

## Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

### Commonwealth Bank of Australia and its Australian associated entities (CBA)

#### Agribusiness Lending

18 May 2018

1. CBA provides the following response to the letter from Mr Simon Daley dated 11 May 2018 (**Agribusiness Lending Letter**) that requested further information in relation to lending for agribusiness purposes. This response also covers Bankwest, a business unit of CBA. Unless otherwise specified, references in these submissions to CBA include Bankwest.
2. The Commissioner's letter of 15 December 2017 sought details as to both misconduct and conduct considered to fall below community standards and expectations. The Commissioner's letter of 2 February 2018 requested more specific information in respect of misconduct only. CBA has provided responses to those letters on 29 January 2018, 13 February 2018 and 22 March 2018 (**Previous Submissions**). CBA has also provided, on 17 April 2018, submissions on SME Lending. The Agribusiness Lending Letter invites CBA to identify any feature of the Previous Submissions which related to agribusiness lending, and whether there is anything that CBA wishes to add to those responses specifically relating to agribusiness lending.

#### Structure of submission

3. This submission is structured as follows.
4. First, CBA provides an overview of its approach to agribusiness lending.
5. Second, CBA provides the Commission with an overview of the recent public inquiries that considered issues relating to agribusiness lending and CBA's response to issues considered by those inquiries. These inquiries required CBA to carefully consider its lending practices in relation to SME lending (which can include agribusiness lending), and review selected customer cases. Details of the work which CBA has undertaken is briefly discussed below.
6. Third, CBA identifies those parts of CBA's Previous Submissions which related to agribusiness lending.
7. Fourth, CBA provides information about customer complaints which it has received in the period since 2010 which relate to agribusiness lending. For the purpose of responding to the Agribusiness Lending Letter, CBA has reviewed customer cases and its own internal complaint management systems in an attempt to identify the main themes of complaints raised relating to agribusiness lending. CBA also provides details of agribusiness customers' cases that have been the subject of Notices to Produce documents issued by the Commission.
8. Finally, CBA provides details of farm debt mediation outcomes and relevant Financial Ombudsman Service (**FOS**) determinations which involve agribusiness lending.
9. If the Commission would be assisted by further information in relation to any specific case referred to in these submissions, CBA would be pleased to provide it to assist the Commission.

#### Overview of agribusiness lending by CBA

10. CBA customers involved in agribusiness fall into three broad categories:
  - (a) Agribusiness customers: being customers engaged in an agriculture enterprise such as growing, harvesting and running commercial activities related to food or fibre production;
  - (b) Specialised and institutional agribusiness customers: these are large-scale companies (typically with an annual turnover >\$100m). Typically, these customers

have an international element to their business and a higher level of complexity in their business operations; and

- (c) Customers who provide services to the two categories of agribusiness customers described above, such as processing, transportation, manufacturing, packaging, distribution or sale, including international trade.

11. Most customers as outlined in paragraph 10(a) and (c) would typically be managed either through CBA's Retail Banking Services Business Unit or Business and Private Banking Business Unit. For those more complex clients as described in paragraph 10(b), relationships are managed by a specialised team within Business and Private Banking, or by the Institutional Banking and Markets Business Unit.
12. Bankwest, a division of CBA's Business and Private Banking Business Unit, provides banking services to agribusiness (and other business) customers through its Rural and Regional division and has regional business centres located across Western Australia. Bankwest agribusiness specialists are located within this division of Bankwest.
13. CBA recognises that its agribusiness customers have different needs from other customers, given the cyclical and seasonal nature of their operations.

#### **Public Inquiries into agribusiness lending**

14. In the period since the Global Financial Crisis (**GFC**), there have been a number of inquiries which considered agribusiness lending. Three key inquiries are outlined below.

##### *2015 - Inquiry into the impairment of customer loans (Parliamentary Joint Committee on Corporations and Financial Services).*

15. The Inquiry into the impairment of customer loans examined a number of issues including non-monetary defaults, timeframes for customers including notice to roll over loans, responsible lending requirements, the role of the FOS, the role of valuers and the need for a nationally consistent farm debt mediation scheme. The final report of the inquiry was published on 4 May 2016.
16. CBA is aware of some agribusiness customers who participated in or were otherwise considered by the Parliamentary Joint Committee. Further details on the CBA cases can be provided to the Commission if that would be of assistance.

##### *2017 - Australian Small Business and Family Enterprise Ombudsman - Small Business Loans Inquiry (Carnell Inquiry)*

17. The Ombudsman's final report as part of the Carnell Inquiry was released in February 2017. The Carnell Inquiry resulted in a number of recommendations, many of which CBA has implemented, or is in the process of implementing, which concern lending contracts in the small business sector (which includes agribusiness customers). This is discussed in further detail in paragraph 27 below.
18. The Carnell Inquiry also recommended the introduction of a nationally consistent approach to farm debt mediation. CBA supports this recommendation, the concept of which is discussed further in paragraph 22 below.

##### *2017 - Inquiry into Lending to Primary Production Customers (Senate Select Committee)*

19. On 16 February 2017, the Senate established the Senate Select Committee on Lending to Primary Production Customers to inquire into and report on the regulation and practices of financial institutions in relation to primary production industries, including agriculture, fisheries and forestry.
20. The Inquiry reported in late 2017 and recommended a number of reforms for both government and the industry, many of which focused on the use of receivers and valuers. The Committee also supported the establishment of a nationally consistent farm debt mediation scheme.

21. CBA is aware of certain of its agribusiness customers who either made submissions to, were the subject of evidence before, or were otherwise considered by, the Senate Select Committee. There were also other CBA customers who CBA does not consider to be agribusiness customers, even though they were the subject of consideration by the Senate Select Committee.<sup>1</sup> Further details in relation to these cases can be provided to the Commission if that would be of assistance.

### Response to issues considered by those inquiries

#### *National Farm Debt Mediation Scheme*

22. CBA views farm debt mediation schemes as a constructive and positive function which allows banks and farmers to develop mutually agreeable solutions in relation to loans. CBA supports a nationally consistent farm debt mediation scheme based on the model currently operating in New South Wales under the *Farm Debt Mediation Act 1994* (NSW) (**FDMA Act**).
23. Presently there are similarly legislated farm debt mediation schemes operating in New South Wales, Victoria and Queensland. The South Australian scheme differs from the others, and there are no legislated schemes in place in Tasmania, Western Australia, the Northern Territory or the Australian Capital Territory. A nationally consistent scheme would provide greater certainty to farmers and lenders, regardless of their geographical location, on how to proceed during times of financial difficulty.
24. Each jurisdiction has legislated eligibility criteria for parties in dispute to access farm debt mediation schemes. In New South Wales, the dispute must relate to a "farm debt", which is a defined term under the FDMA Act (along with "farm" and "farming operation"). CBA recognises the frustration that some of its customers feel when their circumstances do not meet the statutory definition for participation in the farm debt mediation scheme.
25. An overview of the number of farm debt mediations for the last 3 financial years that CBA has participated in is provided at paragraphs 38 to 40 below.
26. CBA acknowledges that the different approach to farm debt mediation in different jurisdictions, and the unavailability of any scheme in some jurisdictions, means that customers are treated inconsistently across states in times of financial difficulty. Even with industry support, it is a matter for government to rectify this by introducing a nationally consistent scheme.

#### *Recent changes to approach to SME lending*

27. SME lending can include lending for agribusiness (and other) purposes. Small businesses make up a significant proportion of those businesses operating within the agriculture sector. Following the Carnell Inquiry, CBA made a number of changes to its approach to lending contracts in the small business sector. Those changes, which are equally applicable to small agribusinesses, were summarised in CBA's 29 January 2018 submission as follows:

*[197] We have responded to concerns we were hearing from the small business sector about our lending contracts and we have simplified the way we provide finance to them. For customers with total lending facilities below \$3m we:*

- *removed financial indicator covenants (excluding property development, foreign currency loans, loans to super funds, margin loans);*
- *removed material adverse change "catch-all" clauses and reduced the non-monetary events of default down to seven key areas, which are all within the customer's control;*

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<sup>1</sup> For example: Senate Select Committee on Lending to Primary Production Customers, Parliament of Australia, *Inquiry into Lending to Primary Production Customers*, (December 2017), 8, 22-23; Evidence to Senate Select Committee on Lending to Primary Production Customers, Parliament of Australia, Roma Explorers Inn 44778 Warrego Highway, Roma, 2 August 2017, 20-24 (Natasha Keys) and 25 -31 (Craig Caulfield and Moeroa Caulfield).

- *provided a minimum 30 day cure right where the default is capable of being remedied by the customer;*
- *provided customers with 45...days' notice period when making changes to all general restriction clauses and covenants; and*
- *provided 120 day notice prior to term loans maturing and providing an additional 90 day notice if a decision is made to not roll-over a term loan.*

*[198] For all loans using standard documentation we are in the process of simplifying and rewriting in plain English the business funding documents, Letters of Variation and the standard Terms and Conditions for business lending, trade finance and corporate cards customers. A new one-page summary of default and key detrimental outcomes will also be included.*

*[199] These changes impact 96% of our small business customers.*

28. These amended, simplified terms and conditions have been implemented by CBA, and better reflect CBA's practices and evolving community expectations.

#### *Revised Code of Banking Practice*

29. The Senate Select Committee on Lending to Primary Production Customers and the Carnell Inquiry made a number of recommendations in relation to the Code of Banking Practice. Before these recommendations were made, there was already industry support, and action had been taken by the ABA, for revisions to be made to the Code of Banking Practice.
30. The draft revised Code of Banking Practice submitted to ASIC for approval in December 2017 includes a number of amendments which address those recommendations, including:
- (a) longer minimum notice periods to customers about changes to loan conditions or decisions on rollover;
  - (b) the removal of material adverse change clauses and a reduction in the number of specific events of non-monetary default clauses which can allow a bank to take enforcement action;
  - (c) requiring banks to provide their customers, including farmers, with full copies of signed loan applications and other relevant documents;
  - (d) requiring that the Code of Banking Practice be incorporated, where relevant, into loan contracts and guarantees; and
  - (e) fairer and more transparent industry practices around the use of receivers by banks.
31. The proposed revised Code of Banking Practice, currently before ASIC, will explicitly provide farmers with the choice of referring a complaint to farm debt mediation or a bank's external dispute resolution processes. If a dispute does not settle at mediation, then a farmer may then take the matter to an external dispute resolution process.

#### **Previous Submissions**

##### *29 January 2018*

32. At section 3.7 of the 29 January 2018 submission, CBA identified issues that it considered were of community interest or concern. Relevantly, at paragraphs 195 and 196 CBA noted:

*There have been some suggestions in recent years that enforcement action in relation to farms is excessively high and that these decisions are taken in haste by financial institutions*

*with little engagement with customers. This is not the experience of the Bank. Of our 25,000 agribusiness customers,<sup>2</sup> we have foreclosed on five farming businesses or assets nationwide in the last financial year. In these cases, we had worked with the customers to explore alternate solutions over an extended period of time. In the vast majority of cases, customers in financial difficulty are able to work with the Bank to restore their position and keep their business as a going concern.*

*Our customers also have the option of resolving any concerns with us through the farm debt mediation schemes that run in a number of jurisdictions. The Bank believes farm debt mediation provides a valuable mechanism for both banks and farmers to develop mutually agreeable solutions in relation to loans.*

*13 February 2018 (RiskInSite Data) and 22 March 2018 (Misconduct table)*

33. As part of its submission dated 13 February 2018, CBA provided the Commission with data from its RiskInSite system, which contains all details of Compliance Incidents records for the period 1 January 2013 to date (see section [2.2] of the submission). In response to feedback from Counsel Assisting that the RiskInSite information was voluminous, CBA subsequently provided a table of misconduct on 22 March 2018, which excluded the large number of Compliance Incident records that were rated insignificant or low.
34. In order to assist the Commission, CBA has reviewed that data to identify entries which relate to agribusiness lending. CBA has identified 20 incidents<sup>3</sup> relating to agribusiness lending, 4 of which were included in the Misconduct table produced to the Commission on 22 March 2018 and are detailed further at paragraph 36 below. The remaining 16 incidents were not included in the Misconduct table, consistent with the methodology outlined in CBA's letter to the Commission dated 22 March 2018.
35. CBA notes that some of these incidents relate to multiple customers, and sometimes involve a large numbers of customers (such as the incidents related to the AgriAdvantage Plus (AA+) Package). Additionally, since agribusiness lending is a component of SME lending, there will be issues and incidents related to SME lending which have also affected agribusiness customers.
36. The following entries from the table produced to the Commission on 22 March 2018 concern conduct relating specifically to agribusiness lending:
  - (a) Row 44 - Breach report made to ASIC in 2014 pursuant to section 912D of the *Corporations Act 2001* (Cth) in respect of CBA's failure to apply fee waivers and ongoing package benefits, to eligible customers who purchased an AgriAdvantage Plus (AA+) Package. A remediation program to reimburse affected customers (approximately 8,400) was completed in 2015, with a total of approximately \$7.6m reimbursed;
  - (b) Row 50 - Breach report made to ASIC pursuant to section 912D of the *Corporations Act 2001* (Cth) in respect of overcharging of fees in place for the quarantined AgriOptions product. This issue was identified in or around September 2012, and a total of 726 accounts were impacted by it. A remediation program was completed in or about October 2012, and resulted in fee refunds to affected customers of approximately \$330,000;
  - (c) Row 289 - Issues identified with Agri Advantage Package in relation to Overdraft Line Fee overcharging. This issue was identified in or about September 2012 and is related to that which is identified in sub-paragraph (a) above. A total of 265

<sup>2</sup> This number includes CBA's rural and regional customers.

<sup>3</sup> These 20 incidents are: CBA.0505.0002.0001 (BankWest, 6 incidents) - rows 66, 145, 243, 654, 953 & 975; CBA.0505.0002.0002 (Business & Private Banking, 3 incidents) - rows 545, 715 & 1001; CBA.0505.0002.0003 (Enterprise Services, 3 incidents) - rows 729, 1428 & 1721; CBA.0505.0002.0008 (Institutional Banking & Markets, 2 incidents) - rows 103 & 114; CBA.0505.0002.0009 (Retail Banking Services, 5 incidents) - rows 18762, 22241, 22627, 23977 & 29791; CBA.0505.0003.0002 (Wealth Management, 1 incident) - row 758.

accounts were impacted. A remediation program was completed in April 2013, resulting in refunds to affected customers totalling approximately \$72,000; and

- (d) Row 294 - Issues identified with AgriAdvantage Plus Package whereby certain customers had not been provided with concessions offered under the package terms. This issue is related to that which is identified at sub-paragraph (a) above.

37. In addition to the incidents referred to above, CBA has identified the following two additional operational incidents which were not included in the Misconduct table:

- (a) An incident involving the identification in 2013 of risk management issues in the Regional and Agribusiness Banking division of Business and Private Banking, relating to potential interest rate management mis-selling. Specifically, the issue related to interest rate hedges that did not match customer loan terms, as well as = customers stating that they were unclear of terms and conditions. CBA identified a total of 19 customers potentially impacted by this issue, 10 of which were agribusiness customers, and worked with each customer to review their case and remediate. 18 cases have been closed, with CBA refunding approximately \$1.37 million to customers (\$0.66 million to agribusiness customers). One case remains outstanding, with an offer awaiting acceptance; and
- (b) An incident identified in 2013 regarding the incorrect mapping of the reference rate for its Agri Line of Credit product onto the New Core Banking Platform. CBA has remediated customers to the value of approximately \$78,000.

#### **Review of Farm Debt Mediation cases**

- 38. In matters that proceed through to farm debt mediation, the parties in dispute are generally able to achieve a better understanding of their respective issues, which has often enabled CBA and the customer to develop a mutually acceptable outcome.
- 39. Between the financial years ending 2015 to 2017, CBA has participated in a total of 51 farm debt mediations, divided as follows per financial year:
  - (a) FY15 - 20 Farm Debt Mediations;
  - (b) FY16 - 16 Farm Debt Mediations; and
  - (c) FY17 - 15 Farm Debt Mediations.
- 40. Further details in relation to these matters can be provided to the Commission if that would be of assistance.

#### **Review of customer complaints**

- 41. In order to provide the Commission with insight into the types of customer complaints that CBA receives in relation to agribusiness lending, CBA has conducted a review of its customer complaints database (introduced in 2010) and makes the following observations about those complaints.
- 42. There have been 1,891<sup>4</sup> customer complaints relating to agribusiness lending. To ascertain this number, CBA reviewed its customer complaints database to identify whether the customer raising the complaint:
  - (a) had been identified as managed by an Agribusiness (RAB) relationship manager at the time of making the complaint;

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<sup>4</sup> In the period from September 2010 to March 2018.

- (b) where relevant, had an occupation code that relates to agribusiness at the time of making their complaint;
  - (c) had been identified as related to Agribusiness Lending using a text searches; and/or
  - (d) where relevant, contacted or received a final resolution in relation to their complaint through the Agribusiness Contact centre.
43. Approximately 59% of the agribusiness complaints received by CBA were classified as 'Quick Resolve'. This means that CBA staff were able to address and resolve the complaint in the first instance, without escalation to further internal or external dispute resolution mechanisms.
44. 23.5% of complaints were classified as 'Standard-Resolve - frontline'. This means that the complaints were not resolved during the first point of interaction, but were resolved without escalation to CBA's internal dispute resolution, Group Customer Relations.
45. 17.5% of complaints were escalated to Group Customer Relations.
46. 120 complaints were escalated to External Dispute Resolution through FOS (see paragraph 55 to 57 below).
47. The most common causes of complaints (comprising 98% of all complaints) recorded by CBA were:
- (a) Process & Administration – including delay, fee charging, availability and performance (26%);
  - (b) Bank Decisions – including bank policy, credit decision, collections, financial hardship and financial assistance (20%);
  - (c) Staff and Service Provision – including performance, attitude, knowledge and error (15%);
  - (d) Products and Features - including features, facilities and availability (13%);
  - (e) Interest rates, fees and charges - including fee charging, interest rates and pricing (10%);
  - (f) Privacy and Communications - including terms and conditions, privacy and correspondence (9%); and
  - (g) Sales and Onboarding - including mis-selling, product purchases and disputed transactions (5%).
48. Further, CBA customers, including agribusiness customers, have the option of raising complaints or concerns with CBA's Customer Advocate. Since this function was introduced in March 2017, there have been four matters raised by agribusiness lending customers.

#### **Customer cases subject to Notices to Produce**

49. CBA and Bankwest have received Notices to Produce documents from the Commission in relation to a number of customer cases. CBA considers that two of those cases concern agribusiness customers, and makes some observations about those particular cases below.

#### *Mr and Mrs Blair*

50. CBA has produced documents in response to Notice to Produce 317 concerning Mr Denis Blair and Mrs Christine Blair. Mr and Mrs Blair are agribusiness customers (lamb and crop

farmers) who raised, in 2017 and 2018 respectively, complaints with CBA and FOS.<sup>5</sup> Their complaint to CBA was escalated to CBA's internal dispute resolution team, Group Customer Relations.

51. Mr and Mrs Blair experienced financial difficulty and sought hardship assistance. They did not request farm debt mediation. Ultimately, CBA agreed to restructure Mr and Mrs Blair's facilities (by increasing their business loan from \$310,161 to \$410,160). FOS has not issued any recommendation or determination, and the parties have recently resolved the complaint and the matter has now been closed. CBA acknowledges that there were delays in Mr and Mrs Blair's facilities being restructured, and Mr and Mrs Blair did not have a good customer experience since first raising their complaint. As part of the resolution of the dispute, CBA has paid compensation to Mr and Mrs Blair.

*Stephen Madden (Kinadden Pty Ltd)*

52. CBA has produced documents in response to Notice to Produce 217 concerning Kinadden Pty Ltd (**Kinadden**), a farm labouring business. Mr Madden, the sole director of Kinadden, sought financial difficulty assistance from CBA on two occasions, in January 2017 and August 2017. CBA has engaged with Mr Madden in response to these requests and has entered into a hardship agreement with him. Mr Madden has raised a complaint with CBA and has recently, in March 2018, filed a complaint with FOS broadly concerning his requests for financial difficulty assistance and dissatisfaction with the service he received.<sup>6</sup>
53. CBA acknowledges that it should have responded to Mr Madden's financial difficulty assistance requests in a more timely manner, and should have provided him in various ways with a better customer experience in handling his requests.
54. Further details in relation to any of the cases referred to above can be provided to the Commission if that would be of assistance.

**Review of FOS complaints**

55. The following summary has been prepared in order to provide the Commission with details of complaints that concern agribusiness lending which were closed at the "preliminary view"<sup>7</sup> or "determination" stage (being the two stages of the FOS process during which a complaint can be closed as a result of a view or decision of FOS). For a complaint to be closed by FOS at the "preliminary view" stage, both parties to the dispute must agree with FOS' view. If either party to a dispute does not agree to a preliminary view issued by FOS, then the dispute proceeds to a determination. Determinations are binding on CBA, but not the applicant.
56. The summary includes cases classified by FOS as "Business Finance", together with additional cases that CBA has identified as potentially relating to Agribusiness related issues. In the time available, CBA has identified since 2010 a total of 120<sup>8</sup> FOS Cases concerning agribusiness lending. Of those cases:
- (a) FOS has issued either a preliminary view or a determination in relation to 19;
  - (b) 14 cases were in favour of CBA; and
  - (c) The remaining 5 cases were adverse to CBA.
57. Those 5 cases involved the following issues:
- (a) Decision made by CBA - two of the cases relate to matters in which a customer made a complaint in relation to a decision that CBA has made. One of these cases

<sup>5</sup> CBA complaint ref: CF587603C; FOS ref. 517953.

<sup>6</sup> CBA complaint ref: CF-5951923C; FOS ref: 521066

<sup>7</sup> Prior to July 2015, "preliminary views" of FOS were termed as a "recommendations".

<sup>8</sup> This number does not include cases lodged with FOS but thereafter resolved as part of CBA's Internal Dispute Resolution process.

involved a complaint made by a customer in relation to CBA's decision to cancel their overdraft and the other case involved CBA's decision not to approve a loan;

- (b) Issues arising with instructions provided by customers to CBA - one case relates to matters in which a customer has made a complaint about instructions that have been provided to CBA. The complaint related to funds, not credit, into a transaction account, although a Business Loan Authority was signed by the customer;
- (c) Transaction - one case relates to a matter in which a customer made a complaint about an unauthorised transaction made by CBA. The complaint relates to a duplicate Credit Card transaction, which resulted in the customer being unable to purchase stock on time; and
- (d) Financial difficulty - one case relates to a matter in which a customer experienced financial difficulty. The complaint relates to CBA's decision to decline a request for dispensation due to financial difficulty.