HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

REVIEW OF THE FOUR MAJOR BANKS

ANZ

ANZ88QW: At the last round of hearings your bank stated that it could devise a product that utilises superannuation as a form of security to enable Australians to purchase a first home. To do so, please advise what legislative change would be required to enable you to do so?

Answer: The legislative change that would be required, if any, to offer a first home product that uses superannuation as security would ultimately depend on the details of the product. Some areas of law that may need consideration include the following. Other areas, or additional issues within the listed areas, may also need to be considered.

- **Superannuation law** – A lender would need to be able to obtain effective security over the borrower's interest in the superannuation fund.

  An interest in a superannuation fund generally entitles the beneficiary to cash their benefits when a condition of release is met (e.g. turning 65 or attaining the preservation age and retiring).

  Assuming that a lender was able to perfect legal security over the interest, it would also need to be able to access funds upon a default occurring, rather than waiting for a condition of release to be met (which may be some time in the future and may be subject to change). This may require a new condition of release connected with the enforcement of the lender's security.

- **Bankruptcy law** – Section 116(2)(d)(iii) of the *Bankruptcy Act 1966* (Cth) excludes the interest of a bankrupt in a regulated superannuation fund from the property divisible among creditors.

- **Security law** – Section 8(1)(jb) of the *Personal Property Securities Act 2009* (Cth) excludes from the personal property security register interests that people have as members of a superannuation fund.

- **Taxation law** – The tax law would need to be considered to understand what tax outcomes, if any, the granting or enforcement of security over the superannuation interest would have for the borrower.

- **Prudential regulation** – Prudential capital requirements for mortgages are linked to the 'loan to value ratio'. This compares the value of the loan to the value of the property which secures the loan. It would be important to understand how residential mortgages that include security over superannuation interests would be treated under this regulation.