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**CONFIDENTIAL**

**BY EMAIL**

Mr Simon Daley  
 Solicitor Assisting the Royal Commission  
 Level 34  
 600 Bourke Street  
 MELBOURNE VIC 3000

Dear Mr Daley

**Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission)**

1. On behalf of the Bank of Queensland Limited (**BOQ**), we refer to:
  - (a) the letter dated 15 December 2017 from the Commissioner (**First Letter**), and the questions it provided;
  - (b) BOQ's response to the First Letter dated 29 January 2018 (**First Response**); and
  - (c) a further letter dated 5 April 2018 from the Solicitor Assisting the Royal Commission (**Second Letter**).
2. The Second Letter explains that future hearings of the Royal Commission will include consideration of lending for business purposes where the bank's total credit exposure to the relevant business customer is \$20 million or less (**SME lending**), and asks BOQ if it wishes to:
  - (a) identify features of the First Response which relate to SME lending; and/or
  - (b) add to its First Response specifically in relation to SME lending.

**Scope of this response**

3. BOQ reiterates its desire to support the Royal Commission in its work, and wishes to continue a co-operative and productive relationship for that purpose. BOQ intends by this response to address both of the questions asked in the Second Letter in a manner that is useful to the Royal Commission, having regard to their scope, the time available to prepare this response, and the legal constraints and considerations that are relevant to its content. BOQ notes that a number of the constraints outlined in paragraphs 6-12 of its First Response still apply.
4. We also note that since the provision of its First Response, BOQ has:
  - (a) responded to Notices to Produce from the Royal Commission dated 16 February 2018, 20 March 2018, and 10 April 2018; and

- (b) provided to the Royal Commission on 13 April 2018 a draft witness outline from Mr Doug Snell, the General Manager, Performance, Product and Governance for the BOQ Business division, which addresses a number of topics in relation to business lending with respect to Rubric 3-6 (**Snell Outline**).
5. With the aim of assisting the Royal Commission, this response:
- (a) addresses the first question asked in the Second Letter (see paragraph 2(a) above) by reference to the grouping of issues employed by BOQ in its First Response; and
  - (b) addresses the second question asked in the Second Letter (see paragraph 2(b) above) by reference to the specific matters raised with respect to SME lending in that letter.

### **Confidentiality**

6. As with the First Response, this document contains confidential and commercially sensitive information. We provide the document on the basis that it will be kept confidential.
7. Similarly, no waiver of legal privilege is intended by the provision of the information in this document. If the Royal Commission intends to publish this document to third parties we request the opportunity to be heard on that matter prior to it doing so on reasonable notice.

### **Features of the First Response which relate to SME lending**

#### Storm Financial

8. Paragraphs 17-45 of the First Response relate to conduct within the terms of reference of the Royal Commission regarding BOQ's dealings with clients of Storm Financial. An aspect of that material dealt with the standard banking industry practice of including at least part of the future income from investments in assessing the serviceability of an investment loan. It was noted in that context that that practice has particular significance to the prospect of small and medium sized businesses obtaining finance (see paragraph 45 of the First Response).

#### Product-related issues

9. Paragraphs 56-76 of the First Response relate to conduct within the terms of reference of the Royal Commission regarding products offered by BOQ. Relevantly:
- (a) paragraph 59(a) referred to the BOQ Dealer Finance product, which may have been used by SME lending customers. The relevant conduct related to overcharging or under-refunding customers due to interest being charged up until the day before the next instalment due date when quoting an early buyout figure;
  - (b) paragraph 59(c) referred to an incorrect interest rate on business lending being charged due to errors in the account set up process;
  - (c) paragraph 59(g) referred to incorrectly charged switching fees on automatic loan product switches, including from one business loan product to another; and
  - (d) paragraph 59(h) referred to the Agreed Credit Advance fee on business overdraft facilities not being correctly discounted on certain Business First Lending Packages.
10. The product-related issues identified in the First Response were fully remediated as part of the Product Review Program as referred to at paragraphs 70-71 of the First Response.

#### Conduct in the branch network

11. Paragraphs 106-126 of the First Response outline conduct within the terms of reference of the Royal Commission including breach of BOQ policies by persons within its branch network. There were some instances where the matter involved lending to SME customers which resulted in termination of employees and owner-manager branch agreements.

Financial Ombudsman Service Complaints

12. Paragraphs 154-159 of the First Response outline FOS complaints made against BOQ, which included complaints by SME lending customers which were resolved in favour of the borrower.

**Additional information relating to SME lending****Conduct of BOQ**

13. By reference to the issues identified in respect of SME lending in the Second Letter, BOQ adds to its answer to Questions 1 and 2 provided with the First Letter as follows.

Use of personal assets

14. BOQ's approach to the handling of the use of personal assets, including the family home of any directors of a business, as security for a business loan is addressed in the response to Question 6(d) in the Snell Outline (see paragraphs 94-97).
15. For the purpose of this response, BOQ has identified a small number of instances in which security for a business loan was provided over personal assets, and complaints were received where recourse to such security was taken by the bank due to the borrower's default. Of itself, the taking of security over a personal asset, and recourse to such security in default, should not be seen as conduct falling below community standards and expectations. It is common practice for small business operators to seek to secure their loans with personal assets where they otherwise would not have adequate collateral to support the loan.
16. As noted in the First Response at paragraphs 18-19, BOQ dealt with clients of Storm Financial in relation to home equity loans, the proceeds of which were used for investments. BOQ has identified an additional instance in which customers were given a business term loan, rather than a retail loan, for that purpose.
17. BOQ has also identified a small number of instances in which guarantees for SME loans were taken from, and sought to be enforced against, guarantors who claimed not to have understood the effect of the guarantee or their waiver of independent legal advice (including where the guarantees were given by relatives of the SME borrower).

Non-monetary defaults

18. BOQ's approach to the handling of non-monetary defaults is addressed in the responses to Questions 12(a), 14 and 15 in the Snell Outline (see paragraphs 147-153, 220-233, and 234-267).
19. For the purpose of this response, BOQ has identified a small number of instances in which non-monetary defaults have been raised by the bank in dealing with SME borrowers.

Communication of notice of default

20. BOQ's approach to the handling of notice periods for default is addressed in the response to Question 15(d) in the Snell Outline (see paragraphs 256-258).
21. For the purpose of this response, BOQ has identified a small number of instances in which it did not provide an extensive period of notice before taking action against a borrower in default, giving rise to complaints about the adequacy of the notice that was provided. However, of itself, the *bona fide* reliance on contractual terms should not be seen as conduct falling below community standards and expectations. It has been BOQ's usual practice since 2012, unless extenuating circumstances apply, to engage with its SME customers experiencing financial difficulty or hardship, to allow them to address their financial affairs.

Unilateral variation clauses

22. As is industry practice, BOQ's standard contracts reserve the bank's right to vary certain terms of the agreement (see, for example, Clause 29 of the General Conditions of the Aggregate Trade Facility which is referred to in Schedule 2 to the Snell Outline).

23. BOQ has not identified any particular problems with the way in which such clauses have operated in its dealings with customers. Again, of itself, the *bona fide* reliance on contractual terms should not be seen as conduct falling below community standards and expectations.

Roll over of SME facilities

24. The issue of the roll over of business lending facilities is addressed in the response to Questions 16-18 in the Snell Outline (see paragraphs 268-293).
25. For the purpose of this response, BOQ has identified a small number of instances in which it did not provide an extensive period of notice of the expiry of a SME facility, giving rise to complaints about the adequacy of the notice that was provided. However, of itself, the *bona fide* reliance on contractual terms should not be seen as conduct falling below community standards and expectations.

Customer hardship

26. The issue of dealings with SME customers in financial distress is addressed in context of BOQ's internal complaint resolution processes in the response to Question 7 in the Snell Outline (see, in particular, paragraph 116).
27. BOQ has not identified any systemic or material issues with the implementation of its policies and practices for offering assistance to customers facing financial distress. The provision of relief in accordance with BOQ's hardship policies is a common feature in the bank's dealings with customers in default, including SME borrowers. As noted above, it has been BOQ's usual practice since 2012, unless extenuating circumstances apply, to engage with its SME customers experiencing financial difficulty or hardship, to allow them to address their financial affairs.

Arrangement with valuers, accountants, and receivers and managers

28. The issue of the relationship between BOQ and valuers is addressed in the response to Question 15(b) in the Snell Outline (see paragraphs 239-251). The issue of the relationship between BOQ and receivers is addressed in the response to Question 15(e) in the Snell Outline (see paragraphs 259-264).
29. BOQ has not identified any systemic or material issues with the way it deals with third parties such as valuers, accountants, and receivers and managers. BOQ has identified a small number of instances in which complaint has been made concerning: (i) the valuations of SME borrowers' security which have been obtained by BOQ; and (ii) the conduct by receivers and managers (such as in the realisation of assets).

Other SME lending issues

30. For the purpose of this response, BOQ has identified a small number of instances in which complaint has been made concerning its assessment of the ability of a SME borrower to service a SME loan given by BOQ. It is noted that BOQ's origination of the loans in these instances occurred in or prior to 2012. There have been reforms to processes since then (see below at paragraph 35 and following).

**Other proceedings, source of the issues, and remediation by BOQ**

31. BOQ supplements its answer to Question 3 provided with the First Letter, by reference to the additional material in respect of Questions 1 and 2 above, as follows.

Other proceedings

32. A number of the instances referred to in BOQ's supplementary answer to Questions 1 and 2 above have resulted in borrowers making FOS complaints, and in some cases commencing legal proceedings, against the bank. Details of particular cases, or cases in respect of a particular issue, can be provided on request.

Sources of the issues


33. BOQ has identified a small number of isolated instances where issues raised by a SME lending customer in relation to BOQ's conduct may respond to Questions 1 or 2 of the First Letter. BOQ does not consider that it has identified any systemic problems in the conduct of its SME lending business. On that basis, it does not attribute any of the conduct it has identified in this response to its particular culture or governance practices, but rather to the specific circumstances of individual cases.
34. Except where reference has been made to industry practice in relation to the assessment of serviceability of investment loans (see paragraph 8 above), and standard contractual terms (see paragraph 22 above), BOQ does not attribute any of the conduct it has identified in this response to broader cultural or governance practices in the industry.

Remediation and rectification

35. The First Response provides a high level summary of BOQ's Risk Management Strategy which guides BOQ's approach to risk and compliance management and to monitoring and supervision. This strategy has evolved over time with systems and processes implemented and enhanced to help BOQ identify, remedy and prevent misconduct or performance that may be inconsistent with professional or community standards and expectations (see paragraph 4 of the First Response).
36. With respect to SME lending, BOQ has implemented risk framework developments and enhancements since 2012 including:
- (a) credit department and group risk team enhancements leading to the appointment of an experienced leadership team and allocation of additional support staff;
  - (b) credit policies and risk appetites reviewed and refined; and
  - (c) controls tightened and enhanced including the strengthening of restrictions of delegated authorities.
37. These enhancements significantly increased BOQ's ability to detect, deter and address any potential maladministration post 2012.
38. BOQ also repeats paragraphs 157-159 of its First Response in respect of its response to FOS determinations.

If it would assist the Royal Commission, we would welcome the opportunity meet to discuss in more detail any of the matters the subject of this response and the First Response.

Yours sincerely

  
**Jon Sutton**  
 Managing Director and Chief Executive Officer

  
**Michelle Thomsen**  
 General Counsel