3.

If this clause 6.5 applies but:

- (i) clause 6.4 applies in respect of the Dividend Payment Date such that no Change of Control Exchange Notice (or, as the case may be, no new Change of Control Exchange Notice) is given under this clause 6.5; or

- (ii) a Change of Control Exchange Notice (or, as the case may be, a new Change of Control Exchange Notice) is given under this clause 6.5 but, if the Change of Control Exchange Date specified in the Change of Control Exchange Notice were a Relevant Date for the purpose of clause 4, either the Second Mandatory Conversion Condition or the Third Mandatory Conversion Condition would not be satisfied in respect of that date,

then this clause 6.5 will be reapplied in respect of each subsequent Dividend Payment Date until an Exchange occurs.

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## 7 Conversion mechanics

### 7.1 Conversion

If ANZ elects to Convert CPS or must Convert CPS in accordance with these CPS Terms, then, subject to clause 13, the following provisions apply:

- (a) each CPS that is being Converted will Convert into one Ordinary Share on the Mandatory Conversion Date, the Exchange Date or the Change of Control Exchange Date (as the case may be);
- (b) each CPS Holder will be allotted, for no consideration, an additional number of Ordinary Shares for each CPS that is being Converted on the Mandatory Conversion Date, the Exchange Date or the Change of Control Exchange Date (as the case may be) equal to **one less than** the Conversion Number, where the Conversion Number (but subject to the Conversion Number being no more than the Maximum Conversion Number) is a number calculated according to the following formula:

$$\text{Conversion Number} = \frac{\text{Issue Price}}{97.5\% \times \text{VWAP}}$$

where:

**VWAP** (expressed in dollars and cents) means the VWAP during the VWAP Period;

- (c) if the total number of additional Ordinary Shares to be allotted to a CPS Holder in respect of their aggregate holding of CPS upon Conversion includes a fraction of an Ordinary Share, that fraction of an Ordinary Share will be disregarded;
- (d) a CPS, upon Conversion, confers all of the rights attaching to one Ordinary Share but these rights do not take effect until 5.00pm (Melbourne time) on the Mandatory Conversion Date, the Exchange Date or the Change of Control Exchange Date (as the case may be). At that time:
  - (i) all other rights conferred or restrictions imposed on that CPS under these CPS Terms will no longer have effect (except for rights relating to a Dividend which has been determined to be payable but has not been paid on or before the Mandatory Conversion Date, the Exchange Date or the Change of Control Exchange Date (as the case may be) which will continue); and
  - (ii) the Ordinary Share resulting from a Conversion will rank equally with all other Ordinary Shares.

Conversion does not constitute a redemption, buy-back, cancellation or termination of CPS or an issue, allotment or creation of a new Ordinary Share (other than the additional Ordinary Shares allotted under clause 7.1(b)).

## 7.2 Adjustments to VWAP

For the purposes of calculating VWAP in these CPS Terms:

- (a) where, on some or all of the Business Days in the relevant VWAP Period, Ordinary Shares have been quoted on ASX as cum dividend or cum any other distribution or entitlement and CPS will Convert into Ordinary Shares after the date those Ordinary Shares no longer carry that dividend or any other distribution or entitlement, then the VWAP on the Business Days on which those Ordinary Shares have been quoted cum dividend or cum any other distribution or entitlement shall be reduced by an amount (**Cum Value**) equal to:
- (i) (in case of a dividend or other distribution), the amount of that dividend or other distribution including, if the dividend or other distribution is franked, the amount that would be included in the assessable income of a recipient of the dividend or other distribution who is both a resident of Australia and a natural person under the Tax Act;
  - (ii) (in the case of any other entitlement that is not a dividend or other distribution under clause 7.2(a)(i) which is traded on ASX on any of those Business Days), the volume weighted average sale price of all such entitlements sold on ASX during the VWAP Period on the Business Days on which those entitlements were traded; or
  - (iii) (in the case of any other entitlement which is not traded on ASX during the VWAP Period), the value of the entitlement as reasonably determined by the Directors; and
- (b) where, on some or all of the Business Days in the VWAP Period, Ordinary Shares have been quoted on ASX as ex dividend or ex any other distribution or entitlement, and CPS will Convert into Ordinary Shares which would be entitled to receive the relevant dividend or other distribution or entitlement, the VWAP on the Business Days on which those Ordinary Shares have been quoted ex dividend or ex any other distribution or entitlement shall be increased by the Cum Value.

## 7.3 Adjustments to VWAP for capital reconstruction

Where the Ordinary Shares are reconstructed, consolidated, divided or reclassified (other than by way of a bonus issue, rights issue or other essentially *pro rata* issue) into a lesser or greater number of securities during the relevant VWAP Period, the VWAP shall be adjusted by ANZ as it considers appropriate to ensure that the CPS Holders are in an economic position in relation to their CPS that is as similar as reasonably practicable to the economic position prior to the occurrence of the event that gave rise to the need for the adjustment. Any adjustment made by ANZ will be effective and binding on CPS Holders under these CPS Terms and these CPS Terms will be construed accordingly. Any such adjustment must be promptly notified to all CPS Holders.

## 7.4 Adjustments to Issue Date VWAP

For the purposes of determining the Issue Date VWAP, adjustments to VWAP will be made in accordance with clause 7.2 and clause 7.3 during the VWAP

Period for the Issue Date VWAP. On and from the Issue Date, adjustments to the Issue Date VWAP:

- (a) may be made in accordance with clauses 7.5, 7.6, 7.7, 7.8 or 7.9; and
- (b) if so made, will correspondingly affect the application of the Mandatory Conversion Conditions and the Optional Conversion Conditions, and cause an adjustment to the Maximum Conversion Number.

## 7.5 Adjustments to Issue Date VWAP for bonus and rights issues

- (a) Subject to clauses 7.5(b) and 7.5(c) below, if ANZ makes a *pro rata* bonus issue or a rights issue or other essentially *pro rata* issue (including an issue of the kind known as a “jumbo” or “RAPIDS” issue, where offers to certain institutional holders (or beneficial holders) are made in advance of offers to other holders) of Ordinary Shares to holders of Ordinary Shares generally, the Issue Date VWAP will be adjusted immediately in accordance with the following formula:

$$V = V_o \times \frac{1}{P} \times \frac{(RD \times P) + (RN \times A)}{(RD + RN)}$$

where:

**V** means the Issue Date VWAP applying immediately after the application of this formula;

**V<sub>o</sub>** means the Issue Date VWAP applying immediately prior to the application of this formula;

**P** means the VWAP during the period from (and including) the first Business Day after the announcement of the bonus, rights or other relevant issue to the ASX up to (and including) the last Business Day of trading cum rights, bonus or other relevant issue (or if there is no period of cum rights, bonus or other relevant issue trading, an amount reasonably determined by the Directors as representing the value of an Ordinary Shares cum the rights, bonus or other relevant issue);

**A** means the subscription or unit price per Ordinary Share for a rights issue and is zero in the case of a bonus issue;

**RN** means the number of Ordinary Shares issued pursuant to the rights, bonus or other relevant issue; and

**RD** means the number of Ordinary Shares on issue immediately prior to the allotment of new Ordinary Shares pursuant to the rights, bonus or other relevant issue.

- (b) No adjustment to the Issue Date VWAP will occur if A exceeds P.
- (c) Clause 7.5(a) does not apply to Ordinary Shares issued as part of a bonus share plan, employee or executive share plan, executive option plan, share top up plan, share purchase plan or a dividend reinvestment plan.
- (d) For the purpose of clause 7.5(a), an issue will be regarded as a *pro rata* issue notwithstanding that ANZ does not make offers to some or all holders of Ordinary Shares with registered addresses outside Australia,

provided that in so doing ANZ is not in contravention of the ASX Listing Rules.

## 7.6 Adjustment to Issue Date VWAP for off market buy-back

- (a) Subject to clause 7.6(b), if ANZ undertakes an off market buy-back under a scheme which but for restrictions on transfer would be generally available to holders of Ordinary Shares, the Issue Date VWAP will be adjusted immediately in accordance with the following formula:

$$V = V_o \times \frac{1}{P} \times \frac{(BD \times P) - (BN \times A)}{(BD - BN)}$$

where:

**V** means the Issue Date VWAP respectively applying immediately after the application of this formula;

**V<sub>o</sub>** means the Issue Date VWAP respectively applying immediately prior to the application of this formula;

**P** means the VWAP during the 20 Business Days prior to the announcement to the ASX of the buy-back;

**A** means the buy-back price per Ordinary Share;

**BN** means the number of Ordinary Shares bought back; and

**BD** means the number of Ordinary Shares on issue immediately prior to the buy-back.

- (b) No adjustment to the Issue Date VWAP will occur if P exceeds A.

## 7.7 Adjustment to Issue Date VWAP for return of capital

If ANZ makes a pro rata return of capital to holders of Ordinary Shares, the Issue Date VWAP will be adjusted in accordance with the following formula:

$$V = V_o \times \frac{(P - C)}{(P)}$$

where:

**V** means the Issue Date VWAP applying immediately after the application of this formula;

**V<sub>o</sub>** means the Issue Date VWAP applying immediately prior to the application of this formula;

**P** means the VWAP during the period from (and including) the first Business Day after the announcement of the return of capital to ASX up to and including the last Business Day of trading *cum* the return of capital (or if there is no period of *cum* return of capital trading, an amount reasonably determined by the Directors as representing the value of Ordinary Shares *cum* the return of capital); and

**C** means, with respect to a return of capital, the amount of the cash and/or the value (as reasonably determined by the Directors) of any

other property distributed to holders of Ordinary Shares per Ordinary Share (or such lesser amount such that the difference between P and C is greater than zero).

## **7.8 Adjustment to Issue Date VWAP for capital reconstruction**

If at any time the Ordinary Shares are reconstructed, consolidated, divided or reclassified into a lesser or greater number of securities, the Directors may if they consider it appropriate reconstruct the Issue Date VWAP in the same way as the exercise price of options over Ordinary Shares would be reconstructed in the same context, in accordance with the ASX Listing Rules (as they apply to ANZ). Each CPS Holder acknowledges that ANZ may reconstruct, consolidate, divide or reclassify into a lesser or greater number of securities the Ordinary Shares at any time in its absolute discretion without any such action constituting a variation of rights of CPS Holders or otherwise requiring any consent or concurrence.

## **7.9 Directors' sole discretion regarding adjustments to Issue Date VWAP**

Despite the provisions of clauses 7.5 to 7.8, where:

- (a) the effect of any of the adjustment provisions set out in clauses 7.5 to 7.8 is not, in the reasonable opinion of the Directors, appropriate in any particular circumstances (including because more than one adjustment provision applies); or
- (b) any other event occurs in relation to ANZ that may have a dilutive or concentrative effect on the value of the Ordinary Shares, and, in the reasonable opinion of the Directors, such occurrence would have a dilutive or concentrative effect on the value of Ordinary Shares,

the Directors may (subject to APRA's prior written approval):

- (i) make such alterations to the Issue Date VWAP as they reasonably consider appropriate or necessary to compensate for that effect; or
- (ii) extend an entitlement to the CPS Holders to participate in such event based on the number of Ordinary Shares to which those CPS Holders would have been entitled if their CPS had been Converted on a date nominated by the Directors to compensate for that effect.

## **7.10 Announcement of adjustment to Issue Date VWAP**

ANZ will notify CPS Holders (an **Adjustment Notice**) of any adjustment to the Issue Date VWAP under this clause 7 within 10 Business Days of ANZ determining the adjustment and the adjustment set out in the announcement will be final and binding.

## **7.11 Ordinary Shares**

Each Ordinary Share issued or arising upon Conversion ranks *pari passu* with all other fully paid Ordinary Shares.

## **7.12 Foreign CPS Holders**

Where CPS held by a Foreign CPS Holder are to be Converted, unless ANZ is satisfied that the laws of the Foreign CPS Holder's country of residence permit the issue of Ordinary Shares to the Foreign CPS Holder (but as to which ANZ is

not bound to enquire), either unconditionally or after compliance with conditions which ANZ in its absolute discretion regards as acceptable and not unduly onerous, the Ordinary Shares which the Foreign CPS Holder is obliged to accept will be issued to a nominee who will sell those Ordinary Shares and pay a cash amount equal to the net proceeds received, after deducting any applicable brokerage, stamp duty and other taxes and charges, to the Foreign CPS Holder accordingly.

### **7.13 Listing Ordinary Shares issued on Conversion**

ANZ shall use all reasonable endeavours to list the Ordinary Shares issued upon conversion of the CPS on ASX or the principal securities exchange on which its Ordinary Shares are then listed.

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## **8 Redemption mechanics**

### **8.1 Redemption mechanics to apply to Redemption**

If, subject to APRA's prior written approval, ANZ elects to Redeem CPS or must Redeem CPS in accordance with these CPS Terms, the provisions of this clause 8 apply to that Redemption.

### **8.2 Redemption**

CPS will be Redeemed by payment on the Redemption Date, the Exchange Date or the Change of Control Exchange Date (as the case may be) of the Issue Price plus any amount payable under clause 8.3(a)(iii) (together, the **Redemption Price**) by way of redemption, buy-back, reduction of capital or any combination thereof to the CPS Holder.

### **8.3 Effect of Redemption on CPS Holders**

On the Redemption Date, the Exchange Date or the Change of Control Exchange Date (as the case may be) the only right CPS Holders will have in respect of CPS will be to obtain the Redemption Price payable in accordance with these CPS Terms and upon payment of the Redemption Price, all other rights conferred, or restrictions imposed, by CPS will no longer have effect.

For the purposes of this clause 8:

- (a) where the Redemption involves a buy-back of CPS:
  - (i) the Redemption Notice, the Exchange Notice or the Change of Control Exchange Notice (as the case may be) constitutes a buy-back offer for the Redemption Price payable on the relevant Redemption Date, Exchange Date or Change of Control Exchange Date (as the case may be);
  - (ii) the CPS Holder must accept the buy-back offer for their CPS and will be deemed to have accepted that buy-back offer for CPS held by that CPS Holder to which the Redemption Notice, the Exchange Notice or the Change of Control Exchange Notice (as the case may be) relates on the date the Redemption Notice, the Exchange Notice or the Change of Control Exchange Notice (as the case may be) is given and will be deemed to have sold those CPS to ANZ free of all Encumbrances on the Redemption Date, the Exchange Date or the Change of Control Exchange Date (as the case may be);

- (iii) no Dividend is payable on CPS on the Redemption Date, the Exchange Date or the Change of Control Exchange Date (as the case may be), but the Directors may, in their absolute discretion, determine that the consideration payable for each CPS that is bought back will include an amount (in addition to the Issue Price) equal to a Dividend calculated in accordance with clause 3 for the Dividend Period ending on (but not including) the Redemption Date, the Exchange Date or the Change of Control Exchange Date (as the case may be);
  - (iv) the buy-back agreement will be taken to include ANZ's undertaking in clause 3.8 (as qualified by clause 3.9); and
  - (v) for the purposes of calculating the Redemption Price, any suspension of the right to receive a Dividend arising from the buy-back agreement under applicable law shall be disregarded; and
- (b) if the Redemption involves either or both a reduction of capital with respect to CPS and a cancellation of CPS and under applicable law CPS Holders are entitled to vote on a resolution to approve that reduction of capital or that cancellation, each CPS Holder agrees to vote in favour of that or those resolutions.

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## **9 Resale mechanics**

### **9.1 Resale mechanics to apply to Resale**

If ANZ elects to Resell CPS or must Resell CPS in accordance with these CPS Terms, the provisions of this clause 9 apply to that Resale.

### **9.2 Appointment of Nominated Purchaser**

ANZ must appoint one or more Nominated Purchasers for the Resale on such terms as may be agreed between ANZ and the Nominated Purchaser. If ANZ appoints more than one Nominated Purchaser in respect of a Resale, all or any of the CPS held by a CPS Holder which are being Resold may be purchased by any one or any combination of the Nominated Purchasers, as determined by ANZ.

The obligation of a Nominated Purchaser to pay the aggregate purchase price on the Relevant Date or the Exchange Date (as the case may be) may be subject to conditions.

ANZ will reasonably endeavour, in light of the circumstances then existing, to minimise the conditionality of a Nominated Purchaser's obligation to pay the aggregate purchase price but gives no assurance as to the details of any such conditions.

### **9.3 Identity of Nominated Purchaser**

ANZ may not appoint a person as a Nominated Purchaser unless that person:

- (a) has undertaken on such terms and subject to such conditions as ANZ reasonably determines for the benefit of each CPS Holder to acquire each CPS from the CPS Holder for the Issue Price on the Relevant Date or the Exchange Date (as the case may be);

- (b) has a long term counterparty credit rating from one of Standard & Poor's, Moody's or Fitch of not less than the rating assigned to CPS at that time by that rating agency; and
- (c) is not a Controlled Entity of ANZ (unless otherwise approved in writing by APRA).

#### **9.4 Irrevocable offer to sell CPS**

Each CPS Holder is taken irrevocably to offer to sell CPS the subject of that Resale to the Nominated Purchaser on the Relevant Date or the Exchange Date (as the case may be) for a cash amount equal to the Issue Price.

#### **9.5 Effect of Resale**

On the Relevant Date or the Exchange Date (as the case may be), subject to payment by the Nominated Purchaser of the Issue Price to the CPS Holders, all right, title and interest in such CPS (excluding the right to any Dividend payable on that date) will be transferred to the Nominated Purchaser on the Relevant Date or the Exchange Date (as the case may be).

#### **9.6 CPS Terms after Resale**

If CPS are Resold in accordance with these CPS Terms, unless otherwise agreed between ANZ and the Nominated Purchaser with the prior written approval of APRA, these CPS Terms will apply in all respects to the CPS held by the Nominated Purchaser on and from the Resale taking effect in accordance with these CPS Terms (including that the CPS will Convert in the hands of the Nominated Purchaser on the Mandatory Conversion Date if the Mandatory Conversion Conditions are satisfied in respect of that date or on any other date on which CPS are to be Converted in accordance with these CPS Terms).

Notwithstanding any other provision of these CPS Terms, after the CPS have been Resold, any provision of these CPS Terms as it relates to the CPS held by the Nominated Purchaser (including without limitation any term relating to Conversion) may be amended by agreement between the Nominated Purchaser and ANZ without the consent of any other CPS Holder but with the prior written approval of APRA. For the purposes of any such amendment, CPS held by:

- (a) a Nominated Purchaser and CPS held by other CPS Holders; and
- (b) CPS held by different Nominated Purchasers,

shall be treated as though they were separate classes of shares, so that without limitation:

- (i) where there is more than one Nominated Purchaser; or
- (ii) where CPS are held by a person other than a Nominated Purchaser,

then:

- (A) amendments may be made to the CPS held by a Nominated Purchaser; and
- (B) the CPS held by a Nominated Purchaser can be Redeemed or Converted,

in each case without the consent of or consideration for the interests of any CPS Holders other than the Nominated Purchaser the terms of whose CPS are being

amended, Redeemed or Converted and without any corresponding amendment, Redemption or Conversion (as the case may be) to the CPS held by other CPS Holders.

## 9.7 Effect of failure by the Nominated Purchaser to pay

If a Nominated Purchaser does not pay the Issue Price to the CPS Holders on the Relevant Date or the Exchange Date (as the case may be) (a **Defaulting Nominated Purchaser**) (whether as a result of a condition to purchase not being satisfied or otherwise):

- (a) the Resale Notice or the Exchange Notice (as the case may be) as it relates to the Defaulting Nominated Purchaser will be void;
- (b) CPS will not be transferred to the Defaulting Nominated Purchaser;
- (c) in the case of a Resale Notice, CPS referable to the Defaulting Nominated Purchaser will not Convert into Ordinary Shares on that Relevant Date and the Mandatory Conversion Date:
  - (i) will be deemed not to have occurred on that Relevant Date; and
  - (ii) will occur on the next Relevant Date on which it is otherwise determined to occur in accordance with clause 4.2;
- (d) the CPS Holder will continue to hold those CPS until otherwise Redeemed, Converted or Resold in accordance with these CPS Terms; and
- (e) ANZ may, subject to APRA's prior written approval and without prejudice to any other rights of ANZ under these terms to elect an Exchange, elect to Exchange all (but not some) CPS referable to the Defaulting Nominated Purchaser on a date no later than 45 Business Days after the Relevant Date or the Exchange Date (as the case may be) (the **Deferred Exchange Date**) by giving another Exchange Notice in accordance with clause 5.1 at least 25 Business Days prior to the Deferred Exchange Date. In these circumstances, the date on which the Exchange is to occur for the purposes of clause 5.2(b) will be the Deferred Exchange Date.

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## 10 CPS general rights

### 10.1 Ranking with respect to dividends

The CPS rank in respect of payment of dividends:

- (a) senior to Ordinary Shares and other instruments or securities of ANZ that rank or are expressed to rank junior to the CPS;
- (b) equally among themselves and with all Equal Ranking Instruments; and
- (c) junior to any securities or instruments that rank senior to the CPS and to all ANZ's debts and liabilities to its depositors and all other creditors, other than indebtedness that by its terms ranks equally with or junior to the CPS,

in each case of (a), (b) and (c), in respect of payment of dividends.

## 10.2 Ranking in a winding-up

- (a) In a winding-up of ANZ, a CPS confers upon the CPS Holder the right to payment in cash of the Liquidation Sum out of the surplus (if any) available for distribution to shareholders, but no further or other right to participate in the assets of ANZ on a return of capital in the winding-up.
- (b) CPS Holders will rank for payment of the Liquidation Sum in a winding-up of ANZ:
  - (i) in priority to Ordinary Shares and other securities that ANZ has issued or may issue that by their terms rank junior to the CPS;
  - (ii) equally among themselves and with all Equal Ranking Instruments; and
  - (iii) junior to any securities or instruments that rank senior to the CPS and to all ANZ's debts and liabilities to its depositors and all other creditors, other than indebtedness that by its terms ranks equally with or junior to the CPS in a winding-up,in each case of (i), (ii) and (iii), with respect to priority of payment in a winding-up.
- (c) The **Liquidation Sum** is an amount out of surplus assets equal to \$100 plus the amount of any Dividend (including any Optional Dividend) determined to be paid but unpaid.

## 10.3 Further issues not to vary class rights

The allotment or issue of preference shares (including further CPS), or the conversion of existing shares into preference shares, ranking junior to, equally with or, (to the maximum extent permitted by the Constitution) senior to the CPS then on issue for participation in profits or assets of ANZ, and whether entitled to cumulative or non-cumulative dividends, or a redemption, buy-back or return or distribution of capital in respect of any share capital other than a CPS, whether ranking junior to, equally with, or senior to, the CPS, is expressly permitted and authorised by these CPS Terms and does not constitute a modification or variation of the rights or privileges to the CPS then on issue.

## 10.4 Calculations and rounding of payments

Unless otherwise specified in these CPS Terms:

- (a) all calculations of amounts payable in respect of a CPS will be rounded to four decimal places; and
- (b) for the purposes of making payment to a CPS Holder in respect of the CPS Holder's aggregate holding of CPS, any fraction of a cent will be disregarded.

## 10.5 No set-off or offsetting rights

A CPS Holder:

- (a) may not exercise any right of set-off against ANZ in respect of any claim by ANZ against that CPS Holder; and
- (b) will have no offsetting rights or claims on ANZ if ANZ does not pay a Dividend when scheduled under CPS.

## **10.6 No security**

CPS are unsecured.

## **10.7 Shortfall on winding-up**

If, upon a return of capital on a winding-up of ANZ, there are insufficient funds to pay in full the Liquidation Sum and the amounts payable in respect of any other instruments in ANZ ranking equally with CPS on a winding-up of ANZ, CPS Holders and the holders of any such other instruments will share in any distribution of assets of ANZ in proportion to the amounts to which they are entitled respectively.

## **10.8 No participation in surplus assets**

CPS do not confer on the CPS Holders any further right to participate in the surplus assets of ANZ on a winding-up beyond payment of the Liquidation Sum.

## **10.9 Power of attorney**

- (a) Each CPS Holder appoints each of ANZ, its officers and any External Administrator of ANZ (each an **Attorney**) severally to be the attorney of the CPS Holder with power in the name and on behalf of the CPS Holder to sign all documents and transfers and do any other thing as may in the Attorney's opinion be necessary or desirable to be done in order for the CPS Holder to observe or perform the CPS Holder's obligations under these CPS Terms including, but not limited to, accepting any buy-back offer, effecting any transfers of CPS, making any entry in the Register or exercising any voting power in relation to any consent or approval required for Conversion, Redemption or Resale or in respect of an Approved NOHC Event.
- (b) The power of attorney given in this clause 10.9 is given for valuable consideration and to secure the performance by the CPS Holder of the CPS Holder's obligations under these CPS Terms and is irrevocable.

## **10.10 CPS Holder acknowledgments**

Each CPS Holder irrevocably:

- (a) upon Conversion of a CPS in accordance with clause 7, consents to becoming a member of ANZ and agrees to be bound by the Constitution (or, where an Approved NOHC Substitution Notice has been given, consents to becoming a member of that Approved NOHC and agrees to be bound by its constitution);
- (b) acknowledges and agrees that an Approved NOHC may be substituted for ANZ as provider of ordinary shares on Conversion and that if such a substitution is effected, the CPS Holder is obliged to accept ordinary shares in that Approved NOHC on a Conversion, and will not receive Ordinary Shares;
- (c) acknowledges and agrees that any amendment made in accordance with clause 16.1(g) to effect the substitution of an Approved NOHC as the issuer of ordinary shares on Conversion or in accordance with clause 9.6 will not constitute a variation of any class rights attaching to CPS;
- (d) acknowledges and agrees that it is obliged to accept ordinary shares upon a Conversion notwithstanding anything that might otherwise affect a Conversion of CPS including:

- (i) any change in the financial position of ANZ or any Approved NOHC since the Issue Date;
  - (ii) any disruption to the market or potential market for the ordinary shares or to capital markets generally; or
  - (iii) any breach by ANZ or any Approved NOHC of any obligation in connection with CPS;
- (e) acknowledges and agrees that the only conditions to Conversion are the Mandatory Conversion Conditions or the Optional Conversion Conditions (as the case may be) and that no other conditions or events will affect Conversion except as expressly provided by these CPS Terms;
  - (f) agrees to provide to ANZ any information necessary to give effect to a Conversion and, if applicable, to surrender any certificate relating to the CPS on the occurrence of the Conversion; and
  - (g) acknowledges and agrees that a CPS Holder has no right to request an Exchange.

### **10.11 On-market buy-backs**

Subject to APRA's prior written approval, ANZ may buy-back CPS at any time and at any price by an on-market buy-back.

### **10.12 No other rights**

- (a) CPS do not confer on CPS Holders any right to participate in profits or property of ANZ except as set out in these CPS Terms.
- (b) CPS do not confer on CPS Holders any right to subscribe for new securities in ANZ or to participate in any bonus issues of securities of ANZ.

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## **11 Voting and other rights**

### **11.1 Meetings**

In accordance with the Constitution, a CPS Holder will have the same rights as the holders of Ordinary Shares with respect to receiving notices of general meetings and financial reports and attending ANZ's general meetings.

### **11.2 Voting rights**

- (a) A CPS Holder shall have the right to speak and vote at a meeting of members of ANZ in the following circumstances and in no others:
  - (i) on any proposal to reduce ANZ's share capital, other than a resolution to approve a Redemption of the CPS;
  - (ii) on a proposal that affects the rights attached to the CPS;
  - (iii) on any resolution to approve the terms of a buy-back agreement, other than a resolution to approve a Redemption of CPS;
  - (iv) on a proposal to wind up ANZ;

- (v) on a proposal for the disposal of the whole of ANZ's property, business and undertaking;
  - (vi) on any matter during a winding up of ANZ; and
  - (vii) on any matter during a period in which a Dividend remains unpaid.
- (b) On a resolution or proposal on which a CPS Holder is entitled to vote under this clause, the CPS Holder has:
- (i) on a show of hands, one vote; and
  - (ii) on a poll, one vote for each CPS held.

### **11.3 Not a “voting share”**

Each CPS Holder acknowledges and agrees that a CPS will not constitute a “voting share” for the purposes of the Corporations Act.

### **11.4 No vote on NOHC Event**

To the maximum extent permitted by law, a CPS Holder has no right to vote on any proposal to approve, implement or give effect to a NOHC Event. If applicable law entitles a CPS Holder to vote on a proposal to approve, implement or give effect to a NOHC Event, each CPS Holder will vote in favour of any resolution to approve, implement or give effect to the NOHC Event.

### **11.5 No right to apply for the winding-up of ANZ**

Each CPS Holder acknowledges and agrees that a CPS Holder has no right to apply for ANZ to be wound up, or placed in administration, or to cause a receiver, or a receiver and manager, to be appointed in respect of ANZ merely on the grounds that ANZ does not pay a Dividend when scheduled in respect of CPS.

### **11.6 No events of default**

Each CPS Holder acknowledges and agrees that these CPS Terms contain no events of default. Accordingly (but without limitation) failure to pay in full, for any reason, a Dividend on the scheduled Dividend Payment Date will not constitute an event of default.

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## **12 Takeovers and schemes of arrangement**

If:

- (a) a takeover bid is made for Ordinary Shares, acceptance of which is recommended by the Directors; or
- (b) the Directors recommend a scheme of arrangement in respect of the Ordinary Shares of ANZ which will result in a person other than ANZ having a relevant interest in more than 50% of the Ordinary Shares,

in each case which would result in an Acquisition Event then, if the Directors consider that APRA will not approve Exchange of CPS in accordance with clause 5 or clause 6, or the Second Mandatory Conversion Condition or the Third Mandatory Conversion Condition will not be satisfied in respect of the Change of Control Exchange Date in accordance with clause 6, the Directors will use all reasonable endeavours to procure that equivalent takeover offers are made to

CPS Holders or that they are entitled to participate in the scheme of arrangement or a similar transaction.

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## 13 Approved NOHC Events

### 13.1 ANZ may give Approved NOHC Substitution Notice

If:

- (a) an Approved NOHC Event is proposed to occur; and
- (b) the Approved NOHC agrees for the benefit of CPS Holders:
  - (i) to deliver Approved NOHC Ordinary Shares under all circumstances when ANZ would have otherwise been obliged to deliver Ordinary Shares on a Conversion, subject to the same terms and conditions as set out in these CPS Terms as amended by this clause 13; and
  - (ii) to use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure quotation of all Approved NOHC Ordinary Shares issued under these CPS Terms (with all necessary modifications) on the securities exchanges on which the other Approved NOHC Ordinary Shares are quoted at the time of a Conversion,

ANZ may give a notice (an **Approved NOHC Substitution Notice**) to CPS Holders (which, if given, must be given as soon as practicable before the Approved NOHC Event and in any event no later than 10 Business Days before the Approved NOHC Event occurs) specifying the amendments to these CPS Terms which will be made in accordance with clause 16.1(f) to effect the substitution of an Approved NOHC as the issuer of ordinary shares on Conversion (the **Approved NOHC Substitution Terms**).

An Approved NOHC Substitution Notice, once given, is irrevocable.

### 13.2 Consequences of Approved NOHC Substitution Notice

If ANZ gives an Approved NOHC Substitution Notice to CPS Holders in accordance with clause 13.1, the Approved NOHC Substitution Terms will have effect on and from the date specified in the Approved NOHC Substitution Notice.

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## 14 Notices

### 14.1 Notices to CPS Holders

Except where otherwise provided in these CPS Terms, a notice may be given by ANZ to a CPS Holder in any manner prescribed by the Constitution for giving notices to members of ANZ and the relevant provisions apply with all necessary modifications to notices to CPS Holders.

### 14.2 Delivery of certain notices

A Non-Conversion Notice, a Deferred Conversion Notice, a Deferred Change of Control Exchange Notice, an Exchange Notice, a Redemption Notice, a Resale Notice, a Change of Control Event Notice, a Change of Control Exchange Notice, an Adjustment Notice, an Approved NOHC Substitution Notice and an ANZ

Details Notice may each be given to CPS Holders by ANZ publishing the notice on its website and announcing the publication of the notice to ASX.

#### **14.3 Non-receipt of notices by CPS Holders**

The non-receipt of a notice by a CPS Holder or an accidental omission to give notice to a CPS Holder will not invalidate the giving of that notice either in respect of that CPS Holder or generally.

#### **14.4 Notices to ANZ**

All notices or other communications to ANZ in respect of these CPS Terms must be:

- (a) in legible writing or typing and in English;
- (b) addressed as shown below:

Attention: Company Secretary  
Australia and New Zealand Banking Group Limited

Address: Level 14  
100 Queen Street  
Melbourne 3000  
Victoria  
Australia

Fax No: +61 3 9273 6142,

or to such other address or fax number as ANZ notifies to CPS Holders as its address or fax number (as the case may be) for notices or other communications in respect of these CPS Terms from time to time (an **ANZ Details Notice**);

- (c) signed by the person making the communication or by a person duly authorised by that person; and
- (d) delivered or posted by prepaid post to the address, or sent by fax to the fax number, of ANZ in accordance with clause 14.4(b).

A notice to ANZ will be taken to be received:

- (i) if sent by fax, when actually received in its entirety in legible form, unless that day is not a Business Day, or is after 5.00pm (Melbourne time) on a Business Day, in which case that communication will be regarded as received at 9.00am (Melbourne time) on the next Business Day; and
- (ii) in any other case, on delivery at the address of ANZ as provided in clause 14.4, unless that delivery is not made on a Business Day, or is after 5.00pm (Melbourne time) on a Business Day, in which case that communication will be regarded as received at 9.00am (Melbourne time) on the next Business Day.

#### **14.5 Notices and reports**

Each CPS Holder is entitled to receive notice of any general meeting of ANZ and a copy of every circular and like document sent out by ANZ to Ordinary Shareholders and to attend general meetings of ANZ.

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## **15 Payments**

### **15.1 Manner of payment to CPS Holders**

The Constitution contains provisions relating to payments in respect of shares and the relevant provisions apply (with all necessary modifications) in respect of each payment on the CPS.

### **15.2 Payment to joint CPS Holders**

A payment to any one of joint CPS Holders will discharge ANZ's liability in respect of the payment.

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## **16 Amendment of these CPS Terms**

### **16.1 Amendment without consent**

Subject to complying with all applicable laws and with APRA's prior written approval, ANZ may amend these CPS Terms without the authority, assent or approval of CPS Holders where the amendment in the reasonable opinion of ANZ:

- (a) is made to correct a manifest error;
- (b) is of a formal, minor or technical nature;
- (c) is necessary to comply with any law, the provisions of any statute or the requirements of any statutory authority;
- (d) is made in accordance with ANZ's adjustment rights in clause 7;
- (e) is made in accordance with clause 9.6;
- (f) is expedient for the purpose of enabling CPS to be listed or to remain listed on a stock exchange or lodged in a clearing system or to remain lodged in a clearing system or to be offered for sale or for subscription under the laws for the time being in force in any place;
- (g) is necessary and appropriate to effect the substitution of an Approved NOHC as the provider of the ordinary shares on Conversion in the manner contemplated by these CPS Terms, including without limitation amendments and additions to:
  - (i) the definition of "Conversion" and the mechanics to effect that Conversion in clause 7;
  - (ii) the definition of "Conversion Number" in clause 7, the inputs into that Conversion Number and the mechanics for adjusting that Conversion Number; and
  - (iii) the definition of "ANZ Group", "Acquisition Event", "Change of Control Event", "Regulatory Event" and "Tax Event"; or
- (h) in any other case, will not materially adversely affect the rights of CPS Holders as a whole.

## 16.2 Amendment with consent

Without limiting clause 16.1, ANZ may, with APRA's prior written approval, amend these CPS Terms if the amendment has been approved by a Special Resolution.

## 16.3 Meanings

In this clause 16 and in clause 9.6, **amend** includes modify, cancel, alter or add to and **amendment** has a corresponding meaning.

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## 17 Quotation on ASX

ANZ must use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure, at its own expense, quotation of CPS on ASX.

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## 18 Governing law

The CPS and these CPS Terms are governed by and shall be construed in accordance with the laws of the State of Victoria, Australia.

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## 19 Interpretation and definitions

### 19.1 Interpretation

- (a) Unless the context otherwise requires, if there is any inconsistency between the provisions of these CPS Terms and the Constitution then, to the maximum extent permitted by law, the provisions of these CPS Terms will prevail.
- (b) Unless otherwise specified, the Directors may exercise all powers of ANZ under these CPS Terms as are not, by the Corporations Act or by the Constitution, required to be exercised by ANZ in general meeting.
- (c) Unless otherwise specified, a reference to a clause is a reference to a clause of these CPS Terms.
- (d) If a calculation is required under these CPS Terms, unless the contrary intention is expressed, the calculation will be rounded to four decimal places.
- (e) Subject to clause 19.1(a), definitions and interpretation under the Constitution will also apply to these CPS Terms unless the contrary intention is expressed.
- (f) Any provisions which refer to the requirements of APRA or any other prudential regulatory requirements will apply to ANZ only if ANZ is an entity, or the holding company of an entity, or is a direct or indirect Subsidiary of a NOHC, subject to regulation and supervision by APRA at the relevant time.
- (g) Any provisions which require APRA's consent or approval will apply only if APRA requires that such consent or approval be given at the relevant time.
- (h) Any provisions in these CPS Terms requiring the prior approval of APRA for a particular course of action to be taken by ANZ do not imply that

APRA has given its consent or approval to the particular action as of the Issue Date.

- (i) The terms takeover bid, relevant interest, scheme of arrangement, buy-back and on-market buy-back when used in these CPS Terms have the meaning given in the Corporations Act.
- (j) Headings and boldings are for convenience only and do not affect the interpretation of these CPS Terms.
- (k) The singular includes the plural and vice versa.
- (l) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (m) If an event under these CPS Terms must occur on a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day.
- (n) A reference to dollars, A\$, \$ or cents is a reference to the lawful currency of Australia.
- (o) A reference to a term defined by the ASX Listing Rules, the ASX Market Rules or the settlement rules of ASTC shall, if that term is replaced in those rules, be taken to be a reference to the replacement term.
- (p) Calculations, elections and determinations made by ANZ under these CPS Terms are binding on CPS Holders in the absence of manifest error.

## 19.2 Definitions

**2003 Trust Securities** means the US\$350,000,000 of trust securities issued by ANZ Capital Trust I and the US\$750,000,000 of trust securities issued by ANZ Capital Trust II in 2003, representing beneficial interests in stapled securities, each stapled security representing a fully paid note issued by Sampson Funding Limited and guaranteed on a subordinated basis by ANZ stapled to a fully paid preference share issued by ANZ.

**2004 Trust Securities** means the €500,000,000 of trust securities issued by ANZ Capital Trust III in 2004 representing beneficial interests in stapled securities, each stapled security representing a fully paid note issued by ANZ Jackson Funding PLC and guaranteed on a subordinated basis by ANZ stapled to a fully paid preference share issued by ANZ.

**2007 Stapled Securities** means the £450,000,000 of stapled securities issued by ANZ in 2007, each comprising a fully paid subordinated note issued by ANZ New York Branch stapled to a fully paid preference share issued by ANZ.

**Acquisition Event** means:

- (a) a takeover bid (as defined in the Corporations Act) is made to acquire all or some of the Ordinary Shares and such offer is, or becomes, unconditional and either:
  - (i) the bidder has at any time during the offer period, a relevant interest in more than 50% of the Ordinary Shares on issue; or
  - (ii) the directors of ANZ, acting as a board, issue a statement that at least a majority of its directors who are eligible to do so have

recommended acceptance of such offer (in the absence of a higher offer); or

- (b) a court orders the holding of meetings to approve a scheme of arrangement under Part 5.1 of the Corporations Act, which scheme would result in a person having a relevant interest in more than 50% of the Ordinary Shares that will be on issue after the scheme is implemented and:
  - (i) all classes of members of ANZ pass all resolutions required to approve the scheme by the majorities required under the Corporations Act to approve the scheme; and
  - (ii) an independent expert issues a report that the proposals in connection with the scheme are in the best interests of the holders of Ordinary Shares.

Notwithstanding the foregoing, none of the events described above will constitute an Acquisition Event if the event would be a NOHC Event and:

- (a) the acquirer (or its ultimate holding company) assumes all of ANZ's obligations to convert the CPS into Ordinary Shares by undertaking to convert such CPS into ordinary shares of the acquirer (or its ultimate holding company) on any Mandatory Conversion Date (or earlier upon the occurrence of a Change of Control Event in respect of the acquirer (or its ultimate holding company) (for which purposes all references in this clause to ANZ will be read as a reference to the acquirer (or its ultimate holding company))); and
- (b) the ordinary shares of the acquirer (or its ultimate holding company) are listed on ASX.

**Adjustment Notice** has the meaning given in clause 7.10.

**ANZ** means Australia and New Zealand Banking Group Limited (ABN 11 005 357 522).

**ANZ Details Notice** has the meaning given in clause 14.4.

**ANZ Group** means ANZ and its controlled entities.

**ANZ Level 1 Group** means ANZ and those of its controlled entities included by APRA from time to time in the calculation of ANZ's Prudential Capital Ratio and Tier 1 Capital Ratio on a Level 1 basis.

**ANZ Level 2 Group** means ANZ together with each related entity included by APRA from time to time in the calculation of ANZ's Prudential Capital Ratio and Tier 1 Capital Ratio on a Level 2 basis.

**ANZ Shares** means Ordinary Shares or any other shares in the capital of ANZ.

**Approved NOHC** means a NOHC arising as a result of an Approved NOHC Event.

**Approved NOHC Event** means a NOHC Event in respect of which the proviso to the definition of "Acquisition Event" is satisfied.

**Approved NOHC Ordinary Share** means a fully paid ordinary share in the capital of the Approved NOHC.

**Approved NOHC Substitution Notice** has the meaning given in clause 13.1.

**Approved NOHC Substitution Terms** has the meaning given in clause 13.1.

**APRA** means the Australian Prudential Regulation Authority (ABN 79 635 582 658) or any successor body responsible for prudential regulation of ANZ, the ANZ Group or any NOHC.

**APRA Condition** means, with respect to a Dividend payment on the CPS on a Dividend Payment Date or an Optional Dividend payment:

- (a) unless APRA otherwise approves in writing:
  - (i) making the Dividend payment or the Optional Dividend payment on the CPS on the payment date would result in the Prudential Capital Ratio or the Tier 1 Capital Ratio of ANZ (on a Level 1 basis) or of the ANZ Group (on a Level 2 basis or, if applicable, Level 3 basis) not complying with APRA's then current capital adequacy guidelines as they are applied to ANZ or the ANZ Group (as the case may be) at the time; or
  - (ii) the Dividend payment or the Optional Dividend payment on the CPS on the payment date would exceed Distributable Profits as at the Record Date for the Dividend payment or the Optional Dividend payment;
- (b) making the Dividend payment or the Optional Dividend payment would result in ANZ becoming, or being likely to become, insolvent for the purposes of the Corporations Act; or
- (c) APRA objecting to the Dividend payment or the Optional Dividend payment on the CPS on the payment date.

**ASTC** means ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532) or any successor.

**ASX** means ASX Limited (ABN 98 008 624 691) or the securities market operated by it, as the context requires, or any successor.

**ASX Listing Rules** means the listing rules of ASX as amended, varied or waived (whether in respect of ANZ or generally) from time to time.

**ASX Market Rules** means the market rules of ASX as amended, varied or waived (whether in respect of ANZ or generally) from time to time.

**Attorney** has the meaning given in clause 10.9.

**Bank Bill Rate** has the meaning given in clause 3.1.

**Bookbuild** means the process conducted prior to the opening of the Offer whereby certain investors lodge bids for CPS and, on the basis of those bids, ANZ and the joint lead managers to the Offer determine the Margin.

**Business Day** means a day which is a business day within the meaning of the ASX Listing Rules.

**Change of Control Event** means where both an Acquisition Event and one of the following has occurred:

- (a) in the case of an Acquisition Event occurring because of a takeover bid, all regulatory approvals necessary for the acquisition to occur have been obtained; and

- (b) in the case of an Acquisition Event occurring because of a scheme of arrangement, all conditions to the implementation of the scheme, including any necessary regulatory or shareholder approvals (but not including approval of the scheme by the court) have been satisfied or waived.

For the avoidance of doubt, a Change of Control Event will not occur where the proviso to the definition of Acquisition Event applies.

**Change of Control Event Notice** has the meaning given in clause 6.1.

**Change of Control Exchange Date** has the meaning given in clause 6.3.

**Change of Control Exchange Notice** has the meaning given in clause 6.2.

**CHES** means the Clearing House Electronic Subregister System operated by ASTC.

**Constitution** means the constitution of ANZ as amended from time to time.

**Control** has the meaning given in the Corporations Act.

**Controlled Entity** means, in respect of ANZ, an entity ANZ Controls.

**Conversion** means, in relation to a CPS, subject to amendment in accordance with clause 16.1(d), the taking effect of the rights specified in clause 7 in relation to that CPS and **Convert** and **Converted** have corresponding meanings.

**Conversion Number** has the meaning given in clause 7.1.

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

**CPS** has the meaning given in clause 1.1.

**CPS Holder** means a person whose name is registered in the Register as the holder of a CPS.

**CPS Terms** means these terms of issue of CPS.

**Cum Value** has the meaning given in clause 7.2.

**Defaulting Nominated Purchaser** has the meaning given in clause 9.7.

**Deferred Change of Control Exchange Notice** has the meaning given in clause 6.5.

**Deferred Conversion Date** has the meaning given in clause 5.5.

**Deferred Conversion Notice** has the meaning given in clause 5.5.

**Deferred Exchange Date** has the meaning given in clause 9.7.

**Deferred Redemption Date** has the meaning given in clause 4.5.

**Delisting Event** means, in respect of a date, that:

- (a) Ordinary Shares ceased to be listed or admitted to trading on ASX on or before that date (and where the cessation occurred before that date, Ordinary Shares continue not to be listed or admitted to trading on that date); or

- (b) trading of Ordinary Shares on ASX is suspended for a period of consecutive days which includes:
  - (i) at least five consecutive Business Days prior to that date; and
  - (ii) that date.

**Directors** means some or all of the directors of ANZ acting as a board.

**Distributable Profits** means the lesser of:

- (a) A - B; and
- (b) C - D,

where:

**"A"** is the aggregate of the consolidated net profits after income tax of the ANZ Level 2 Group (determined before any interest, dividends or distributions paid or payable by a member of the ANZ Level 2 Group on its Upper Tier 2 Capital and Tier 1 Capital) for the immediately preceding two six-monthly financial periods for which results have been publicly announced (or any other amount as determined by APRA in its discretion to be appropriate in ANZ's circumstances on a Level 2 basis for the purposes of paying interest, dividends or distributions on the Tier 1 Capital and Upper Tier 2 Capital of the ANZ Level 2 Group);

**"B"** is the aggregate amount of interest, dividends, distributions or other amounts paid, determined to be paid or liable to be paid by a member of the ANZ Level 2 Group in the 12 months to and including the applicable Dividend Payment Date on:

- (a) the CPS; and
- (b) any other Tier 1 Capital or Upper Tier 2 Capital security of the ANZ Level 2 Group to the extent interest, dividends or distributions on those securities are funded by a member of the ANZ Level 2 Group or by instruments of the ANZ Level 2 Group,

but excluding:

- (i) any dividends payable in relation to the CPS on the applicable Dividend Payment Date; and
- (ii) any such interest, dividend, distribution or other amount to which a member of the ANZ Level 2 Group was or is beneficially entitled;

**"C"** is the net profit after income tax of the ANZ Level 1 Group (determined before any interest, dividends or distributions paid or payable by the ANZ Level 1 Group on its Upper Tier 2 Capital and Tier 1 Capital) for the period referred to in "A" above (or any other amount as determined by APRA in its discretion to be appropriate in the ANZ's circumstances on a Level 1 basis for the purposes of paying interest, dividends or distributions on the ANZ Level 1 Group's Tier 1 Capital or Upper Tier 2 Capital); and

- “D”** is the aggregate amount of interest, dividends, distributions or other amounts paid, determined to be paid or liable to be paid:
- (a) by a member of the ANZ Level 1 Group in the twelve months to and including the applicable Dividend Payment Date on:
    - (i) the CPS; and
    - (ii) any other Tier 1 Capital or Upper Tier 2 Capital security of the ANZ Level 1 Group to the extent interest, dividends, distributions and other amounts on those securities are funded by a member of the ANZ Level 1 Group; and
  - (b) on any other securities determined by APRA in its discretion to be appropriate for inclusion as Tier 1 Capital or Upper Tier 2 Capital on a Level 1 basis,

but excluding:

- (i) interest or dividends payable in relation to the CPS on the applicable Dividend Payment Date; and
- (ii) any such interest, dividend, distribution or other amount to which a member of the ANZ Level 1 Group was or is beneficially entitled.

**Dividend** has the meaning given in clause 3.1.

**Dividend Payment Date** has the meaning given in clause 3.5 whether or not a Dividend is, or is able to be, paid on that date.

**Dividend Period** means in respect of:

- (a) the first Dividend Period, the period from (and including) the Issue Date until (but not including) the first Dividend Payment Date following the Issue Date; and
- (b) each subsequent Dividend Period, the period from (and including) the preceding Dividend Payment Date until (but not including) the next Dividend Payment Date.

**Dividend Rate** has the meaning given in clause 3.1.

**Encumbrance** means any mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, title retention, preferential right or trust arrangement, any other security agreement or security arrangement and any other arrangement of any kind having the same effect as any of the foregoing other than liens arising by operation of law.

**Equal Ranking Instruments** means, in respect of the payment of dividends or the return of capital in a winding up:

- (a) the preference shares comprised in the 2003 Trust Securities;
- (b) the preference shares comprised in the 2004 Trust Securities;
- (c) the preference shares comprised in the 2007 Stapled Securities;
- (d) each other preference share that ANZ may issue that ranks or is expressed to rank equally with the foregoing and the CPS in respect of

dividend or for the return of capital in a winding up of ANZ (as the case may be); and

- (e) any securities or other instruments that rank or are expressed to rank in respect of dividend or for the return of capital in a winding up (as the case may be) equally with those preference shares and the CPS.

**Exchange** means:

- (a) in respect of an Exchange under clause 6, Conversion in accordance with and subject to clause 7 or Redemption in accordance with and subject to clause 8; or
- (b) otherwise, Conversion in accordance with and subject to clause 7, Redemption in accordance with and subject to clause 8 or Resale in accordance with and subject to clause 9,

and **Exchanged** has a corresponding meaning.

**Exchange Date** has the meaning given in clause 5.2(b).

**Exchange Method** has the meaning given in clause 5.3.

**Exchange Notice** has the meaning given in clause 5.1.

**External Administrator** means, in respect of a person:

- (a) a liquidator, a provisional liquidator, an administrator or a statutory manager of that person; or
- (b) a receiver, or a receiver and manager, in respect of all or substantially all of the assets and undertaking of that person,

or in either case any similar official.

**First Mandatory Conversion Condition** has the meaning given in clause 4.3.

**First Optional Conversion Condition** has the meaning given in clause 5.4.

**First Test Date** has the meaning given in clause 4.3.

**Fitch** means Fitch Australia Pty Ltd (ACN 081 339 184) or any successor.

**Foreign CPS Holder** means a CPS Holder whose address in the Register is a place outside Australia or who ANZ otherwise believes may not be a resident of Australia.

**Franking Rate** (expressed as a decimal) means the franking percentage (within the meaning of Part 3-6 of the Tax Act or any provisions that revise or replace that Part) applicable to the franking account of ANZ as at the relevant Dividend Payment Date.

**Initial Mandatory Conversion Date** has the meaning given in clause 4.2.

**Issue Date** means the date on which CPS are issued.

**Issue Date VWAP** means the VWAP during the period of 20 Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the first date on which any CPS were issued, as adjusted in accordance with clauses 7.5 to 7.9.

**Issue Price** has the meaning given in clause 1.2.

**Level 1, Level 2 and Level 3** means those terms as defined by APRA from time to time.

**Liquidation Sum** has the meaning given in clause 10.2(c).

**Mandatory Conversion** means the mandatory conversion under clause 4 of CPS to Ordinary Shares on the Mandatory Conversion Date.

**Mandatory Conversion Conditions** has the meaning given in clause 4.3.

**Mandatory Conversion Date** has the meaning given in clause 4.2.

**Margin** has the meaning given in clause 3.1.

**Maximum Conversion Number** means a number calculated according to the following formula:

$$\text{Maximum Conversion Number} = \frac{\text{Issue Price}}{\text{Issue Date VWAP} \times 0.5}$$

**Moody's** means Moody's Investors Service Pty Limited (ACN 003 399 657) or any successor.

**NOHC** means the ultimate holding company of ANZ after a NOHC Event which must be a "non-operating holding company" within the meaning of the *Banking Act 1959* (Cth).

**NOHC Event** means an event which:

- (a) is initiated by the Directors, acting as a board; and
- (b) would otherwise be an Acquisition Event,

but the result of which would be that the person who would be the ultimate holding company of ANZ would be a NOHC.

**Nominated Purchaser** means, subject to clause 9.3, with respect to a Resale, one or more third parties selected by ANZ in its absolute discretion.

**Non-Conversion Notice** has the meaning given in clause 4.4.

**Non-Innovative Residual Tier 1 Capital** has the meaning given by APRA from time to time.

**Non-marketable Parcel** has the meaning given in the Constitution.

**Offer** means the invitation under the Prospectus made by ANZ for persons to subscribe for CPS.

**Optional Conversion Conditions** has the meaning given in clause 5.4.

**Optional Conversion Test Date** has the meaning given in clause 5.4.

**Optional Dividend** has the meaning given in clause 3.8.

**Ordinary Share** means a fully paid ordinary share in the capital of ANZ.

**Ordinary Shareholder** means a person whose name is registered as the holder of an Ordinary Share.

**Prospectus** means the prospectus for the Offer including these CPS Terms.

**Prudential Capital Ratio** means that ratio as defined by APRA from time to time.

**Record Date** means for payment of:

- (a) a Dividend (other than a Dividend payable in respect of Reinvestment CPS on a Reinvestment Date):
  - (i) the date which is 11 Business Days before the Dividend Payment Date for that Dividend; or
  - (ii) such other date as is determined by the Directors in their absolute discretion and communicated to ASX not less than seven Business Days before the specified Record Date; ~~and~~
- (b) an Optional Dividend, the date determined by the Directors which falls prior to the date for payment of the Optional Dividend; and
- ~~(b)~~(c) a Dividend payable in respect of Reinvestment CPS on the Reinvestment Date, the date falling prior to the Reinvestment Date which is determined by the Directors to be the Record Date for that Dividend,

or in either case such other date as may be required by ASX.

**Redeem** means, in relation to a CPS, redeem, buy-back (other than an on-market buy-back within the meaning of the Corporations Act) or reduce capital, or any combination of such activities, in connection with that CPS in accordance with clause 8, and **Redeemed**, **Redeemable** and **Redemption** have the corresponding meanings.

**Redemption Date** has the meaning given in clause 4.6.

**Redemption Notice** has the meaning given in clause 4.5(a).

**Redemption Price** has the meaning given in clause 8.2.

**Register** means the register of CPS maintained by or on behalf of ANZ and including any subregister established and maintained in CHESS.

**Registrar** means ANZ or any other registrar that maintains the Register.

**Regulatory Event** means:

- (a) the receipt by the Directors of an opinion from a reputable legal counsel that, as a result of any amendment to, clarification of or change (including any announcement of a prospective change) in, any law or regulation affecting securities laws of Australia or any official administrative pronouncement or action or judicial decision interpreting or applying such laws or regulations which amendment, clarification or change is effective, or pronouncement, action or decision is announced, on or after the Issue Date, additional requirements would be imposed on ANZ in relation to or in connection with CPS which the Directors (having received all approvals they consider in their absolute discretion to be necessary (including from APRA)) determine at their absolute discretion, to be unacceptable; or

- (b) the determination by the Directors (having received all approvals they consider in their absolute discretion to be necessary (including from APRA)) that ANZ is not or will not be entitled to treat all CPS as Non-Innovative Residual Tier 1 Capital, except where the reason ANZ is not entitled to treat all CPS as Non-Innovative Residual Tier 1 Capital is because ANZ has exceeded a limit on Non-Innovative Residual Tier 1 Capital which was in effect on the Issue Date.

Reinvestment CPS means the CPS of a CPS Holder which ANZ may buy-back in accordance with the terms of the Reinvestment Offer.

Reinvestment Date means the date of issue of the Reinvestment Securities.

Reinvestment Offer means an offer made, with the prior written approval of APRA, by ANZ of securities:

- (a) each having an issue price equal to the Issue Price of the CPS;
- (b) pursuant to the Reinvestment Prospectus; and
- (c) on terms that provide for the application price of the security to be funded by the buy-back price of Reinvestment CPS.

Reinvestment Prospectus means a prospectus lodged with ASIC on or about 11 February 2014 including any replacement prospectus for the offer of securities, and may include application forms accompanying that prospectus.

Reinvestment Securities means those securities to be issued by ANZ to CPS Holders pursuant to the Reinvestment Offer, to the extent that those CPS Holders have applied to participate in the Reinvestment Offer.

**Relevant Date** has the meaning in clause 4.2.

**Resale** means, in relation to a CPS, the sale of that CPS in accordance with clause 9 and **Resell** and **Resold** have corresponding meanings.

**Resale Notice** has the meaning in clause 4.7.

**Second Mandatory Conversion Condition** has the meaning given in clause 4.3.

**Second Optional Conversion Condition** has the meaning given in clause 5.4.

**Second Test Period** has the meaning given in clause 4.3.

**Special Resolution** means a resolution passed at a meeting of CPS Holders by a majority of at least 75% of the votes validly cast by CPS Holders in person or by proxy and entitled to vote on the resolution.

**Standard & Poor's** means Standard & Poor's (Australia) Pty Limited (ACN 007 324 852) or any successor.

**Subsequent Mandatory Conversion Date** has the meaning given in clause 4.2.

**Subsidiary** has the meaning given in the Corporations Act.

**Tax Act** means:

- (a) the Income Tax Assessment Act 1936 (Cth) or the Income Tax Assessment Act 1997 (Cth) as the case may be and a reference to any section of the Income Tax Assessment Act 1936 (Cth) includes a

reference to that section as rewritten in the Income Tax Assessment Act 1997 (Cth); and

- (b) any other Act setting the rate of income tax payable and any regulation promulgated under it.

**Tax Event** means the receipt by the Directors of an opinion from a reputable legal counsel or other tax adviser in Australia, experienced in such matters to the effect that, as a result of:

- (a) any amendment to, clarification of, or change (including any announced prospective change), in the laws or treaties or any regulations of Australia or any political subdivision or taxing authority of Australia affecting taxation;
- (b) any judicial decision, official administrative pronouncement, published or private ruling, regulatory procedure, notice or announcement (including any notice or announcement of intent to adopt such procedures or regulations) (**Administrative Action**); or
- (c) any amendment to, clarification of, or change in, an Administrative Action that provides for a position that differs from the current generally accepted position,

in each case, by any legislative body, court, governmental authority or regulatory body, irrespective of the manner in which such amendment, clarification, change or Administrative Action is made known, which amendment, clarification, change or Administrative Action is effective, or which pronouncement or decision is announced, on or after the Issue Date, there is more than an insubstantial risk which the Directors determine (having received all approvals they consider in their absolute discretion to be necessary (including from APRA)) at their absolute discretion to be unacceptable that:

- (i) ANZ would be exposed to more than a *de minimis* increase in its costs (including without limitation through the imposition of any taxes, duties, assessments or other charges) in relation to CPS;
- (ii) any Dividend would not be a frankable dividend or distribution within the meaning of Division 202 of the Tax Act or Australian tax resident CPS Holders generally would not be entitled to franking credits in respect of the Dividends; or
- (iii) the CPS would cease to be disregarded in accordance with section 703-37 of the Tax Act.

**Tax Rate** has the meaning given in clause 3.1.

**Third Mandatory Conversion Condition** has the meaning given in clause 4.3.

**Tier 1 Capital** means the tier 1 capital of ANZ (on a Level 1 basis) or the ANZ Group (on a Level 2 basis or, if applicable a Level 3 basis) as defined by APRA from time to time.

**Tier 1 Capital Ratio** means that ratio as defined by APRA from time to time.

**Upper Tier 2 Capital** means the upper tier 2 capital of ANZ (on a Level 1 basis) or the ANZ Group (on a Level 2 basis or, if applicable a Level 3 basis) as defined by APRA from time to time.

**VWAP** means, subject to any adjustments under clause 7, the average of the daily volume weighted average sale prices (such average being rounded to the

nearest full cent) of Ordinary Shares sold on ASX during the relevant period or on the relevant days but does not include any "Crossing" transacted outside the "Open Session State" or any "Special Crossing" transacted at any time, each as defined in the ASX Market Rules, or any overseas trades or trades pursuant to the exercise of options over Ordinary Shares.

**VWAP Period** means:

- (a) in the case of a Conversion resulting from an Acquisition Event or a Change of Control Event the lesser of 20 Business Days and the number of Business Days that the Ordinary Shares are quoted for trading on ASX (or the principal securities exchange on which the Ordinary Shares are then listed) after the occurrence of the Acquisition Event or the Change of Control Event (as the case may be);
- (b) in the case of any other Conversion, the period of 20 Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the date on which Conversion is to occur in accordance with these CPS Terms; or
- (c) otherwise, the period for which VWAP is to be calculated in accordance with these CPS Terms.