

Expert Report for Suncorp Group

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15th May 2023

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SECTION 1: Introduction

Expert Report for Suncorp Group

1. I have been engaged by Herbert Smith Freehills (HSF) to prepare an independent expert report in connection with the application to the Australian Competition and Consumer Commission for authorisation of the proposed sale of SGBH Limited, the holding company for Suncorp Bank, to Australia and New Zealand Banking Group Limited (ANZ).
2. I have prepared this report in response to the instructions contained in the letter provided to me by HSF on 14th April 2023. I have appended the letter from HSF to my report.

My Qualifications

3. I am a Founder and Director of Kanangra Ratings Advisory Services (Kanangra), a consulting company which provides financial advice to companies particularly focussed on credit ratings. Over the 15 years since I formed Kanangra I have performed a series of roles for in excess of 30 of the largest Australian companies including:
 - Advising companies on the best path to obtain an initial credit rating;
 - Advising companies on the content of the six monthly and annual reports to rating agencies; and
 - Advising rated companies on the consequences on their rating of various capital structure transactions including mergers, divestments, abnormally high dividends and large capital expenditure plans.
4. Prior to founding Kanangra I was, from 2002 to 2008, a Senior Analyst at Moody's Investors Service (Moody's) where my role was to analyse a set of companies and take them through the rating committee process where the ratings could be changed. This work entailed six monthly, annual and as required analysis on rated companies and initiating analysis on companies which had sought a Moody's rating.
5. While at Moody's I was a member of several global Moody's employee teams charged by management with the task of initiating and writing methodologies. These methodologies were

guides to how Moody's assigned credit rating to companies in particular industries and these methodologies persist to today, albeit revised.

6. Prior to Moody's I worked in banking, particularly project finance and corporate banking, at a series of banks in Sydney, London and New York from 1986 to 1998.
7. I am a Fellow of the Australian Institute of Corporate Directors and a Certified Corporate Treasurer Australia of the Australian Corporate Treasury Association.
8. Prior to my banking career I worked as a geologist for 10 years after attaining a PhD in Geology at the University of South Carolina.

Acknowledgements

9. I acknowledge that I have read the Expert Evidence Practice Note (GPN-EXPT) and agree to abide by it. I have appended the GPN-EXPT to my report.
10. I have prepared this Expert Report myself with no assistance from any other persons.
11. I have relied on material published by each rating agency and written material supplied to me by Suncorp Group, and the references are included in an appendix.
12. I acknowledge that that my opinions are based substantially on my understanding of the methodologies published by rating agencies and my interpretation of them having regard to my 20 years of experience.

Questions

13. The questions I have been asked to consider are as follows:

Question 1: Having regard to the methodology adopted by ratings agencies S&P, Moody's, and Fitch, please could you provide an opinion on the likely issuer rating for a hypothetical combination of Suncorp Bank and Bendigo and Adelaide Bank. For this purpose, you should assume a demerger from Suncorp Group Limited of Suncorp Bank and that Suncorp Bank would be acquired by Bendigo and Adelaide Bank (Hypothetical Merged Entity).

Question 2: In preparing your opinion and having regard to the key elements of the ratings methodologies of each of the ratings agencies, please could you indicate how the Hypothetical

Merged Entity compares with the issuer credit ratings issued by ratings agencies S&P, Moody's and Fitch, for each of CBA, Westpac, NAB, ANZ, Macquarie, Suncorp Bank and BEN.

14. In this Expert Opinion I refer to the "Hypothetical Merged Entity" as the "Combined Bank".

Methodology

15. The general methodology I have used in this Expert's Opinion is to:

- review the bank methodology from all three credit rating agencies (Moody's, S&P Global Ratings (S&P) and Fitch Ratings (Fitch));
- review the most recent Credit Opinions¹ from all three agencies for both Suncorp-Metway Limited (SML) and Bendigo and Adelaide Bank (BEN);
- review the most recent Credit Opinions for peer Australian banks (Peer Banks): Commonwealth Bank of Australia (CBA), National Australia Bank (NAB), Australia and New Zealand Banking Group (ANZ), Westpac Banking Corporation (WBC) and Macquarie Bank Limited (MBL) from all three agencies;
- using the methodologies of each rating agency and referencing the Credit Opinions I have estimated the rating of the Combined Bank; and
- having regard to my experience as a rating adviser and my knowledge of the methodologies used by the rating agencies in assigning ratings, sense checked the estimated rating of the Combined Bank against the rating of the Peer Banks.

16. For the purposes of my report I understand the reference to "Suncorp Bank" to be a reference to SML.

Executive Summary

17. Moody's: I estimate the Moody's rating for the Combined Bank to be [REDACTED]

[REDACTED]

[REDACTED]

¹ Credit Opinions are periodic publications from credit rating agencies explaining and updating the rating of individual issuers and the methodologies used to arrive at that rating

[Redacted]

18. S&P: I estimate that the S&P rating of the Combined Bank will be [Redacted]
[Redacted]

19. Fitch: I estimate that the Fitch credit rating of the Combined Bank will be [Redacted]
[Redacted]

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4 [Redacted]

SECTION 2: Background

Rating Methodologies

22. Since around 2005 all three major rating agencies (Moody's, S&P and Fitch) have periodically published methodologies, for the purpose of explaining to rated issuers of debt and investors in that debt the important factors which have led the agency to assigned a particular rating to a company. Each agency has published a methodology specifically for the banking industry.

23. This approach is explained by Moody's in their Banks Methodology in their most recent version published on 9 July 2021 as follows:

"This rating methodology explains our general approach to assessing credit risk for banks globally and how this credit assessment leads to our assigning ratings to instruments ranging from bank deposits to preferred stock." ⁵

24. S&P's approach is explained in its Financial Institutions Rating Methodology dated 9 December 2021 as follows:

"S&P Global Ratings assigns credit ratings to both issuers and issues and strives to maintain comparability of ratings across sectors and over time. That is, S&P Global Ratings intends for each rating symbol to connote the same general level of creditworthiness for issuers and issues in different sectors and at different times. Enhancing comparability requires calibrating the criteria⁶ for determining ratings. S&P Global Ratings calibrates criteria through various means including measuring default behaviour across sectors and over time, applying common approaches to risk analysis, and using a common set of macroeconomic scenarios associated with the different rating levels."⁷

25. Fitch in its methodology entitled Bank Rating Criteria published on 8 September 2022 has stated:

⁵ Banks Methodology 9/7/2022 Page 1

⁶ In my opinion the terms "Methodology" and "Criteria" are interchangeable, used by different agencies

⁷ Principles of Ratings, 17/2/2011, Page 1

“This criteria outlines Fitch Ratings’ methodology for rating banks – including commercial and policy banks – and bank holding companies, their finance companies and their obligations. The criteria apply globally to new and existing ratings”⁸.

26. While the methodologies published provide a guide to the rating outcome and the way each rating agency arrives at the rating, I have over the time I have been in the business of credit rating advice that the methodology is not a definite determinant of the final rating, leaving the agency able to adjust the rating and the factors determining it.

Rating Levels

27. Each rating agency assigns ratings for each bank according to a series of rating levels.

Table 1: Rating Levels and equivalence for each agency:

	Fitch and S&P	Moody’s
Highest Rating	AAA	Aaa
	AA+	Aa1
	AA	Aa2
	AA-	Aa3
	A+	A1
	A	A2
	A-	A3
	BBB+	Baa1
	BBB	Baa2
Base of Investment Grade	BBB-	Baa3
Top of Non-Investment Grade	BB+	Ba1
	BB	Ba2
	BB-	Ba3
	B+	B1
	B	B2
Lower Rating ⁹	B-	B3

28. As part of the structuring of each rating, each agency uses the above bands as preliminary results¹⁰ either as the scoring of individual factors or as a partial rating result.

⁸ Bank Rating Criteria, 8/9/2022, Page 1

⁹ [Redacted]

¹⁰ To distinguish them from actual ratings the preliminary results are always in lower case – for example S&P may have a bbb result for one factor, whereas the final rating could be BBB

29. Most methodologies list a series of attributes (qualitative or quantitative) for banks under a series of higher and lower risk scores. These scores are averaged (either formally used a fixed weighting percentage) or informally (using higher or lower importance), to arrive at a preliminary result. This process of matching attributes to scores is referred to as “mapping” the attribute to the score.
30. Once the preliminary result is obtained the agency may then “notch” the result, either by putting the result up one or more levels due to positive attributes of the bank, termed “notching up” or lowering the rating due to negative attributes, termed “notching down.”

Structure of Sections 3, 4 and 5

31. As each rating agency uses a different methodology this Expert Opinion is structured to address each rating agency in order. I have thus divided the Expert Opinion into three sections – one for each rating agency. Section 3 covers Moody’s Methodology and Credit Opinions, Section 4 covers S&P’s Methodology and Credit Opinions and Section 5 covers Fitch’s Methodology and Credit Opinions.
32. I have divided each of Sections 3, 4 and 5 into three parts:
 - Part 1: An explanation of the general methodology for each agency in assigning rating to banks.
 - Part 2: The application of that methodology to SML and BEN and their Peer Banks, to obtain data points for the rating of potential peers to the Combined Bank.
 - Part 3: Using the methodology explained in Part 1 and referencing the other rating outlined in Parts 2, I estimate the application of the methodology to the Combined Bank.

SECTION 3: Moody's

Context

33. Banks are rated by Moody's according to the "Banks Methodology" published in July 2021 (the "Moody's Methodology") and both Suncorp-Metway Limited (SML) and Bendigo and Adelaide Bank Limited (BEN) are rated according to this methodology. The most recent Credit Opinions, which provide the rating of each entity and the methodology by which the agency arrived at that rating, were published by Moody's for each bank on 23/11/2022 and 13/12/2022 respectively.

Part 1: Moody's Bank Methodology

34. In this Part I summarise the Moody's methodology. Moody's has four broad steps to arrive at a credit rating:

- Step 1: Baseline Credit Assessment (BCA): Analyses a bank's financials and operating environment to capture its standalone probability of failure. Step 1 leads to a "Assigned BCA".
- Step 2: Affiliate Support: Adjusts the Assigned BCA to capture the likelihood of affiliate support, and leads to an "Adjusted BCA".
- Step 3: Loss Given Failure Liability Analysis: Assesses the risks different creditors are exposed to in the event of the bank's failure, holding differing debt instruments.
- Step 4: Government Support: Assesses the extent to which risk to each creditor class is mitigated by public support.

35. Within each Step there are multiple factors which are considered by Moody's in its methodology. I describe each below.

Step 1: Baseline Credit Assessment¹¹

36. The first step involves analysis of a bank's financial and operating environment to capture its stand alone probability of failure, that is its Assigned BCA.

37. There are three factors which determine the BCA:

¹¹ Summary of Page 8-61 of Moody's Methodology

- Factor 1: Macro Profile
- Factor 2: Financial Profile
- Factor 3: Qualitative Adjustment Factors

Factor 1: Macro Profile

38. Moody's states that Macro Profile is "an assessment of the system-wide factors that we believe are predictive of the propensity of banks to fail"¹²
39. As the Macro Profile is the same score for all Australian banks, I will summarise this Factor briefly. In the methodology Moody's states that Macro Profile is made up of:
- Banking Country Risk;
 - Credit Conditions;
 - Funding Conditions Adjustment and
 - Industry Structure Adjustment.
40. Moody's considers each bank in a single jurisdiction, such as Australia, will have the same Macro Profile, and thus BEN, SML, the Combined Bank and all Peers will have the same Macro Profile

Factor 2: Financial Profile

41. Moody's methodology states that "Our approach to determining a bank's intrinsic and relative financial strength is centered on our view that a bank's credit strength, and, hence, its viability, is largely a function of its solvency (indicated by its risk relative to its loss absorbing resources) and its liquidity (the degree of a bank's maturity transformation)."¹³
42. Moody's uses five quantitative factors to measure the Financial Profile of a bank. Each of those factor has an associated financial metric. The historic value of this metric is mapped to a score using a table in the Moody's Methodology (the Initial Score). The Moody's Methodology then states that "the ratio is then conditioned by our view of the strength or weakness of the banking system(s) in which the institution operates. Moreover, we incorporate our expectation of how

¹² Moody's Methodology p8

¹³ Ibid p10

each metric is likely to evolve.” This adjustment yields an “Assigned Score”. Each of the quantitative factors have a weighting (the five add to 100%) and the Financial Profile is the weighted average of the five quantitative factors resulting in an Assigned Score.

43. The five quantitative factors and their weighting using the Moody’s methodology is as follows¹⁴:

Table 2: The five quantitative factors which make up the Moody’s Financial Profile¹⁵

Factor	Weighting
Assets Risk	25%
Capital	25%
Profitability	15%
Funding Structure	20%
Liquid Resources	15%
	100%

44. The quantitative factors are grouped into two – the first three averaged for Combined Solvency Score and the remaining two for Combined Liquidity Score. The Financial Profile assessment results in an alphanumeric score similar to a credit rating.

Factor 3: Qualitative Adjustment Factors

45. Moody’s Methodology states: “We have identified three additional factors beyond those considered in the Financial Profile that are important qualitative contributors to the soundness of a financial institution”¹⁶. These three factors are:

- Business Diversification;
- Opacity and Complexity; and
- Corporate Behaviour.

46. These qualitative factors are used to notch up or down the Financial Profile.
47. The Financial Profile and any adjustments for the three qualitative factors results in the BCA Scorecard outcome, and the Assigned BCA is then given generally within this range.

¹⁴ Ibid p11

¹⁵ I have described each of these factors in detail in Part 3 of this Section

¹⁶ Ibid p12

Step 2: Affiliate Support

48. The second step involves adjusting the Assigned BCA to capture the likelihood of affiliate support.
49. Moody's Methodology states that "The next step in our analysis is typically to consider support from affiliated entities. The outcome of this step results in the Adjusted BCA, achieved through an analysis of both the provider of support and its recipient."¹⁷ The Assigned BCA is then notched to account for this support, if available, and the Adjusted BCA is the result.

Step 3: Loss Given Failure Liability Analysis:

50. This step in Moody's analysis entails assessment of the priority of various instruments within the corporate structure of the bank¹⁸. In its methodology Moody's "considers the impact of the failure of the bank — any affiliate support having been either denied or exhausted — on its various debt classes, in the absence of any government support."¹⁹
51. As this step deals with the relative rating of each instrument issued by the respective banks this step is not relevant for the purposes of this Expert Opinion, as the opinion is focused on only the Issuer Rating.

Step 4: Government Support

52. Moody's Methodology says "We assess the probability that a public body (usually a government but sometimes a central bank or supranational institution) will support an institution."²⁰ The Adjusted BCA is then notched up if the support is thought by Moody's to be available, and result will be the Issuer Rating (also referred to as a "Senior Unsecured Rating").

Part 2: Mapping of SML, BEN and Peer Bank with the Moody's Methodology

53. The following table outlines the mapping of both SML, BEN and Peer Banks according to the Moody's Methodology in the latest published Credit Opinions.

¹⁷ Ibid p14

¹⁸ The rating of financial instruments within one company will be different depending on the seniority of the instrument, its security, and any subordination provisions relevant to it.

¹⁹ Ibid p16

²⁰ Ibid p18

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²¹ Moody's: Commonwealth Bank of Australia, Update following rating affirmation, 3 April 2023
²² Moody's National Australian Bank Limited: Update following rating affirmation, 4 April 2023
²³ Moody's: Australia and New Zealand Banking Grp. Ltd: Update following rating affirmation, 4 April 2023
²⁴ Moody's: Westpac Banking Corporation: Update following rating affirmation, 3 April 2023
²⁵ Moody's Macquarie Bank Limited: Update following rating affirmation, outlook changed to positive, 7 March 2023
²⁶ Moody's: Suncorp-Metway Limited: Update of credit analysis, 23 November 2022
²⁷ Moody's: Bendigo and Adelaide Bank Limited: Update to credit analysis, 13 December 2022
²⁸ For senior unsecured debt

56. [Redacted text block]

Part 3: Estimate of the Rating of the Combined Bank

57. This Part of the Expert Opinion outlines my estimate of the rating of the Combined Bank using the Moody's Methodology, the actual rating of SML and BEN and a comparison with the rating of the Peer Banks as set out in the most recent Credit Opinions.

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²⁹ Moody's: Bendigo and Adelaide Bank Limited: Update to credit analysis, 13 December 2022, p8
³⁰ As defined in Moody's Methodology
³¹ As defined in Moody's Methodology

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³² Ibid

³³ [Redacted]

³⁴ Using [Redacted] of Moody's Methodology

³⁵ Moody's: Bendigo and Adelaide Bank Limited: Update to Credit Analysis, 13 December 2022, [Redacted]

³⁶ Moody's: Suncorp-Metway Limited: Update to Credit Analysis, 23 November 2022, [Redacted]

³⁷ As defined in Moody's Methodology

³⁸ As defined in Moody's Methodology

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70. [Redacted]

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³⁹ Based on the numbers provided on the Moody's website

⁴⁰ Using [Redacted] for Basel III Banks

⁴¹ [Redacted]

⁴² Using [Redacted] of Moody's Methodology

⁴³ Moody's SML Opinion page [Redacted]

⁴⁴ As defined in Moody's Methodology

⁴⁵ As defined in Moody's Methodology

- 71. [Redacted]
- 72. [Redacted]
- 73. [Redacted]
- 74. [Redacted]
- 75. [Redacted]

⁴⁶ Using Exhibit 23 page 47 of Moody's Methodology

⁴⁷ [Redacted]
⁴⁸ [Redacted]
⁴⁹ [Redacted]

⁵⁰ Moody's: Suncorp-Metway Limited 23 November 2022 and Bendigo and Adelaide Bank Limited 13 December 2022

⁵¹ Using [Redacted] of Moody's Methodology

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⁵² As defined in Moody's Methodology

⁵³ As defined in Moody's Methodology

⁵⁴ Extract from Exhibit 25, p49 Moody's Methodology

⁵⁵ Using [Redacted] of Moody's Methodology

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81. [Redacted]

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83. [Redacted]

84. [Redacted]

⁵⁶ As defined in Moody's Methodology
⁵⁷ Extract from Exhibit 26, p54 Moody's Methodology
⁵⁸ Using [Redacted] of Moody's Methodology
⁵⁹ Moody's: Suncorp-Metway Limited 22 November 2022 and Bendigo and Adelaide Bank Limited 13 December 2022
⁶⁰ Moody's: Suncorp-Metway Limited: Update to Credit Analysis, 23 November 2022, [Redacted]
⁶¹ Moody's: Bendigo and Adelaide Bank Limited: Update to Credit Analysis, 13 December 2022, [Redacted]

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Conclusion

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99. [Redacted text block]

⁶³ Ibid [Redacted]
⁶⁴ From Moody's opinions [Redacted]

SECTION 4: S&P

Context

100. Banks are rated by S&P according to their “Financial Institutions Rating Methodology” published in December 2021 (the “S&P Methodology”) and both SML and BEN are rated according to this methodology. The most recent Credit Opinions⁶⁵, which provide the rating of each entity and the methodology by which the agency arrived at that rating, were published by S&P in December 2022 for each bank.

Part 1: S&P’s Bank Methodology

101. Set out below is the methodology used by S&P to assign Issuer Credit Rating (ICR) to a bank. This methodology has five steps.

Step 1: Bank Anchor

102. The S&P Methodology states that “The anchor is a globally consistent, relative ranking of creditworthiness across national banking markets, and ranges from ‘a’, the least risky, to ‘b-’, the riskiest.⁶⁶” The Bank Anchor is assigned and is driven by Economic Risk Score and Industry Risk Score, and with few exceptions the same Anchor is applied to all banks within one jurisdiction.

Step 2: FI – Specific factors

103. The Bank Anchor is then adjusted for factors specific to each individual financial institution (“FI”). There are four discrete factors, each of which is assigned one of six descriptors from “Very Strong” to “Weak”. The Bank Anchor is then notched up or down depending on these descriptors. Much of this factor analysis is dependent on comparing the bank with peers in the same region or country and it is generally a qualitative assessment.

104. The factors to be considered are set out below.

⁶⁵ S&P Global Ratings: RatingsDirect: Suncorp-Metway Ltd. 11 December 2022 and S&P Global Ratings: RatingsDirect: Bendigo and Adelaide Bank Ltd., 14 December 2022

⁶⁶ S&P Methodology p8

Factor 1: Business Position

105. The S&P Methodology states that this “measures the strength of an FI’s business operations⁶⁷” and considers three aspects; (a) Governance, Management and Strategy, (b) Business Stability and (c) Diversification. These are defined within the S&P Methodology.

Factor 2: Capital and Earnings

106. According to the S&P Methodology, this factor “reflects an FI’s ability to absorb losses based on its level of capital and ability to replenish that capital through earnings and other sources (excluding extraordinary external support).”⁶⁸ An Initial Capital and Earnings score is derived using the RAC ratio⁶⁹ which can be subsequently qualitatively adjusted.

Factor 3: Risk Position

107. The S&P Methodology states that “the risk position to refine our view of an FI’s risk beyond the capital and earning analysis.”⁷⁰ This factor is a qualitative assessment which includes risk appetite, loss experience, concentrations, and complexity.

Factor 4: Funding and Liquidity

108. S&P analyses these two elements separately. As to funding, the S&P Methodology “mainly considers the stability of an entity’s funding sources and the likelihood they will be available to fund existing and new assets over an extended period⁷¹” and as to liquidity, the S&P Methodology “focusses largely on an FI’s ability to withstand liquidity outflows that could occur typically under stress over the coming 12 months.⁷²”

Step 3: Potential Comparable Rating Analysis (CRA) adjustment

109. The CRA adjustment leads to a Stand-alone Credit Profile (“SACP”). The S&P Methodology then states that the CRA adjustment captures “a more holistic view of creditworthiness⁷³” and

⁶⁷ *ibid* p14

⁶⁸ *Ibid* p19

⁶⁹ RAC Ratio = Risk-adjusted Capital Ratio = Total adjusted capital/ Total adjusted risk-weighted assets as defined in the S&P Methodology

⁷⁰ *Ibid* p29

⁷¹ *Ibid* p38

⁷² *Ibid* p44

⁷³ *Ibid* p5

“assesses an FI’s relative credit standing among FIs with similar SACPs”. According to the S&P methodology, this adjustment is at most one notch up or down.

Step 4: Extraordinary External Support

110. The SACP is then adjusted by some or none of the following support mechanism, depending on the bank in question.

111. The factors to be considered are set out below.

Factor 1: Group Support

112. This support is determined using the Group Methodology⁷⁴ a methodology which S&P uses to establish ratings of various affiliated companies within one corporate group. This Group Methodology is common across all corporate rating sectors.

Factor 2: Government/Government Related Entity (GRE) Support

113. There are four parts to this assessment: (a) government’s tendency to support banks (could be highly supportive, supportive or uncertain); (b) the degree of a bank’s systemic importance (could be high, moderate or low); (c) the likelihood that the government will provide support to a particular bank (which is driven by the two previous parts and the rating of the government in question); and (d) determine whether the additional support is available.

Factor 3: Additional loss-absorbing capacity (ALAC) Support

114. This has not been used in the rating of any Australian banks.

Factor 4: Guarantee Support

115. No Australian bank has an external guarantee and thus this factor is not relevant to this Opinion.

Step 5: Potential adjustment for government-support related factors leading to an ICR

Part 2: Mapping of Peer Banks, SML and BEN using S&P Methodology

116. The following table shows the mapping of SML, BEN and Peers Bank as listed in the latest Credit Opinions published by S&P.

⁷⁴ “Group Rating Methodology”, 1 July 2019

[Redacted]

[Redacted]

117. [Redacted]
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118. [Redacted]
[Redacted]
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⁷⁵ S&P Global Ratings: RatingsDirect: Commonwealth Bank of Australia, 9 February 2023

⁷⁶ S&P Global Ratings: RatingsDirect: National Australia Bank Ltd., 2 March 2023

⁷⁷ S&P Global Ratings: RatingsDirect: Australia and New Zealand Banking Group Limited, 6 March 2023

⁷⁸ S&P Global Ratings: RatingsDirect: Westpac Banking Corporation, 16 February 2023

⁷⁹ S&P Global Ratings: RatingsDirect: Macquarie Bank Ltd., 14 December 2022

⁸⁰ S&P Global Ratings: RatingsDirect: Suncorp-Metway Ltd., 11 December 2022

⁸¹ S&P Global Ratings: RatingsDirect: Bendigo and Adelaide Bank Ltd., 14 December 2022

Part 3: The Estimated Rating of Combined Bank

119. This Part of the Expert Opinion outlines my estimate of the rating of the Combined Bank using the S&P Methodology and the actual rating of SML and BEN and a comparison with the rating of the Peer Banks as set out in the most recent Credit Opinions.

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128. [Redacted text block]

[Redacted text block]

129. [Redacted text block]

130. [Redacted text block]

⁸³ From S&P SML Opinion page [Redacted]

⁸⁴ From Table 12

⁸⁵ From the BEN credit opinion, December 2022

[Redacted text]

- 131. [Redacted text]

Conclusion

- 132. [Redacted text]

⁸⁶ [Redacted text]

⁸⁷ See Table 12 above

SECTION 5: Fitch

Context

133. Banks are rated by Fitch according to “Bank Rating Criteria” published in September 2022 (the “Fitch Methodology”) and both SML and BEN are rated according to this methodology. The most recent Credit Opinions, which provide the rating of each entity and the methodology by which the agency arrived at that rating, were published by Fitch for each bank in November 2022.

Part 1: Fitch’s Bank Methodology⁸⁸

134. Set out below is the methodology used by Fitch to assign Issuer Default Rating (IDR) to a bank. This methodology has three steps.

Step 1: Assessment of the Viability Rating (VR)

135. The VR captures the bank’s standalone profile, firstly assessing the Operating Environment and adding six Key Rating Drivers (KRDs):

Table 15: The Derivation of the Fitch VR stand-alone rating

KRD	Attribute	Qual/Quant	Weighting
KRD 1	Business Profile	Quantitative	20%
KRD 2	Risk Profile	Qualitative	10%
KRD 3	Asset Quality	Quantitative	20%
KRD 4	Earnings & Profitability	Quantitative	15%
KRD 5	Capitalisation & Leverage	Quantitative	25%
KRD 6	Funding & Liquidity	Quantitative	10%

136. In each step Fitch can adjust the KRD or rating due to qualitative considerations. Fitch uses the weighted average of the six KRDs to calculate the Implied VR. The Implied VR which can then be adjusted qualitatively to assign a Final VR.

137. The KRDs in the Fitch Methodology are not as definitive as S&P or Moody’s because they only point to a band of three ratings rather than an individual rating result.

⁸⁸ Bank Rating Criteria, 8 September 2022 – Fitch Banking Methodology

Operating Environment

138. The Operating Environment is determined by the interplay of GDP per capita and Operational Risk Index.⁸⁹ Fitch's Methodology states "These metrics are most closely correlated with the ability of banks to generate business volumes with acceptable levels of risk in a given jurisdiction."⁹⁰

139. The score of each of the following KRDs is dependent on the Operating Environment.

KRD 1: Business Profile

140. The Fitch Methodology states that "The Business Profile captures the extent to which a bank's franchise and business model allow it to generate and defend business volumes and earnings while controlling levels of risk"⁹¹. The metric of Total Operating Income⁹² is a guide to this factor.

KRD 2: Risk Profile

141. The Fitch Methodology states that "We assess Risk Profile as the risks that a bank is exposed to and how it manages these can ultimately lead to changes in its financial metrics".⁹³ This factor is a qualitative assessment.

KRD 3: Asset Quality

142. The Fitch Methodology states that "A bank's asset quality is a KRD for its VR because of the direct impact of this on solvency"⁹⁴ The metric used in this factor is the ratio of Impaired Loans⁹⁵ to Gross Loans.⁹⁶

KRD 4: Earnings & Profitability

143. The Fitch Methodology states that the Earnings and Profitability "... is a KRD for a bank's VR because a bank's earnings represent a first buffer to absorb potential losses, and to a degree

⁸⁹ This is a Fitch generated index and assigned to each jurisdiction.

⁹⁰ Ibid p6

⁹¹ Ibid p10

⁹² As defined in the Fitch Methodology

⁹³ Ibid p11

⁹⁴ Ibid p12

⁹⁵ As defined in the Fitch Methodology

⁹⁶ As defined in the Fitch Methodology

indicate the robustness of a bank's business model⁹⁷. The metrics used in this KRD is the ratio of Operating Profit⁹⁸ to Risk-Weighted Assets.⁹⁹

KRD 5: Capitalisation & Leverage

144. The Fitch Methodology states that "A bank's capitalisation and leverage can have the most direct impact on its viability, and hence this is the highest-weighted KRD in determining a bank's implied VR."¹⁰⁰ The metrics chosen by Fitch for this KRD is the Core Capital Ratio.¹⁰¹

KRD 6: Funding & Liquidity

145. The Fitch Methodology states that "Funding & Liquidity is a KRD for the VR because this determines a bank's ability to meet its short-term obligations and more broadly its ability to finance and maintain its operations¹⁰²", The metrics chosen by Fitch is the ratio of Loans¹⁰³ to Customer Deposits.¹⁰⁴

Step 2: Allocate the Government Support Rating (GSR) or Shareholder Support Rating (SSR)

146. GSR or SSR is used based on whichever is more likely to support the rating, in Fitch's opinion. Fitch examines the ability and propensity of the government or shareholder to provide the support.

147. GSR: The structure of the potential Government support is dependent on whether the jurisdiction has a "developed and credible resolution framework which provides bail-in of senior creditors.¹⁰⁵" This framework, according to the Fitch Methodology exists in most developed markets and it is reasonable for me to assume that it applies in Australia. Where this framework exists the resolution legislation is the dominant determinant of the GSR.

148. The starting point in the GSR analysis is the Government support rating for a Domestic Systemically Important Bank (DSIB). This is driven primarily by the sovereign country IDR, and can then be adjusted for qualitative attributes.

⁹⁷ Ibid p13

⁹⁸ As defined in the Fitch Methodology

⁹⁹ As defined in the Fitch Methodology

¹⁰⁰ Ibid p14

¹⁰¹ Tier 1 Capital/Risk Weighted Assets; as defined in the Fitch Methodology

¹⁰² Ibid p15

¹⁰³ As defined in the Fitch Methodology

¹⁰⁴ As defined in the Fitch Methodology

¹⁰⁵ Fitch Methodology p4

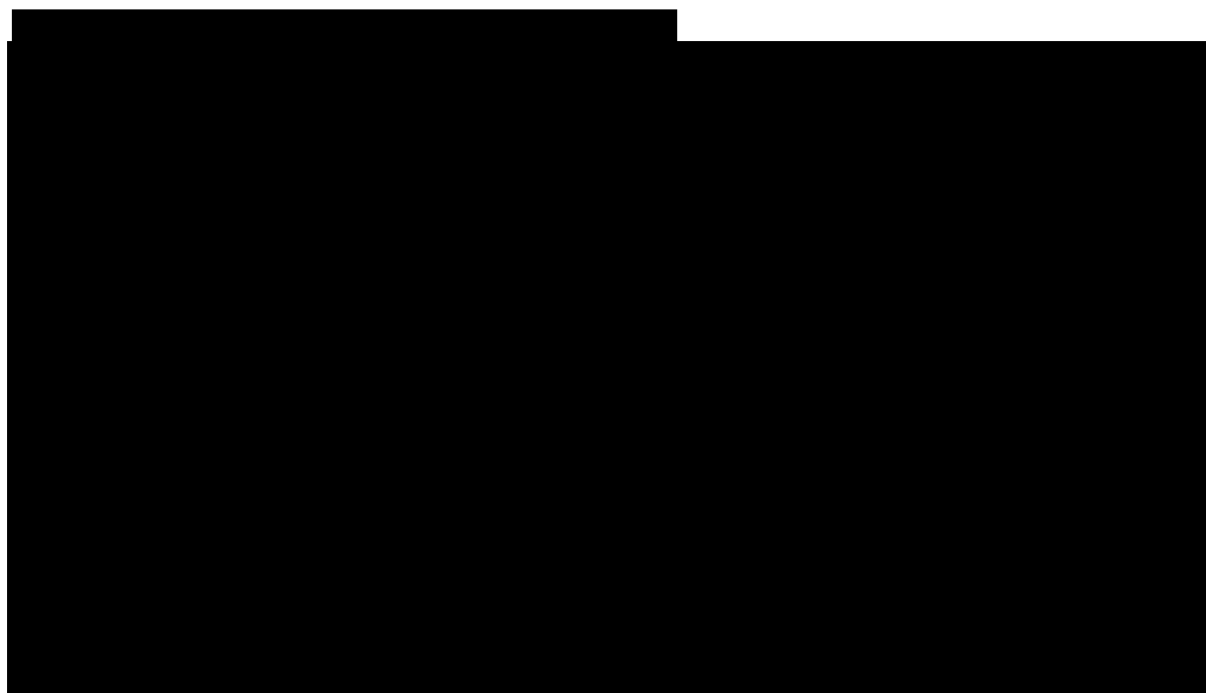
149. The GSR of the bank in question is driven by the GSR of the DSIB and could be higher, lower, or equivalent to it depending on the propensity of the government to support the bank. This propensity is estimated by analysis of three qualitative factors (a) Systemic Importance; (b) Liability Structure; and (c) Ownership. Each of these factors could be Positive, Neutral or Negative.
150. SSR: There are four factors within the “Shareholder ability to support” regime and six factor within the “Shareholder propensity to support” regime. Each factor is weighted either “Higher”, “Moderate” or “Lower”. In the Fitch Methodology all factors are qualitative.

Step 3: Issuer Default Rating (IDR)

151. The IDR according to the Fitch Methodology is the highest of the VR, the GSR, or the SSR.

Part 2: Mapping of SML and BEN using Fitch Methodology

152. The following table outlines the mapping of both SML, BEN and Peer Banks according to the Fitch Methodology in the latest published Credit Opinions.



¹⁰⁶ FitchRatings: Commonwealth Bank of Australia, 23 March 2023

¹⁰⁷ Fitchratings: National Australia Bank Limited, 4 April 2023

¹⁰⁸ FitchRatings: Australia and New Zealand Banking Group Limited, 30 March 2023

¹⁰⁹ FitchRatings: Westpac Banking Corporation, 27 March 2023

¹¹⁰ FitchRatings: Macquarie Bank Limited, 20 May 2022

¹¹¹ FitchRatings: Suncorp-Metway Limited, 29 November 2022

¹¹² FitchRatings: Bendigo and Adelaide Bank Limited, 23 November 2022

[Redacted]

153. [Redacted]
[Redacted]
[Redacted]
[Redacted]

154. [Redacted]
[Redacted]
[Redacted]

155. [Redacted]
[Redacted]
[Redacted]
[Redacted]

Part 3: The Estimated rating of the Combined Bank

156. This Part of the Expert Opinion outlines my estimate of the rating of the Combined Bank using the Fitch Methodology and the actual rating of SML and BEN and a comparison with the rating of the Peer Banks as set out in the most recent Credit Opinions.

[Redacted]

[Redacted]

157. [Redacted]
[Redacted]

[Redacted]

158. [Redacted]
[Redacted]
[Redacted]

113 [Redacted]

[Redacted]

159. [Redacted]

160. [Redacted]

[Redacted]

161. [Redacted]

[Redacted]

162. [Redacted]

[Redacted]

163. [Redacted]

¹¹⁴ [Redacted]
¹¹⁵ [Redacted] using Fitch: Suncorp-Metway Limited 29 November 2022 and Bendigo and Adelaide Bank Limited 23 November 2022

¹¹⁶ As defined in the Fitch Methodology

¹¹⁷ [Redacted]

¹¹⁸ See KRD1 for explanation

[Redacted text block]

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164. [Redacted text block]

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165. [Redacted text block]

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166. [Redacted text block]

167. [Redacted text block]

[Redacted text block]

168. [Redacted text block]

¹¹⁹ Fitch: Suncorp-Metway Limited 29th November 2022
¹²⁰ Fitch: Bendigo and Adelaide Bank Limited 23rd November 2022

[Redacted]

[Redacted]

169. [Redacted]

[Redacted]

[Redacted]

170. [Redacted]

[Redacted]

[Redacted]

[Redacted]

171. [Redacted]

[Redacted]

Conclusion

172. [Redacted]

[Redacted]

Date: 15th May 2023

Signature:

[Redacted Signature]

¹²¹ Fitch: Bendigo and Adelaide Bank Limited 23rd November 2022

¹²² See Table 12

¹²³ [Redacted]

Bibliography:

Moody's:

Moody's: Banks Methodology, July 2021

Moody's: Suncorp-Metway Limited Credit Opinion, 23 November 2022

Moody's: Bendigo and Adelaide Bank Limited: Update to credit analysis, 13 December 2022

Moody's Macquarie Bank Limited: Update following rating affirmation, outlook changed to positive, 7 March 2023

Moody's: Commonwealth Bank of Australia, Update following rating affirmation, 3 April 2023

Moody's: Westpac Banking Corporation: Update following rating affirmation, 3 April 2023

Moody's: Australia and New Zealand Banking Grp. Ltd: Update following rating affirmation, 4 April 2023

Moody's National Australian Bank Limited: Update following rating affirmation, 4 April 2023

S&P:

S&P Global Ratings: "Group Rating Methodology", 1 July 2019

S&P Global Ratings: Financial Institutions Rating Methodology December 2021

S&P Global Ratings: RatingsDirect: Suncorp-Metway Ltd. 11 December 2022

S&P Global Ratings: RatingsDirect: Bendigo and Adelaide Bank Ltd., 14 December 2022

S&P Global Ratings: RatingsDirect: Macquarie Bank Ltd., 14 December 2022

S&P Global Ratings: RatingsDirect: Commonwealth Bank of Australia, 9 February 2023

S&P Global Ratings: RatingsDirect: Westpac Banking Corporation, 16 February 2023

S&P Global Ratings: RatingsDirect: National Australia Bank Ltd., 2 March 2023

S&P Global Ratings: RatingsDirect: Australia and New Zealand Banking Group Limited, 6 March 2023

Fitch:

FitchRatings: Macquarie Bank Limited, 20 May 2022

FitchRatings : Bank Rating Criteria, 8 September 2022

FitchRatings: Bendigo and Adelaide Bank Limited, 23 November 2022

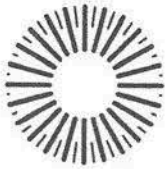
FitchRatings: Suncorp-Metway Ltd, 29 November 2022

FitchRatings: Commonwealth Bank of Australia, 23 March 2023

FitchRatings: Westpac Banking Corporation, 27 March 2023

FitchRatings: Australia and New Zealand Banking Group Limited, 30 March 2023

FitchRatings: National Australia Bank Limited, 4 April 2023



HERBERT
SMITH
FREEHILLS

Dr David Howell
Kanangra Ratings Advisory Services
GPO Box 1532
Sydney, NSW, 2001
Australia

14 April 2023
Matter 82730813
By Email

Dear Dr Howell

Expert retainer letter - ANZ proposed acquisition of Suncorp Bank

1 Introduction

We act for Suncorp Group Limited (**Suncorp Group**) in respect of the proposed sale of SGBH Limited, the holding company for Suncorp Bank, to Australia and New Zealand Banking Group Limited (**ANZ**) (**Proposed Acquisition**). As a result of the Proposed Acquisition, Suncorp Bank will become a wholly owned subsidiary of ANZ.

On behalf of Suncorp Group we are instructed to seek expert opinion, in the form of a written report, in connection with the application to the Australian Competition and Consumer Commission (**ACCC**) for merger authorisation for the Proposed Transaction.

This letter sets out the instructions for the preparation of your expert report.

2 Background

ANZ has submitted an application for merger authorisation of the Proposed Acquisition to the ACCC (**Authorisation Application**). In making its decision, the ACCC will consider a range of factors including the likely hypothetical alternative to the Proposed Acquisition (the **Counterfactual**).

The Counterfactual put by the parties is that absent the Proposed Acquisition, Suncorp Group would continue to hold Suncorp Bank.

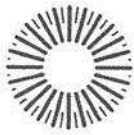
In its submission to the ACCC dated 3 March 2023 and published on the ACCC's public register on 24 March 2023, Bendigo and Adelaide Bank (**BEN**), posits an alternative counterfactual of a regional merger between BEN and Suncorp Bank. BEN submits that this would likely result in a credit rating uplift through the increased scale and revenue base it would gain through acquiring Suncorp Bank, which would reduce its wholesale funding costs and improve access to funding markets, thereby enhancing its ability to challenge the Major Banks on pricing.

3 Your instructions

You are instructed to prepare an expert report (**Expert Report**) giving your expert opinion on the following matters:

- (a) **Question 1** - Having regard to the methodology adopted by ratings agencies S&P, Moody's and Fitch, please could you provide an opinion on the likely issuer rating for a hypothetical combination of Suncorp Bank and Bendigo and Adelaide Bank. For this purpose, you should assume a demerger from Suncorp Group Limited of Suncorp Bank and that Suncorp Bank would be acquired by Bendigo and Adelaide Bank (**Hypothetical Expanded Bendigo**).

Doc 104450686



- (b) **Question 2** - In preparing your opinion and having regard to the key elements of the ratings methodologies of each of the ratings agencies, please could you indicate how the Hypothetical Expanded Bendigo compares with the issuer credit ratings issued by ratings agencies S&P, Moody's and Fitch, for each of CBA, Westpac, NAB, ANZ, Macquarie, Suncorp Bank and BEN.

We include a short guide for the preparation of your expert report as Attachment 2 to this letter.

4 **Documents provided to you**

For the purposes of preparing your Expert Report, we have provided you with copies of the documents described in and enclosed with Attachment 3 to this letter. The documents at Tabs 2 to 5 are confidential to Suncorp Group.

5 **Expert witness code of conduct**

Your Expert Report may be submitted to the ACCC as part of the Authorisation Application and may be made available to the Australian Competition Tribunal and Federal Court of Australia in any subsequent reviews and appeals of the ACCC's determination.

Your retainer is governed by the Federal Court's Expert Evidence Practice Note (GPN-EXPT) (**Practice Note**). A copy of the Harmonised Expert Witness Code of Conduct (Annexure A to the Practice Note) is attached as Attachment 1 to this letter (**Code**). You should fulfil the duties and responsibilities set out in the Code in undertaking your work and preparing for the presentation of evidence that you may ultimately be required to give.

6 **Confidentiality**

Your independent expert report and any drafts prepared in accordance with your retainer are confidential and are not to be copied or used for any purpose unrelated to the Proposed Acquisition without our permission.

Material supplied to you by Herbert Smith Freehills is confidential and is not to be copied or used for any purpose unrelated to your retainer without our permission. As appropriate, you must:

- (a) keep all Suncorp Bank and Suncorp Group documents and information you receive secret and confidential at all times, unless those documents or information are publicly available (**Suncorp Confidential Information**);
- (b) only use Suncorp Confidential Information for the purposes of your expert report;
- (c) as required, only disclose Suncorp Confidential Information in a form that is aggregated and does not disclose the granular detail;
- (d) ensure that your report is clearly marked confidential;
- (e) not disclose, directly or indirectly, any Suncorp Confidential Information to any person other than Herbert Smith Freehills, unless you have prior consent from Herbert Smith Freehills;
- (f) not use the Suncorp Confidential Information other than for the purpose of carrying out your engagement in accordance with Herbert Smith Freehills' instructions;



- (g) only disclose Suncorp Confidential Information to your employees or contractors who need to know the same for the purposes of your engagement and with the prior written permission of Herbert Smith Freehills, and ensure that each such person makes the same acknowledgement, agrees to comply with, this confidentiality undertaking; and
- (h) if required, return all documents, copies and workings at the conclusion or termination of your retainer.

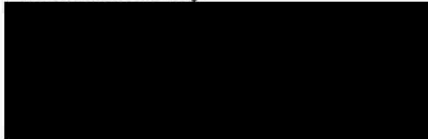
To the extent your expert report refers to information set out in any of the documents enclosed with Attachment 3 which are marked as confidential, please:

- (a) include the words "RESTRICTION OF PUBLICATION CLAIMED" in the header of each page of your report; and
- (b) highlight any information confidential to Suncorp in blue. We may provide you with further instructions as to the specific material in your expert report that should be highlighted confidential, once prepared.

7 Communications

All communications, whether verbal or written, should be directed to Linda Evans or Stephanie Panayi.

Yours sincerely



Linda Evans
Partner
Herbert Smith Freehills



Stephanie Panayi
Special Counsel
Herbert Smith Freehills



Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership ABN 98 773 882 646, are separate member firms of the international legal practice known as Herbert Smith Freehills.

date 17th April 2023

sign here ▶

name of expert DAVID JOHN HOWELL



Attachment 1

Harmonised Expert Witness Code of Conduct Federal Court of Australia

Application of Code

- 1 This Code of Conduct applies to any expert witness engaged or appointed:
 - (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or
 - (b) to give opinion evidence in proceedings or proposed proceedings.

General Duties to the Court

- 2 An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

Content of Report

- 3 Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:
 - (a) the name and address of the expert;
 - (b) an acknowledgement that the expert has read this code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];
 - (e) the reasons for and any literature or other materials utilised in support of such opinion;
 - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
 - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;
 - (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
 - (j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;



- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and
- (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

Supplementary Report Following Change of Opinion

- 4 Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.
- 5 In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

Duty to Comply with the Court's Directions

- 6 If directed to do so by the Court, an expert witness shall:
 - (a) confer with any other expert witness;
 - (b) provide the Court with a joint-report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and
 - (c) abide in a timely way by any direction of the Court.

Conference of Experts

- 7 Each expert witness shall:
 - (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and
 - (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.



Attachment 2

Preparation of your expert report

1 Introduction

Your introduction should contain the following information:

- (a) Your name and (business) address.
- (b) An acknowledgement of having read the Expert Evidence Practice Note (GPN-EXPT) (and having agreed to abide by it) and a reference to the appendix or Attachment in which it can be found.
- (c) A summary of your qualifications and experience (or reference to the appropriate paragraph in a statement you have previously provided).
- (d) The scope of your assignment, including:
 - (1) the questions you have been asked;
 - (2) the assumptions (if any) you have been asked to make; and
 - (3) reference to the appendices or attachments in which these are set out.
- (e) A list of people who have assisted you in the preparation of your report, including their qualifications and the roles they played.
- (f) Reference to the appendices or attachments setting out the lists of documents you have relied on, and been supplied with.
- (g) An acknowledgement that your opinions are based wholly or substantially on specialised knowledge arising from your training, study or experience.

2 Summary of opinions

In the case of reports where a number of opinions have been expressed, a summary of your opinions should appear between the introduction and body of the report.

3 Formalities

Each paragraph of the report should be numbered, the pages should be numbered and the report should be in double spacing.

In the course of providing your opinion, you should ensure that you state, specify or provide:

- (a) the assumptions and the material facts on which each opinion expressed in your report is based;
- (b) the reasons for and any literature or other materials utilised in support of each opinion;
- (c) any examinations, tests or other investigations on which you have relied, identifying the person who carried them out and that person's qualifications;
- (d) the extent to which any opinion which you have expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;



- (e) a declaration that you have made all the inquiries which you believe are desirable and appropriate (save for any matters identified explicitly in your report), and that no matters of significance which you regard as relevant have, to your knowledge, been withheld;
- (f) any qualifications on an opinion expressed in your report without which your report is or may be incomplete or inaccurate; and
- (g) whether any opinion expressed in your report is not a concluded opinion because of insufficient research or insufficient data or for any other reason;

If you are unable to provide an opinion because a particular question, issue or matter falls outside your field of expertise, then you must also expressly acknowledge that in your report.

4 Appendices or attachments

As a minimum, your report must have the following appendices or attachments:

- (a) Your curriculum vitae (if this is your first report).
- (b) The question(s) supplied by Herbert Smith Freehills which you answered in your report.
- (c) The documents that record any instructions given to you by Herbert Smith Freehills.
- (d) The assumptions (if any) you were asked to make for the purposes of preparing your report.
- (e) A list of documents and other materials that you have been instructed to consider or on which you have relied upon for the purposes of preparing your report.
- (f) A list of documents supplied to you by Herbert Smith Freehills.
- (g) A copy of the Expert Evidence Practice Note (GPN-EXPT) (this will be provided to you by Herbert Smith Freehills).

5 Checking the report

- (a) **Expert Evidence Practice Note (GPN-EXPT) and Harmonised Expert Witness Code of Conduct contained in Attachment 1**
Ensure you have read and are familiar with this document, including its annexures.
- (b) **Paragraph numbering and cross referencing**
Check the paragraph and table/figure numbering is sequential and that cross referencing is accurate.
- (c) **Footnote**
Check footnotes are on the same page as the paragraphs to which they refer.
Check every document referred to in a footnote is in the list of documents relied upon in the appendices.
- (d) **Documents relied upon**
Check every document referred to in the report is in the list of documents relied upon in the appendices.

Prepare a copy of every document relied upon in your report for sending to Herbert Smith Freehills when your report is filed. In the case of journal articles, internet printouts, media reports, statistics etc, copies of the entire document



are required. In the case of text books or other large publications, a copy of the front cover, title page, page showing publication details including edition and year of publication, and entirety of any chapter containing material referred to are required.

(e) **Signing off on your report**

When your report is fully completed you must ensure that the last page of the body of the report (ie before any appendices, exhibits or attachments) is signed and dated. There is no requirement that the signature be witnessed.

(f) **Statement and exhibit**

You may be asked to complete an affidavit or witness statement to which your expert report will be exhibited, so that your report may be put into evidence. If so, Herbert Smith Freehills will provide a draft and further instructions on finalising the affidavit or witness statement.



Attachment 3

Index

Tab	Document	Date
1	Bendigo and Adelaide Bank submission to the ACCC, including: <ul style="list-style-type: none">• statement of Mr Cameron Stewart (Annexure 1)• statement of Professor Stephen P King (Annexure 2)	3 March 2023 (published on the ACCC's public register on 24 March 2023)
2	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]

David J. Howell FAICD, CFTP

M:
E:

CAREER SUMMARY

Initial degrees, including PhD in geology, followed work in Australia and USA, progressing to financial evaluation of mining industry acquisition targets. Returned to Australia in 1986 and joined Westpac's project finance team. Started, built and successfully ran the project finance team at NatWest Australia, followed by three years in New York running the debt markets area of NatWest. After two years in London assisting dismantling NatWest Markets and gaining experience in private equity and advice, returned to Australia to start NAB's project advisory team. After a short time at NAB spent six years with Moody's Investors Service, as a senior analyst specializing in project finance and infrastructure – airports, power and toll roads, senior analyst for all Australian and New Zealand rated energy networks. Also responsible for some major Australian and New Zealand corporates – Qantas, Air New Zealand, Mighty River Power, Babcock & Brown Infrastructure and AWB.

In May 2008, resigned from Moody's to start up Kanangra Ratings Advisory Services focusing on advising corporates on relations with rating agencies. Since then has advised companies including Fortescue Metals, ElectraNet, Qantas, Caltex, Powercor, Reliance Rail, APA Group, APLNG, NCIG and Adelaide Airport on debt and ratings related issues. From 2010 have been a consultant to CitiGroup.

On the Board of River City Motorway from July 2010 until February 2011 and Waterloo Wind Farm from June 2013 until December 2017. Chairman of Waterloo Wind Farm and associated companies from March 2016 to June 2018. An independent member of the Investment Committee of Palisade Partners, an Australian infrastructure equity investor, from 2009 to 2019.

From 2015 to 2020 a joint founding director of Aleron Advisory Group, to advice corporates globally on ratings and other debt structuring issues. Clients were Virgin Australia, Kingfisher plc and IATA.

A Fellow of the Australian Institute of Company Directors and a Certified Treasury and Financial Professional in the Finance and Treasury Association.

DETAILED CAREER HISTORY

5/2008 - Current

Kanangra Ratings Advisory Services
Director

Providing ratings advice to corporates.

- Clients include Fortescue Metals Group, Kapstream Capital, Adelaide Airport Limited, Watercare Services Limited, Reliance Rail, ElectraNet, Origin Energy, Qantas, Sydney Water Corporation, Caltex, Boral, Fonterra, APLNG, and NCIG
- Contract with Citi Group advising bankers on credit rating implications of transactions – obtaining initial ratings, managing rating through capital management issues, acquisitions, divestments, and annual rating management

4/2002 – 5/2008

Moody's Investors Service
 Global Credit Ratings Agency
Vice President/Senior Analyst

- Responsible for a variety of Australian and New Zealand credits
- Specialised in project finance and infrastructure – airports, power and toll roads
- Additional major credits are Qantas, Air New Zealand, and AWB.
- Two UK PPP credits assessed in 2003 – road and troup garrison

2/2000 – 10/2001

National Australia Bank
 Australia's largest financial institution
Head of Project Advisory

Establishing and running the Project Advisory business within Project and Structured Finance Division

- Built team from one to eight people
- Championed equity investments and received internal approval for two major equity investments
- Raised more than \$150m equity from institutional equity as co-investors with National
- Led marketing, equity aspects of advisory deals
- Established business parameters
- Built client base – repeat clients
- Executed successful transactions

9/1998 – 2/2000

Ecofin Limited
 London-based Boutique Corporate Advisor
Member of small advisory team

- Advised on the sale and capital restructure of MicroBio Limited, a \$30m agricultural biotech company to Becker Underwood, a major US seed

company

- Advised on sale of Europa Limited a kit aircraft manufacturer to Cobham Plc
- Advisor to Total Waste Management, a proposed toxic waste incinerator in Ireland

12/1997 – 9/1998

NatWest Markets, London

Major UK Investment Bank

Managing Director – Balance Sheet Management

- Closed Australian business of NatWest Markets after sale to Salomon Smith Barney
- Lead team in winding down of Asian lending book
- Implemented risk adjusted capital models

5/1996 – 12/1997

NatWest Markets, New York

Largest UK investment bank in North America

Managing Director, Global Debt Markets

- Direction of 22 relationship managers servicing a group of 250 major US/Canadian corporates, marketing all products of NatWest Markets
- Restructure of relationship managers into industry groups
- Closed Chicago and Los Angeles offices, with no resulting human resource issues
- Refocus of all New York based debt product groups of NatWest Markets – private placements, debt structuring, public finance, leasing, project finance, project advisory and trade finance
- Design of new performance targeting, assessment and reward system for relationship managers
- Senior marketing executive for major US/Canadian clients

3/1995 – 5/1996

NatWest Markets, New York

Senior Vice President, Project Finance

- Leadership of team of 6 pursuing project finance advisory mandates in North America
- Led marketing, negotiation and execution of mandates across a range of industries
- Refocus and broaden team into mining and water privatisation
- Successful mandates in power, mining and waste water privatisation

8/1990 – 3/1995

NatWest Markets Australia, Sydney

Major full service foreign investment bank

Head of Corporate Banking and Project Finance

- Built project finance team from one to seven people
- Restructure team of bankers to maximise balance sheet efficiency
- No loan losses
- Responsible for cross-product marketing
- Led marketing, negotiation, execution, and syndication of project finance lending business
- Innovating financing of hospitals, water treatments plants, hydro-electric plants, tollroads and thermal power stations

4/1989 – 8/1990

HongKong Bank of Australia

Associate Director, Wardley James Capel Corporate Finance

- Corporate advisory and project advisory team member
- Executed equity raising for North Kalgurli Mines
- Project financed Minproc's sodium cyanide plant, Gladstone
- Advisor on restructure of Bond International Gold

8/1986 – 4/1989

Westpac Banking Corporation

Major Australian trading bank

Manager and Associate Director, Westpac project & Advisory Services

- Leader of resources marketing and execution team
- Marketed, mandated and executed gold, iron ore, base metals, mineral sands and coal financings
- Marketing of other Westpac products to client base

12/1980 – 6/1986

Exxon Corporation, Houston

Exploration Geologist, Development Coordinator and Senior Planning Advisor

- Economic analysis of US coal industry for price forecasting purposes and for acquisition
- Responsible for Exxon's US coal, oil shale and tar sands reserves
- Technical consultant to geological team

EDUCATION

1973:

Bachelor of Science - Geology: University of Sydney

1978:

Master of Science: University of South Carolina

1980:

Doctor of Philosophy: University of South Carolina

1986:

Corporate Finance Course, Macquarie University

2006:

Graduate of AICD Company Directors Course

PERSONAL DETAILS

DoB:

22 February 1952

Sports:

Bush walking, Gardening

Marital Status:

Married, No children.

Volunteer Activity:

Board Member of The Song Company (2001-2004) ,
President of Mt Wilson Rural Fire Service (2004 – 2021),
Senior Deputy Captain (2021 -),
Fellow of Royal Geographic Society,
Fellow of the Australian Institute of Company Directors
Warden and Treasurer of the St Georges Anglican Church Mt
Wilson (2019-)



EXPERT EVIDENCE PRACTICE NOTE (GPN-EXPT)

General Practice Note

1. INTRODUCTION

- 1.1 This practice note, including the *Harmonised Expert Witness Code of Conduct* (“**Code**”) (see **Annexure A**) and the *Concurrent Expert Evidence Guidelines* (“**Concurrent Evidence Guidelines**”) (see **Annexure B**), applies to any proceeding involving the use of expert evidence and must be read together with:
- (a) the Central Practice Note (CPN-1), which sets out the fundamental principles concerning the National Court Framework (“**NCF**”) of the Federal Court and key principles of case management procedure;
 - (b) the Federal Court of Australia Act 1976 (Cth) (“**Federal Court Act**”);
 - (c) the *Evidence Act 1995* (Cth) (“**Evidence Act**”), including Part 3.3 of the Evidence Act;
 - (d) Part 23 of the *Federal Court Rules 2011* (Cth) (“**Federal Court Rules**”); and
 - (e) where applicable, the Survey Evidence Practice Note (GPN-SURV).
- 1.2 This practice note takes effect from the date it is issued and, to the extent practicable, applies to proceedings whether filed before, or after, the date of issuing.

2. APPROACH TO EXPERT EVIDENCE

- 2.1 An expert witness may be retained to give opinion evidence in the proceeding, or, in certain circumstances, to express an opinion that may be relied upon in alternative dispute resolution procedures such as mediation or a conference of experts. In some circumstances an expert may be appointed as an independent adviser to the Court.
- 2.2 The purpose of the use of expert evidence in proceedings, often in relation to complex subject matter, is for the Court to receive the benefit of the objective and impartial assessment of an issue from a witness with specialised knowledge (based on training, study or experience - see generally s 79 of the *Evidence Act*).
- 2.3 However, the use or admissibility of expert evidence remains subject to the overriding requirements that:
- (a) to be admissible in a proceeding, any such evidence must be relevant (s 56 of the *Evidence Act*); and
 - (b) even if relevant, any such evidence, may be refused to be admitted by the Court if its probative value is outweighed by other considerations such as the evidence

being unfairly prejudicial, misleading or will result in an undue waste of time (s 135 of the Evidence Act).

- 2.4 An expert witness' opinion evidence may have little or no value unless the assumptions adopted by the expert (ie. the facts or grounds relied upon) and his or her reasoning are expressly stated in any written report or oral evidence given.
- 2.5 The Court will ensure that, in the interests of justice, parties are given a reasonable opportunity to adduce and test relevant expert opinion evidence. However, the Court expects parties and any legal representatives acting on their behalf, when dealing with expert witnesses and expert evidence, to at all times comply with their duties associated with the overarching purpose in the Federal Court Act (see ss 37M and 37N).

3. INTERACTION WITH EXPERT WITNESSES

- 3.1 Parties and their legal representatives should never view an expert witness retained (or partly retained) by them as that party's advocate or "hired gun". Equally, they should never attempt to pressure or influence an expert into conforming his or her views with the party's interests.
- 3.2 A party or legal representative should be cautious not to have inappropriate communications when retaining or instructing an independent expert, or assisting an independent expert in the preparation of his or her evidence. However, it is important to note that there is no principle of law or practice and there is nothing in this practice note that obliges a party to embark on the costly task of engaging a "consulting expert" in order to avoid "contamination" of the expert who will give evidence. Indeed the Court would generally discourage such costly duplication.
- 3.3 Any witness retained by a party for the purpose of preparing a report or giving evidence in a proceeding as to an opinion held by the witness that is wholly or substantially based in the specialised knowledge of the witness¹ should, at the earliest opportunity, be provided with:
 - (a) a copy of this practice note, including the Code (see Annexure A); and
 - (b) all relevant information (whether helpful or harmful to that party's case) so as to enable the expert to prepare a report of a truly independent nature.
- 3.4 Any questions or assumptions provided to an expert should be provided in an unbiased manner and in such a way that the expert is not confined to addressing selective, irrelevant or immaterial issues.

¹ Such a witness includes a "Court expert" as defined in r 23.01 of the Federal Court Rules. For the definition of "expert", "expert evidence" and "expert report" see the Dictionary, in Schedule 1 of the Federal Court Rules.

4. ROLE AND DUTIES OF THE EXPERT WITNESS

- 4.1 The role of the expert witness is to provide relevant and impartial evidence in his or her area of expertise. An expert should never mislead the Court or become an advocate for the cause of the party that has retained the expert.
- 4.2 It should be emphasised that there is nothing inherently wrong with experts disagreeing or failing to reach the same conclusion. The Court will, with the assistance of the evidence of the experts, reach its own conclusion.
- 4.3 However, experts should willingly be prepared to change their opinion or make concessions when it is necessary or appropriate to do so, even if doing so would be contrary to any previously held or expressed view of that expert.

Harmonised Expert Witness Code of Conduct

- 4.4 Every expert witness giving evidence in this Court must read the *Harmonised Expert Witness Code of Conduct* (attached in Annexure A) and agree to be bound by it.
- 4.5 The Code is not intended to address all aspects of an expert witness' duties, but is intended to facilitate the admission of opinion evidence, and to assist experts to understand in general terms what the Court expects of them. Additionally, it is expected that compliance with the Code will assist individual expert witnesses to avoid criticism (rightly or wrongly) that they lack objectivity or are partisan.

5. CONTENTS OF AN EXPERT'S REPORT AND RELATED MATERIAL

- 5.1 The contents of an expert's report must conform with the requirements set out in the Code (including clauses 3 to 5 of the Code).
- 5.2 In addition, the contents of such a report must also comply with r 23.13 of the Federal Court Rules. Given that the requirements of that rule significantly overlap with the requirements in the Code, an expert, unless otherwise directed by the Court, will be taken to have complied with the requirements of r 23.13 if that expert has complied with the requirements in the Code and has complied with the additional following requirements. The expert shall:
 - (a) acknowledge in the report that:
 - (i) the expert has read and complied with this practice note and agrees to be bound by it; and
 - (ii) the expert's opinions are based wholly or substantially on specialised knowledge arising from the expert's training, study or experience;
 - (b) identify in the report the questions that the expert was asked to address;
 - (c) sign the report and attach or exhibit to it copies of:
 - (i) documents that record any instructions given to the expert; and

- (ii) documents and other materials that the expert has been instructed to consider.

5.3 Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the other parties at the same time as the expert's report.

6. CASE MANAGEMENT CONSIDERATIONS

6.1 Parties intending to rely on expert evidence at trial are expected to consider between them and inform the Court at the earliest opportunity of their views on the following:

- (a) whether a party should adduce evidence from more than one expert in any single discipline;
- (b) whether a common expert is appropriate for all or any part of the evidence;
- (c) the nature and extent of expert reports, including any in reply;
- (d) the identity of each expert witness that a party intends to call, their area(s) of expertise and availability during the proposed hearing;
- (e) the issues that it is proposed each expert will address;
- (f) the arrangements for a conference of experts to prepare a joint-report (see Part 7 of this practice note);
- (g) whether the evidence is to be given concurrently and, if so, how (see Part 8 of this practice note); and
- (h) whether any of the evidence in chief can be given orally.

6.2 It will often be desirable, before any expert is retained, for the parties to attempt to agree on the question or questions proposed to be the subject of expert evidence as well as the relevant facts and assumptions. The Court may make orders to that effect where it considers it appropriate to do so.

7. CONFERENCE OF EXPERTS AND JOINT-REPORT

7.1 Parties, their legal representatives and experts should be familiar with aspects of the Code relating to conferences of experts and joint-reports (see clauses 6 and 7 of the Code attached in Annexure A).

7.2 In order to facilitate the proper understanding of issues arising in expert evidence and to manage expert evidence in accordance with the overarching purpose, the Court may require experts who are to give evidence or who have produced reports to meet for the purpose of identifying and addressing the issues not agreed between them with a view to reaching agreement where this is possible ("**conference of experts**"). In an appropriate case, the Court may appoint a registrar of the Court or some other suitably qualified person ("**Conference Facilitator**") to act as a facilitator at the conference of experts.

- 7.3 It is expected that where expert evidence may be relied on in any proceeding, at the earliest opportunity, parties will discuss and then inform the Court whether a conference of experts and/or a joint-report by the experts may be desirable to assist with or simplify the giving of expert evidence in the proceeding. The parties should discuss the necessary arrangements for any conference and/or joint-report. The arrangements discussed between the parties should address:
- (a) who should prepare any joint-report;
 - (b) whether a list of issues is needed to assist the experts in the conference and, if so, whether the Court, the parties or the experts should assist in preparing such a list;
 - (c) the agenda for the conference of experts; and
 - (d) arrangements for the provision, to the parties and the Court, of any joint-report or any other report as to the outcomes of the conference (“**conference report**”).

Conference of Experts

- 7.4 The purpose of the conference of experts is for the experts to have a comprehensive discussion of issues relating to their field of expertise, with a view to identifying matters and issues in a proceeding about which the experts agree, partly agree or disagree and why. For this reason the conference is attended only by the experts and any Conference Facilitator. Unless the Court orders otherwise, the parties' lawyers will not attend the conference but will be provided with a copy of any conference report.
- 7.5 The Court may order that a conference of experts occur in a variety of circumstances, depending on the views of the judge and the parties and the needs of the case, including:
- (a) while a case is in mediation. When this occurs the Court may also order that the outcome of the conference or any document disclosing or summarising the experts' opinions be confidential to the parties while the mediation is occurring;
 - (b) before the experts have reached a final opinion on a relevant question or the facts involved in a case. When this occurs the Court may order that the parties exchange draft expert reports and that a conference report be prepared for the use of the experts in finalising their reports;
 - (c) after the experts' reports have been provided to the Court but before the hearing of the experts' evidence. When this occurs the Court may also order that a conference report be prepared (jointly or otherwise) to ensure the efficient hearing of the experts' evidence.
- 7.6 Subject to any other order or direction of the Court, the parties and their lawyers must not involve themselves in the conference of experts process. In particular, they must not seek to encourage an expert not to agree with another expert or otherwise seek to influence the outcome of the conference of experts. The experts should raise any queries they may have in relation to the process with the Conference Facilitator (if one has been appointed) or in

accordance with a protocol agreed between the lawyers prior to the conference of experts taking place (if no Conference Facilitator has been appointed).

- 7.7 Any list of issues prepared for the consideration of the experts as part of the conference of experts process should be prepared using non-tendentious language.
- 7.8 The timing and location of the conference of experts will be decided by the judge or a registrar who will take into account the location and availability of the experts and the Court's case management timetable. The conference may take place at the Court and will usually be conducted in-person. However, if not considered a hindrance to the process, the conference may also be conducted with the assistance of visual or audio technology (such as via the internet, video link and/or by telephone).
- 7.9 Experts should prepare for a conference of experts by ensuring that they are familiar with all of the material upon which they base their opinions. Where expert reports in draft or final form have been exchanged prior to the conference, experts should attend the conference familiar with the reports of the other experts. Prior to the conference, experts should also consider where they believe the differences of opinion lie between them and what processes and discussions may assist to identify and refine those areas of difference.

Joint-report

- 7.10 At the conclusion of the conference of experts, unless the Court considers it unnecessary to do so, it is expected that the experts will have narrowed the issues in respect of which they agree, partly agree or disagree in a joint-report. The joint-report should be clear, plain and concise and should summarise the views of the experts on the identified issues, including a succinct explanation for any differences of opinion, and otherwise be structured in the manner requested by the judge or registrar.
- 7.11 In some cases (and most particularly in some native title cases), depending on the nature, volume and complexity of the expert evidence a judge may direct a registrar to draft part, or all, of a conference report. If so, the registrar will usually provide the draft conference report to the relevant experts and seek their confirmation that the conference report accurately reflects the opinions of the experts expressed at the conference. Once that confirmation has been received the registrar will finalise the conference report and provide it to the intended recipient(s).

8. CONCURRENT EXPERT EVIDENCE

- 8.1 The Court may determine that it is appropriate, depending on the nature of the expert evidence and the proceeding generally, for experts to give some or all of their evidence concurrently at the final (or other) hearing.
- 8.2 Parties should familiarise themselves with the *Concurrent Expert Evidence Guidelines* (attached in Annexure B). The Concurrent Evidence Guidelines are not intended to be exhaustive but indicate the circumstances when the Court might consider it appropriate for

concurrent expert evidence to take place, outline how that process may be undertaken, and assist experts to understand in general terms what the Court expects of them.

- 8.3 If an order is made for concurrent expert evidence to be given at a hearing, any expert to give such evidence should be provided with the Concurrent Evidence Guidelines well in advance of the hearing and should be familiar with those guidelines before giving evidence.

9. FURTHER PRACTICE INFORMATION AND RESOURCES

- 9.1 Further information regarding Expert Evidence and Expert Witnesses is available on the Court's website.
- 9.2 Further information to assist litigants, including a range of helpful guides, is also available on the Court's website. This information may be particularly helpful for litigants who are representing themselves.

J L B ALLSOP
Chief Justice
25 October 2016

Annexure A

HARMONISED EXPERT WITNESS CODE OF CONDUCT²

APPLICATION OF CODE

1. This Code of Conduct applies to any expert witness engaged or appointed:
 - (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or
 - (b) to give opinion evidence in proceedings or proposed proceedings.

GENERAL DUTIES TO THE COURT

2. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

CONTENT OF REPORT

3. Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:
 - (a) the name and address of the expert;
 - (b) an acknowledgment that the expert has read this code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];
 - (e) the reasons for and any literature or other materials utilised in support of such opinion;
 - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
 - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;
 - (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the

² Approved by the Council of Chief Justices' Rules Harmonisation Committee

- knowledge of the expert, been withheld from the Court;
- (j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
 - (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and
 - (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

SUPPLEMENTARY REPORT FOLLOWING CHANGE OF OPINION

- 4. Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.
- 5. In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

DUTY TO COMPLY WITH THE COURT'S DIRECTIONS

- 6. If directed to do so by the Court, an expert witness shall:
 - (a) confer with any other expert witness;
 - (b) provide the Court with a joint-report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and
 - (c) abide in a timely way by any direction of the Court.

CONFERENCE OF EXPERTS

- 7. Each expert witness shall:
 - (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and
 - (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

ANNEXURE B

CONCURRENT EXPERT EVIDENCE GUIDELINES

APPLICATION OF THE COURT'S GUIDELINES

1. The Court's Concurrent Expert Evidence Guidelines ("**Concurrent Evidence Guidelines**") are intended to inform parties, practitioners and experts of the Court's general approach to concurrent expert evidence, the circumstances in which the Court might consider expert witnesses giving evidence concurrently and, if so, the procedures by which their evidence may be taken.

OBJECTIVES OF CONCURRENT EXPERT EVIDENCE TECHNIQUE

2. The use of concurrent evidence for the giving of expert evidence at hearings as a case management technique³ will be utilised by the Court in appropriate circumstances (see r 23.15 of the *Federal Court Rules 2011* (Cth)). Not all cases will suit the process. For instance, in some patent cases, where the entire case revolves around conflicts within fields of expertise, concurrent evidence may not assist a judge. However, patent cases should not be excluded from concurrent expert evidence processes.
3. In many cases the use of concurrent expert evidence is a technique that can reduce the partisan or confrontational nature of conventional hearing processes and minimises the risk that experts become "opposing experts" rather than independent experts assisting the Court. It can elicit more precise and accurate expert evidence with greater input and assistance from the experts themselves.
4. When properly and flexibly applied, with efficiency and discipline during the hearing process, the technique may also allow the experts to more effectively focus on the critical points of disagreement between them, identify or resolve those issues more quickly, and narrow the issues in dispute. This can also allow for the key evidence to be given at the same time (rather than being spread across many days of hearing); permit the judge to assess an expert more readily, whilst allowing each party a genuine opportunity to put and test expert evidence. This can reduce the chance of the experts, lawyers and the judge misunderstanding the opinions being expressed by the experts.
5. It is essential that such a process has the full cooperation and support of all of the individuals involved, including the experts and counsel involved in the questioning process. Without that cooperation and support the process may fail in its objectives and even hinder the case management process.

³ Also known as the "hot tub" or as "expert panels".

CASE MANAGEMENT

6. Parties should expect that, the Court will give careful consideration to whether concurrent evidence is appropriate in circumstances where there is more than one expert witness having the same expertise who is to give evidence on the same or related topics. Whether experts should give evidence concurrently is a matter for the Court, and will depend on the circumstances of each individual case, including the character of the proceeding, the nature of the expert evidence, and the views of the parties.
7. Although this consideration may take place at any time, including the commencement of the hearing, if not raised earlier, parties should raise the issue of concurrent evidence at the first appropriate case management hearing, and no later than any pre-trial case management hearing, so that orders can be made in advance, if necessary. To that end, prior to the hearing at which expert evidence may be given concurrently, parties and their lawyers should confer and give general consideration as to:
 - (a) the agenda;
 - (b) the order and manner in which questions will be asked; and
 - (c) whether cross-examination will take place within the context of the concurrent evidence or after its conclusion.
8. At the same time, and before any hearing date is fixed, the identity of all experts proposed to be called and their areas of expertise is to be notified to the Court by all parties.
9. The lack of any concurrent evidence orders does not mean that the Court will not consider using concurrent evidence without prior notice to the parties, if appropriate.

CONFERENCE OF EXPERTS & JOINT-REPORT OR LIST OF ISSUES

10. The process of giving concurrent evidence at hearings may be assisted by the preparation of a joint-report or list of issues prepared as part of a conference of experts.
11. Parties should expect that, where concurrent evidence is appropriate, the Court may make orders requiring a conference of experts to take place or for documents such as a joint-report to be prepared to facilitate the concurrent expert evidence process at a hearing (see Part 7 of the Expert Evidence Practice Note).

PROCEDURE AT HEARING

12. Concurrent expert evidence may be taken at any convenient time during the hearing, although it will often occur at the conclusion of both parties' lay evidence.
13. At the hearing itself, the way in which concurrent expert evidence is taken must be applied flexibly and having regard to the characteristics of the case and the nature of the evidence to be given.
14. Without intending to be prescriptive of the procedure, parties should expect that, when evidence is given by experts in concurrent session:

- (a) the judge will explain to the experts the procedure that will be followed and that the nature of the process may be different to their previous experiences of giving expert evidence;
- (b) the experts will be grouped and called to give evidence together in their respective fields of expertise;
- (c) the experts will take the oath or affirmation together, as appropriate;
- (d) the experts will sit together with convenient access to their materials for their ease of reference, either in the witness box or in some other location in the courtroom, including (if necessary) at the bar table;
- (e) each expert may be given the opportunity to provide a summary overview of their current opinions and explain what they consider to be the principal issues of disagreement between the experts, as they see them, in their own words;
- (f) the judge will guide the process by which evidence is given, including, where appropriate:
 - (i) using any joint-report or list of issues as a guide for all the experts to be asked questions by the judge and counsel, about each issue on an issue-by-issue basis;
 - (ii) ensuring that each expert is given an adequate opportunity to deal with each issue and the exposition given by other experts including, where considered appropriate, each expert asking questions of other experts or supplementing the evidence given by other experts;
 - (iii) inviting legal representatives to identify the topics upon which they will cross-examine;
 - (iv) ensuring that legal representatives have an adequate opportunity to ask all experts questions about each issue. Legal representatives may also seek responses or contributions from one or more experts in response to the evidence given by a different expert; and
 - (v) allowing the experts an opportunity to summarise their views at the end of the process where opinions may have been changed or clarifications are needed.

15. The fact that the experts may have been provided with a list of issues for consideration does not confine the scope of any cross-examination of any expert. The process of cross-examination remains subject to the overall control of the judge.

16. The concurrent session should allow for a sensible and orderly series of exchanges between expert and expert, and between expert and lawyer. Where appropriate, the judge may allow for more traditional cross-examination to be pursued by a legal representative on a particular issue exclusively with one expert. Where that occurs, other experts may be asked to comment on the evidence given.

17. Where any issue involves only one expert, the party wishing to ask questions about that issue should let the judge know in advance so that consideration can be given to whether

arrangements should be made for that issue to be dealt with after the completion of the concurrent session. Otherwise, as far as practicable, questions (including in the form of cross-examination) will usually be dealt with in the concurrent session.

18. Throughout the concurrent evidence process the judge will ensure that the process is fair and effective (for the parties and the experts), balanced (including not permitting one expert to overwhelm or overshadow any other expert), and does not become a protracted or inefficient process.