

**ROYAL COMMISSION INTO
MISCONDUCT IN THE BANKING, SUPERANNUATION AND
FINANCIAL SERVICES INDUSTRY**

FIRST ROUND OF PUBLIC HEARINGS: CONSUMER LENDING

SUBMISSIONS OF NATIONAL AUSTRALIA BANK – INTRODUCER CASE STUDY¹

A. INTRODUCTION

1. NAB’s case study focused on NAB’s Introducer Program in the relevant period of 2013 to 2016. During that period, NAB’s Introducer Program was a program by which a third party (the **Introducer**) introduced potential customers to NAB.² The Introducer’s role was to “spot and refer” potential customers.³ The Introducer generally earned a one-time commission for each customer introduced who subsequently entered into and drew down on a loan with NAB.⁴ Some Introducers had direct arrangements with NAB, while others had arrangements with a national referral partner (**NRP**).⁵
2. As a result of investigations described further below, NAB identified misconduct in the period 2013 to 2016, in connection with the provision of residential lending, by certain bankers who were, in turn, associated with certain Introducers (the **misconduct**). The misconduct ultimately identified by NAB is described in paragraph 14 below and included: reliance on false documentation to support loan applications; use of incorrect income figures in loan serviceability assessments; dishonest application of customer signatures on Introducer consent forms; and/or the misstatement of loans in loan documentation.⁶ The misconduct potentially resulted in customers taking out loans which were unsuitable for them.
3. As well as fraudulent or dishonest conduct, the investigations also uncovered other behaviours by certain bankers in connection with residential lending that did not comply with NAB policies or procedures but did not involve any dishonesty. It should be noted that NAB’s internal documentation often uses the term “misconduct” to describe a range of conduct, including non-compliant conduct (involving no dishonesty or financial benefit to the individual involved). The misconduct discussed in this submission (as defined above) spans that range of conduct (consistently with NAB’s own investigations), and is broader than the definition of misconduct in the Commission’s terms of reference.
4. In summary, NAB submits that the evidence shows that:

¹ Filed by NAB pursuant to the grant of leave given by the Commission pursuant to paragraph 1(d) of the revised order granting leave to appear dated 6 March 2018.

² Exhibit 1.4, WIT.0001.0010.0001, Statement of Anthony John Waldron dated 2 March 2018 with exhibits tendered as exhibit 1.18 (**Waldron Statement**) at [13].

³ Waldron Statement at [14]. See also, cl 2.1 and cl 2.3 of the Introducer Agreement (Waldron Statement, tab 116, NAB.005.039.0003 at .0007 and .0008-9); cl 2.6-2.8 of the NAB Introducer Guide (Waldron Statement, tab 117, NAB.005.068.0025 at .0027); cl 4.1 of the NAB Introducer General Terms (Waldron Statement, tab 118, NAB.005.036.0235 at .0240).

⁴ Waldron Statement at [14].

⁵ Waldron Statement at [13].

⁶ Waldron Statement at [21].

- (a) In 2015 to 2016, NAB identified misconduct occurring in 2013 to 2016 involving a cohort of bankers and Introducers in the Greater Western Sydney (GWS) area, and other areas, including the ACT, New South Wales and Victoria;⁷
 - (b) NAB's investigation response was thorough and appropriate, in that it commenced consideration of relevant issues in April 2015 when a review process first raised concerns, it promptly investigated the allegations subsequently made through its whistleblower program, and thereafter conducted a detailed investigation to ensure the full extent of the misconduct had been uncovered;
 - (c) Having determined the extent of the misconduct, NAB conducted a comprehensive review of the "root causes" of the misconduct;
 - (d) Having regard to the results of this root cause analysis, NAB has put in place changes to its processes and systems directed to preventing (to the extent possible) the occurrence of similar misconduct and detecting it if it does occur; and
 - (e) NAB has in place measures – including a standalone remediation program as well as its hardship program – to assist customers who have received an unsuitable loan as a result of the misconduct.
5. This submission is framed by reference to the four themes identified by Senior Counsel Assisting in her opening and, ultimately, the findings and questions posed in relation to the NAB Case Study during her closing of the first round of hearings.⁸

B. COMMISSION'S FIRST THEME – WAS THE MISCONDUCT ATTRIBUTABLE TO A PARTICULAR CULTURE, SYSTEM OR PRACTICE?

B.1 The misconduct – identification and investigations

6. Before directly addressing the question of whether the misconduct was attributable to a particular culture, system or practice, it is necessary to identify how the misconduct came to light, and describe the investigations into it.
7. In April 2015, a review process carried out on a NAB branch in GWS raised concerns in relation to Introducer files at the branch and the nature of the relationship of the branch manager with certain Introducers.⁹ Although the review process had not progressed to completion, the matter was referred to NAB's Forensic Services division "to avoid any delay".¹⁰ The matters for consideration were complex and delicate;¹¹ Forensic Services were still pursuing their enquiries¹² when two calls to NAB's whistleblower hotline were received: one on 14 September 2015,¹³ and another on 15 October 2015.¹⁴
8. Following the first call, by email of 23 September 2015, a Manager in NAB's Major Financial Crimes group confirmed that the matter "is receiving our attention" and observed that the "intelligence received" from the whistleblower correlated with intelligence previously

⁷ Waldron Statement at [23]-[26], [63]; Waldron Statement, tab 200, NAB.020.014.2131 at .2132.

⁸ Waldron XN T48.30-37.

⁹ Exhibit 1.5, NAB.032.001.0605.

¹⁰ Exhibit 1.5, NAB.032.001.0605 at .0606; Waldron XN T94.5-8.

¹¹ Waldron XN T93.17.

¹² See email dated 23 September 2015 from the Manager of the Major Financial Crimes group within NAB's Forensic Services to NAB's Workplace Relations Consulting Team dated 23 September 2015 at 2.48 pm (Waldron Statement, tab 126; NAB.005.074.0522 at 0522). See also Waldron Statement at [57], [68]. See also Waldron XN T88.31-38, T96.10-14.

¹³ Waldron Statement at [68].

¹⁴ Waldron Statement at [69].

- received.¹⁵ The investigation was ongoing when the second whistleblower call was received, this time concerning the same branch manager as the April review.¹⁶
9. The 15 October 2015 call was referred to Forensic Services,¹⁷ and on 29 October 2015 a Credit Investigation Working Group was convened.¹⁸ The Credit Investigation Working Group met bi-weekly, and its tasks included assessing new evidence and discussing the outcome of interviews with bankers.¹⁹
 10. As a result of NAB's investigations, in November 2015 five bankers were dismissed and two Introducer relationships were terminated.²⁰ The matter was escalated to NAB's Principal Board Risk Committee on 4 November 2015,²¹ and to the full Board on 15 December 2015.²²
 11. While the investigations into the conduct of the GWS bankers continued,²³ a second working group was established on 23 November 2015 to investigate whether the control breakdowns that permitted the misconduct to occur were systemic and to consider potential customer impact.²⁴ On 30 November 2015, a meeting of the Personal Banking Management Assurance Committee was informed that an audit review in relation to Introducers would be completed by January 2016.²⁵ On 11 December 2015, NAB engaged KPMG to conduct a forensic investigation in relation to the GWS allegations.²⁶
 12. By letter of 21 December 2015, NAB advised ASIC of its investigations, the findings to date, and the proposed next steps, including examining whether the relevant control breakdowns were systemic and whether any customers had been impacted.²⁷ The letter also indicated that the event would be assessed under NAB's Significant Event Review Panel (**SERP**) process. The SERP process is the process by which NAB determines whether an event is reportable under s 912D of the *Corporations Act 2001* (Cth). For the purposes of s 912D, then, the first notification of a potential breach of NAB's obligations under s 912A occurred on 21 December 2015. Thereafter, as detailed below, NAB engaged closely with ASIC as the investigations continued and organisational responses were developed.
 13. A breach paper was prepared, and the paper (dated 5 January 2016) was provided to the SERP and considered at its 20 January 2016 meeting.²⁸ The SERP meeting was held five days after receipt of a draft KPMG report dated 15 January 2016 setting out KPMG's initial findings.²⁹ NAB met with ASIC on 22 January 2016,³⁰ and the results of the investigations to date were discussed. On 3 February 2016, NAB provided ASIC with a further written update and a

¹⁵ See email dated 23 September 2015 from the Manager of the Major Financial Crimes group within NAB's Forensic Services to NAB's Workplace Relations Consulting Team dated 23 September 2015 at 2.48 pm (Waldron Statement, tab 126; NAB.005.074.0522 at .0526).

¹⁶ Waldron Statement at [68]-[69]; Waldron XXN T90.12-17; T96.10-98.8; T101.24-31; Waldron Statement, tab 126, NAB.005.074.0522 at .0526.

¹⁷ Waldron Statement at [69].

¹⁸ Waldron Statement at [69]-[70]. See also the letter from NAB to ASIC dated 21 December 2015 (Waldron Statement, tab 159, NAB.032.001.0042) at .0042.

¹⁹ Waldron Statement at [70].

²⁰ Waldron Statement at [75].

²¹ Exhibit 1.8, NAB.005.130.0001 (at _0003); Waldron XXN T113.20-T114.11

²² Waldron Statement at [61].

²³ Letter from NAB to ASIC dated 21 December 2015 (Waldron Statement, tab 159, NAB.032.001.0042) at .0042.

²⁴ Letter from NAB to ASIC dated 21 December 2015 (Waldron Statement, tab 159, NAB.032.001.0042) at .0042.

²⁵ Waldron Statement at [74]; Waldron Statement, tab 158, NAB.005.046.1691 at .1692.

²⁶ Waldron Statement at [76].

²⁷ Letter from NAB to ASIC dated 21 December 2015 (Waldron Statement, tab 159, NAB.032.001.0042) at .0043.

²⁸ Waldron Statement at [83] (and see Waldron Statement, tab 162, NAB.032.001.0044).

²⁹ Waldron Statement at [79]-[82]; Waldron Statement, tab 161, NAB.005.037.0887.

³⁰ Waldron Statement, tab 163, NAB.032.001.0066.

formal breach report under s 912D.³¹ This breach report was given within 10 business days of the 20 January 2016 SERP meeting, which was the meeting held by SERP for the purpose of determining whether there was a reportable event.³² No complaint was or has been raised by ASIC with respect to NAB's compliance with its reporting obligations under s 912D.

B.2 Nature of the misconduct

14. NAB's investigations identified a range of non-compliant conduct, spanning dishonest or fraudulent conduct to less serious matters which nonetheless constituted a breach of NAB's policies or procedures (for example, use of a personal email address by a NAB banker to receive confidential information).³³ The misconduct was described by NAB to ASIC in March 2016 as involving six types of conduct:³⁴ (i) false attribution of customer details to Introducers; (ii) non-disclosure of conflicts of interest between NAB bankers and Introducers; (iii) incorrect allocation of incentives under NAB's Star Sales Incentive Plan³⁵ to NAB bankers in order to inflate the incentive applicable to the branch manager; (iv) customer information being received directly from Introducers (rather than the customers); (v) bankers failing to declare conflicts of interest (arising from relationships with Introducers); and (vi) the use of Introducers in non-preferred industries.
15. Through its investigations, NAB identified 60 'bankers of interest',³⁶ being bankers who were found to have potentially breached one or more of NAB's internal policies or procedures.³⁷ Those bankers who were found to have engaged in non-compliant conduct received an appropriate sanction (referable to the nature of the conduct in issue). Of the 60 bankers of interest, 44 received a "red" conduct gate.³⁸ Of those 44, 20 bankers resigned or were terminated.³⁹ Nine of the 60 bankers received an "amber" conduct gate⁴⁰ (discussed at paragraph 60 below). The most common reason for receiving an amber gate related to the forwarding of documents to a personal email address.⁴¹
16. For these reasons, the use of the words "inappropriate conduct" in NAB's 29 January submission⁴² as a general descriptor of the conduct was appropriate. Not all bankers had engaged in dishonest conduct.⁴³ The word "potential" was used because the investigation considered bankers and files in respect of whom no misconduct was ultimately demonstrated. Further, the relevant entry in the 29 January submission⁴⁴ expressly referred to fraud and dishonest conduct. NAB, in its engagement with both ASIC and this Commission, has been candid in its acknowledgement that misconduct was, regrettably, found to have occurred, and required a response that embraced systemic, cultural and policy changes, as well as appropriate customer remediation.

³¹ Waldron Statement, tab 167, NAB.032.001.0069.

³² Waldron Statement at [83].

³³ Letter from NAB to ASIC dated 31 August 2016 (Waldron Statement, tab 208, NAB.032.001.0020 at .0022).

³⁴ Minutes of 7 March 2016 meeting between NAB and ASIC (Waldron Statement, tab 168, NAB.032.001.0098 at .0098-0099).

³⁵ From 1 October 2016, this program became the Customer Experience Incentive Program (see Waldron Statement, footnote 1).

³⁶ Waldron XXN T84.27-28. One of KPMG's tasks was to identify bankers and Introducers of interest for further investigation: see Waldron Statement, tab 189, NAB.036.073.9220. Ultimately, 11 additional bankers of interest were identified as a result of KPMG's work: Waldron Statement, tab 224, NAB.005.044.0517 at .0519.

³⁷ Project Winnow – customer response: remediation and compensation scheme (Waldron Statement, tab 263, NAB.032.001.2769 at .2772).

³⁸ Meaning that those bankers did not receive any bonus for the financial year (see Waldron XXN T151.1-3).

³⁹ Waldron XXN T185.19-21.

⁴⁰ Waldron Statement at [232(d)].

⁴¹ Waldron Statement at [232(d)]. Waldron RXN T188.39-T189.3: the late completion of training is also conduct that would typically attract an amber conduct gate.

⁴² Exhibit 1.13, RCD.0001.0034.0007; Waldron XXN T82.25-T83.2; T119.46-T120.2.

⁴³ Exhibit 1.13, RCD.0001.0034.0007, entry 1 in section 3.1.

⁴⁴ Exhibit 1.13 (p 5 of NAB Group Response dated 29 January 2018, RCD.0001.0034.0007) at entry 1 in section 3.1.

B.3 Was the misconduct attributable to a particular culture, system or practice?

17. NAB did not confine its work in relation to the misconduct to identifying the nature of the misconduct and its scope. It recognised that it was important to understand the reasons why – notwithstanding existing system controls – the misconduct had been possible and the steps which might be taken to prevent recurrence of similar conduct. On 23 November 2015, NAB established a working group to investigate possible systemic issues and implications for customers.⁴⁵ Amongst other things, NAB undertook a “root cause” analysis to address the underlying causation question.⁴⁶ The root cause analysis became one of several workstreams of Project Winnow, which was an overarching project established in October 2016.⁴⁷ Project Winnow encompassed the GWS investigation and Project Beacon, but extended further to also consider risk oversight issues and responsible lending generally.⁴⁸ The key findings of the root cause analysis are set out in Mr Waldron’s statement at paragraph 222. They may be summarised as follows:
- (a) not all bankers understood compliance requirements with respect to consumer lending;⁴⁹
 - (b) control effectiveness relied too heavily on banker behaviour;⁵⁰
 - (c) there was a lack of controls in relation to addressing intentional misconduct (including fraud);⁵¹
 - (d) there was ineffective feedback to bankers in relation to compliance or conduct issues;⁵² and
 - (e) monitoring and reporting was not being used adequately to enable early identification by NAB of emerging issues.⁵³
18. As to culture, NAB’s investigations identified a “localised systemic risk culture issue” within the GWS area.⁵⁴ However, there is no evidence to support a finding of a particular culture more widely or at NAB *as a whole* as causative of the misconduct. Nor is there any evidence to support a finding of a particular practice as being causative of the misconduct.
19. However, NAB acknowledges that the misconduct identified in the GWS area (and, subsequently, in other places) was attributable to several systemic issues in relation to the Introducer Program itself and, more broadly, the structure of NAB’s incentives program. **First**, there was a lack of accountability in relation to the Introducer Program.⁵⁵ **Secondly**, there was a lack of clarity in relation to the role of an Introducer.⁵⁶ **Thirdly**, problems were created by permitting persons from industries unrelated to the financial services or allied

⁴⁵ Waldron Statement, tab 159, NAB.032.001.0042.

⁴⁶ Waldron Statement, tab 253, NAB.005.037.0722; Waldron Statement, tab 215, NAB.005.046.2007 at .2013.

⁴⁷ Waldron Statement at [64].

⁴⁸ Waldron Statement at [64].

⁴⁹ Waldron XXN T164.44-T165.16; Waldron Statement, tab 253, NAB.005.037.0722 at .0728.

⁵⁰ Waldron XXN T165.20-35; Waldron Statement, tab 253, NAB.005.037.0722 at .0728.

⁵¹ Waldron XXN T165.20-35; Waldron Statement, tab 253, NAB.005.037.0722 at .0728.

⁵² Waldron XXN T165.40-T166.9; Waldron Statement, tab 253, NAB.005.037.0722 at .0728.

⁵³ Waldron XXN T166.16-31; Waldron Statement, tab 253, NAB.005.037.0722 at .0728.

⁵⁴ Waldron Statement, tab 166, NAB.032.001.2605 at .2605 (Memorandum for Group Risk Return Management Committee, styled “Internal Investigation into Fraud Event”). See also, exhibit 1.12 (NAB.040.001.0133).

⁵⁵ Waldron Statement, tab 166, NAB.032.001.2605 (Memorandum for Group Risk Return Management Committee, styled “Internal Investigation into Fraud Event”) at .2609 (preliminary insights).

⁵⁶ Waldron Statement, tab 131, NAB.005.043.0427 (Presentation to Project Winnow Steering Committee styled “Project Winnow Steering Committee #1 27 October 2016”) at .0432; Waldron XXN T154.44-T155.10.

industries to be Introducers.⁵⁷ *Fourthly*, there were gaps in NAB’s control systems that resulted in misconduct not being detected for a period of time. *Fifthly*, NAB’s incentive structures and targets contributed to a small number of people choosing to behave unethically.⁵⁸

20. The first and fourth issues identified in the above paragraph are addressed in these submissions in paragraphs 26 and 27 below. As to the second issue (lack of clarity in relation to the Introducer’s role), NAB has modified its Introducer agreements to make changes including the introduction of attestation requirements, to ensure Introducers understand their obligations.⁵⁹ NAB has also introduced mandatory training for its bankers in relation to the role of Introducers.⁶⁰
21. As to the third issue (the use of Introducers from unrelated industries), NAB has tightened the criteria for the selection of Introducers, including by requiring Introducers to hold a professional accreditation and to operate in an industry with a connection to financial services.⁶¹ This, along with excluding ‘dormant’ Introducers from the program,⁶² resulted in the number of Introducers reducing from a peak of 8,000 to 1,398 (at the time of Mr Waldron’s statement).⁶³
22. As to the fifth issue (incentive structures and targets), NAB’s submissions are set out in section G below. NAB also notes that it has modified its Introducer agreements by (inter alia) introducing a “claw-back” to enable NAB to claim back moneys in circumstances where the Introducer has engaged in misconduct.⁶⁴

C. COMMISSION’S SECOND THEME – WHY DID THE INTRODUCER PROGRAM MISCONDUCT GO UNDETECTED UNTIL 2015?

23. It is impossible entirely to prevent or eradicate misconduct within an organisation of NAB’s scale. This is one of the reasons why NAB’s whistleblower program – which operated effectively in the present instance – is an important element of its overall control environment. However, a key focus of NAB’s response to discovery of the misconduct was identification not only of the reasons why those responsible were able to ‘cheat the system’ (including to defraud NAB itself), but also of the reasons why their conduct was not identified earlier.
24. NAB’s investigations and its root cause analysis reveal the following reasons why the misconduct went undetected until 2015:
 - (a) *First*, there was no designated “owner”⁶⁵ of the Introducer Program across NAB;⁶⁶
 - (b) *Secondly*, there were governance gaps in relation to the Introducer Program (in particular, a lack of segregation of duties and a lack of systems to monitor and review Introducers);⁶⁷

⁵⁷ Waldron Statement, tab 166, NAB.032.001.2605 (Memorandum for Group Risk Return Management Committee, styled “Internal Investigation into Fraud Event”) at .2605.

⁵⁸ Exhibit 1.13 (p 5 of NAB Group Response dated 29 January 2018, RCD.0001.0034.0007).

⁵⁹ Waldron Statement at [213(g)(iii)].

⁶⁰ Waldron Statement at [213(h)].

⁶¹ Waldron Statement at [213(b)].

⁶² Waldron XN T181.36-182.33 (explaining that a dormant Introducer is considered high risk because they will “not necessarily be au fait with what is expected of them ... [and] they may have a higher probability of overstepping the requirements ...”).

⁶³ Waldron Statement at [213(d)].

⁶⁴ Waldron Statement at [213(g)(ii)].

⁶⁵ That is, in the sense explained in paragraph 26 below.

⁶⁶ Project Winnow Steering Committee, Meeting Pack for first meeting on 27 October 2016, Waldron Statement, tab 131, NAB 005.043.0427 at .0432.

- (c) *Thirdly*, there was a lack of due diligence oversight of Introducers generally,⁶⁸ including limited due diligence oversight performed by NRPs⁶⁹ on new sub-Introducers;⁷⁰
- (d) *Fourthly*, NAB's control processes were overly reliant on banker behaviour. This meant that where a banker or Introducer was deliberately engaging in dishonest conduct, NAB's controls were inadequate to pick up the misconduct; and
- (e) *Fifthly*, certain practices within the Introducer Program reduced the probability of misconduct coming to light, including bankers accepting an application and supporting information from an Introducer without meeting the customer face-to-face (contrary to NAB policy).⁷¹
25. NAB has addressed each of the above issues.
26. In relation to ownership and accountability across the bank, NAB had identified that although there was a person leading the Introducer Program in Retail, that person was not sufficiently senior and was not accountable for the program across the whole bank.⁷² In response, by October 2016, NAB had appointed a General Manager with accountability for the Introducer Program across NAB, and Broker Partnerships became the "owner" of the Introducer Program.⁷³ The improved accountability across the bank will (in NAB's view) increase the likelihood of detecting misconduct in the Introducer Program in the future.
27. In relation to the identified governance gaps, NAB has separated the on-boarding and off-boarding processes for Introducers and for bankers respectively, meaning that on-boarding and off-boarding of Introducers is now handled by an Introducer-specific process and team.⁷⁴ Mr Waldron also gave evidence of the introduction of business development managers, who work in the field with Introducers.⁷⁵ The role of business development managers is "multi-faceted" – they (rather than bankers) sign on the Introducers, ensure Introducers understand their role and undertake checks to ensure NAB's requirements are being met.⁷⁶ These measures are directed, among other things, to achieving greater segregation of duties in relation to Introducers.⁷⁷ As Mr Waldron explained, the new processes not only aim to segregate the on-boarding of Introducers from the banker relationship, segregation is also achieved by ensuring multiple referrals from one Introducer will be spread between different bankers.⁷⁸ Further, NAB has employed a team to monitor and review Introducers,⁷⁹ and NAB now performs a

⁶⁷ Project Winnow Steering Committee, Meeting Pack for first meeting on 27 October 2016, Waldron Statement, tab 131, NAB 005.043.0427 at .0432.

⁶⁸ Waldron Statement, tab 130, Project Winnow Steering Committee Meeting Minutes & Actions for 27 October 2016 meeting, NAB.005.043.0302 at .0303 (referring to re-design of on-boarding and due diligence process in relation to the Introducer Program).

⁶⁹ NRPs are explained in the Waldron Statement at [13].

⁷⁰ Project Winnow Steering Committee, Meeting Pack for first meeting on 27 October 2016, Waldron Statement, tab 131, NAB 005.043.0427 at .0432.

⁷¹ Waldron Statement, tab 161, KPMG Phase 2 report, NAB.005.037.0887 at .0964.

⁷² Waldron Statement, tab 131, NAB.005.043.0427 at .0432; Waldron XXN T65.1-2.

⁷³ Project Winnow Steering Committee, Meeting Pack for first meeting on 27 October 2016, Waldron Statement, tab 131, NAB 005.043.0427 at .0432.

⁷⁴ Waldron Statement at [213(f)].

⁷⁵ Waldron XXN T79.37-47, T80.9-29.

⁷⁶ Waldron XXN 79.37-47, T80.9-29.

⁷⁷ Waldron XXN T79.37-47, T80.31-46.

⁷⁸ Waldron XXN T80.31-46.

⁷⁹ Waldron Statement at [213(i)].

data matching review on a 6 monthly basis to identify possible conflicts of interest and other situations requiring investigation.⁸⁰

28. In relation to the lack of due diligence oversight by NRPs, NAB reviewed the on-boarding and due diligence practices of the three NRPs with whom NAB works⁸¹ and requested improvements to their existing processes.⁸²
29. In relation to the over-reliance of control processes on banker behaviour, by October 2017 NAB commenced “triangulated reporting” to monitor unusual changes in banker and Introducer performance and behaviour.⁸³ Triangulated reporting links sudden changes in sales volumes between banker and Introducer, and highlights unusual loan performance, thereby providing a mechanism to monitor the relationship between customer, banker and Introducer.⁸⁴ Mr Waldron also gave evidence that NAB is currently rolling out a software-based fraud tool to detect fraudulent documentation (including income documentation) used to support home lending applications.⁸⁵ NAB has also developed a proprietary predictive banker conduct model, to be fully implemented by September 2018,⁸⁶ which assesses banker behaviour based on a range of indicators of risk.⁸⁷
30. In relation to the existence of practices that might prevent the identification of misconduct, this is addressed by the team NAB has put in place to monitor and review Introducers. Among other things, this team conducts sample testing of introduced lending applications to monitor conduct and also to follow-up with customers, to ensure (for example) that the relevant customer was genuinely introduced by the Introducer to NAB.⁸⁸

D. COMMISSION’S THIRD THEME – WERE THE PROCESSES ADEQUATE TO DETECT AND PREVENT THE MISCONDUCT?

31. NAB’s investigations and its root cause analysis revealed that its processes were, in the relevant period, not adequate to detect and prevent the misconduct. However, NAB has implemented changes to remedy the weaknesses identified. The identified weaknesses, and the changes made, are addressed below.
32. The weaknesses identified by NAB in relation to *detection* of the misconduct in relation to the Introducer Program have been addressed above in section C. As to *prevention* of the misconduct, the Commission should find that the following key system weaknesses were identified by NAB in the course of its review of the misconduct and the circumstances giving rise to it (some of which apply to Introducers, some to bankers, and some to both):
 - (a) *First*, NAB’s criteria for the selection of Introducers was too broad, in particular in not requiring professional accreditation and permitting Introducers from industries with no connection to the financial services industry.⁸⁹

⁸⁰ Waldron Statement at [213(j)].

⁸¹ See Waldron Statement at [13].

⁸² Waldron Statement at [213(c)].

⁸³ Waldron Statement at [213(k)], [226]; Waldron Statement, tab 152, Project Winnow Steering Committee, Meeting Pack for Meeting 13 (28 November 2017), NAB.005.043.0341 at .0345; Waldron XXN T180.26-30.

⁸⁴ Waldron XXN T180.25-33.

⁸⁵ Waldron XXN T180.40-46. See also Waldron Statement at [226].

⁸⁶ Waldron Statement at [226].

⁸⁷ Waldron XXN T180.6-16.

⁸⁸ Waldron Statement at [213(i)]. See also Waldron XXN T180.25-33 (as to monitoring the relationship between banker, Introducer and customer).

⁸⁹ Waldron Statement at [213(b)].

- (b) *Secondly*, there was a lack of understanding on the part of some Introducers and bankers in relation to the role of an Introducer.⁹⁰
- (c) *Thirdly*, NAB found that its approach to training and accreditation of bankers was not fully effective to ensure all bankers understood consumer lending process compliance requirements.⁹¹
- (d) *Fourthly*, NAB found that bankers were receiving inadequate feedback where compliance improvements were required.⁹² Among other things, this limited the prospect that bankers would appropriately change their behaviour.⁹³
- (e) *Finally*, monitoring and reporting was not facilitating early identification of emerging issues.⁹⁴ While early detection operates as a hindsight measure to pick up misconduct which has occurred, it also operates to prevent misconduct, in that early identification of a lack of understanding of compliance requirements might prevent a future (and more serious) non-compliance issue.
33. NAB has put in a place a range of measures to address the weaknesses in its systems (including detection and prevention). **Annexure A** sets out the actions taken (and being taken) by NAB in response to the findings of the root cause analysis.
34. Before turning to section E, it is necessary to address a particular issue in relation to NAB's systems that was raised in the course of the hearing, namely the availability of policy waivers. Policy waivers were explained by Mr Gilfillan in his witness statement.⁹⁵ They might be granted where, for some reason, the customer's application does not conform exactly to NAB's policies, for example, because income verification documentation might be slightly out of date.⁹⁶ A departure from policy (via a policy waiver) does not constitute a breach of the *National Consumer Credit Protection Act 2009 (Cth) (NCCP)*. Where a policy waiver is given, NAB still collects information from the customer – the waiver operates because the information collected is outside the standard information collected in accordance with NAB's internal policies. Moreover, NAB's policies require that all exceptions to credit policy and standards must be approved by an individual holding a minimum delegated credit authority level 3.⁹⁷ Strict guidance is given in relation to when a policy waiver might be considered, and what can be waived.⁹⁸ Mr Gilfillan gave evidence that a delegated credit authority level 3 holder "would be a very experienced credit professional" who has been assessed as having "the required skills and capability to make credit decisions on behalf of NAB".⁹⁹ In light of the experience and skills required of delegated credit authority level 3 holders, and NAB's policies and procedures in relation to policy waivers,¹⁰⁰ NAB does not consider the availability

⁹⁰ Waldron Statement at [213(g)(iii)], Waldron XXN T179.24-29, 182.1-8; Waldron XXN T155.1-20.

⁹¹ Waldron Statement at [222], [225]; Waldron Statement, tab 155, Project Winnow Steering Committee Meeting Pack for Meeting # 10 on 28 August 2017, NAB.005.043.0298 at _0013 (root cause analysis – key findings).

⁹² Waldron Statement at [222]; Waldron Statement, tab 155, Project Winnow Steering Committee Meeting Pack for Meeting # 10 on 28 August 2017, NAB.005.043.0298 at _0013 (root cause analysis – key findings).

⁹³ Waldron Statement at [222]; Waldron Statement, tab 155, Project Winnow Steering Committee Meeting Pack for Meeting # 10 on 28 August 2017, NAB.005.043.0298 at _0013 (root cause analysis – key findings).

⁹⁴ Waldron Statement at [222]; Waldron Statement, tab 155, Project Winnow Steering Committee Meeting Pack for Meeting # 10 on 28 August 2017, NAB.005.043.0298 at _0013 (root cause analysis – key findings).

⁹⁵ At [32]-[34].

⁹⁶ Gilfillan XXN T210.24-30, T211.13-19.

⁹⁷ Exhibit 1.20, WIT.0001.0002.0001, statement of Angus Gilfillan (with exhibits) dated 5 March 2018 (**Gilfillan Statement**), tab 17, NAB.005.069.0446. See further Gilfillan Statement at [32].

⁹⁸ The suite of policies relevant to policy waiver is described in the Gilfillan Statement at [47], [52]-[53] (and exhibits referred to, therein).

⁹⁹ Gilfillan RXN T214.33-40.

¹⁰⁰ See Gilfillan Statement at [47]-[55].

of policy waivers to be a weakness in its systems that has contributed to the misconduct or other behaviours which might fall short of the responsible lending criteria prescribed in the NCCP.

E. COMMISSION’S FOURTH THEME – DID NAB RESPOND IN A TIMELY AND EFFICIENT WAY?

35. NAB’s response to the misconduct encompasses: (i) initial investigations into the misconduct and its engagement with ASIC; (ii) systemic work, including Projects Beacon and Winnow, and the “root cause” analysis; and (iii) NAB’s remediation program for customers adversely affected by the misconduct (which operates alongside the existing NAB Assist program which provides assistance to customers experiencing hardship in connection with servicing their loans). NAB submits that its response has, overall, been thorough and efficient. As to timeliness, NAB accepts that in some respects its response could have been (and should have been) quicker. Each aspect of its response is addressed below.

E.1 Initial investigations and engagement with ASIC

37. As stated above at paragraph 7, NAB’s Forensic Services team commenced its consideration of relevant issues in April 2015. That process escalated beyond Forensic Services after the receipt of the whistleblower calls on 14 September and 15 October 2015. The misconduct raised by the whistleblowers was serious and required investigation to: (a) verify the allegations; and (b) ascertain precisely what had occurred and the extent of the problem. As a result of NAB’s investigations, some of the misconduct identified in the whistleblower reports was found not to be substantiated.¹⁰¹
36. While investigations remained ongoing, in December 2015 NAB notified the NSW Police¹⁰² and provided written notification to ASIC.¹⁰³ As already stated, in its letter of 21 December 2015, NAB notified ASIC of the status of investigations, the action taken to date, and the planned next steps and further investigations. ASIC was invited to contact NAB’s Head of Group Regulatory Affairs should it wish to discuss the matter in the interim. Thereafter, the first of a number of meetings on this issue took place between ASIC and NAB after Christmas 2015, at which NAB provided an update as to the misconduct and its investigations. At that meeting, NAB emphasised – as was the case – that it was taking the matter seriously and that it was still undertaking investigations to establish the facts and understand the impact on customers.¹⁰⁴ The same approach was evident in its ongoing engagement with ASIC as set out in detail in the Waldron Statement.
37. In this regard, NAB continued to update ASIC, and it did so by letter dated 3 February 2016 and a further meeting held on 7 March 2016. Throughout 2016, NAB continued its engagement with and reporting to ASIC. It held further meetings with ASIC in July and August 2016.¹⁰⁵ On 31 August 2016, NAB issued a second notice¹⁰⁶ under s 912D of the *Corporations Act* in relation conduct that was similar to that identified in GWS.¹⁰⁷ Since that

¹⁰¹ See Waldron Statement, tab 126, NAB.005.074.0522 at .0541-0542 in respect of two bankers who were alleged to have been involved in significant misconduct (charging customers money for loans and creating false documents); see also Waldron Statement, tab 127, NAB.005.074.0550 at .0564 in respect of the allegations that: there was a “syndicate”; the named employees were linked; customers were charged cash for loans.

¹⁰² Waldron XN T118.2-4.

¹⁰³ Waldron Statement, tab 159, NAB.032.001.0042.

¹⁰⁴ Waldron Statement, tab 163, NAB.032.001.0066.

¹⁰⁵ Waldron Statement at [130], tab 201, NAB.005.097.0001; Waldron Statement at [134] and [239], tab 203, NAB.005.074.0010.

¹⁰⁶ Waldron Statement at [139]; tab 208, NAB.032.001.0020.

¹⁰⁷ Waldron XN T148.19-22.

time, NAB has continued to update ASIC by letter¹⁰⁸ and during the course of further meetings.¹⁰⁹ NAB is currently providing ASIC with bi-monthly updates, and (at the time Mr Waldron’s statement was prepared) provided its most recent update on 16 March 2018.¹¹⁰

38. NAB submits that its engagement with ASIC has been comprehensive and co-operative, and has continued consistently from the time of NAB’s first notification in December 2015 to date.¹¹¹ In that period, NAB met with ASIC on 12 occasions and provided written updates (in addition to the notices issued under s 912D of the *Corporations Act* referred to above). NAB has further responded to formal and informal requests issued by ASIC.¹¹² ASIC has made no criticism of NAB’s engagement with it with respect to the misconduct, or, more broadly, to NAB’s investigation of and response to the misconduct.
39. As a final point in relation to NAB’s engagement with ASIC, NAB wishes to address the “straw man” issue raised during the cross-examination of Mr Waldron.¹¹³ Mr Waldron was not the author of the document containing the “straw man” reference, which was a presentation to a Project Winnow Steering Committee meeting on 27 October 2016.¹¹⁴ Nevertheless, he gave evidence of his understanding of the straw man concept to be “a situation outlining a draft or hypothesis”, and that in this case the reference would have been to “a draft of documents that [NAB] prepared”.¹¹⁵ NAB acknowledges that in its ordinary usage, one of the meanings of a “straw man” is “an argument deliberately put up so that it can be knocked down”.¹¹⁶ However, as Mr Waldron’s evidence reflects, within NAB and the business community more broadly the term has developed an additional and different meaning, and is to refer to an “outline or draft copy circulated for comments or suggestions”.¹¹⁷ It is a draft “that a team can debate, pick apart, and improve”.¹¹⁸ In NAB’s submission, Mr Waldron’s understanding of how the term was used should be accepted. There is no foundation whatsoever for any inference that the term was used to indicate that a “fallacious example” was being created by NAB for the purposes of its engagement with ASIC with the “intent to keep from ASIC ... a true understanding” of the situation.¹¹⁹

¹⁰⁸ Including letters dated 30 September 2016 (Waldron Statement [146], tab 216, NAB.032.001.0026); 30 November 2016 (Waldron Statement at [158], tab 225, NAB.032.001.0029); 31 January 2017 (Waldron Statement at [161], tab 228, NAB.032.001.0032); 10 March 2017 (Waldron Statement at [168], tab 232, NAB.032.001.0035); 7 July 2017 (Waldron Statement at [241], tab 276, NAB.032.001.1689); 16 August 2017 (Waldron Statement at [243], NAB.041.002.2245); 21 September 2017 (Waldron Statement at [246], tab 208, NAB.032.001.0020); 16 January 2018 (Waldron Statement at [207], tabs 258-263, NAB.032.001.2790, NAB.032.001.2750, NAB.032.001.2756, NAB.032.001.2762, NAB.032.001.2763, NAB.032.001.2769).

¹⁰⁹ Including meetings held on: 22 January 2016 (Waldron Statement at [86], tab 163, NAB.032.001.0066); 7 March 2016 (Waldron Statement at [95], tab 168, NAB.032.001.0098); 20 July 2016 (Waldron Statement at [130], tab 201, NAB.005.097.0001); 10 August 2016 (Waldron Statement at [134], tab 203, NAB.005.074.0010); 21 October 2016 (Waldron Statement at [152], tab 222, NAB.032.001.0616); 21 April 2017 (by phone) (Waldron Statement at [175]); 2 June 2017 (Waldron Statement at [181] [182] and [240], tab 242, NAB.032.001.1986, and tab 156, NAB.005.036.0518); 31 July 2017 (Waldron Statement at [242], tab 250, NAB.032.001.1998); 18 August 2017 (Waldron Statement at [244], tab 277, NAB.032.001.2201); 13 November 2017 (Waldron Statement at [202]); 16 January 2018 (Waldron Statement at [250], tab 260, NAB.032.001.2790).

¹¹⁰ Waldron Statement at [249] - [251].

¹¹¹ NAB also advised APRA of the GWS investigation: see Waldron Statement at [60(e)], [119].

¹¹² Waldron Statement at [96]-[108], [110], [112]-[115], [120]-[123], [126], [133], [135]-[137], [142]-[144], [147]-[151], [155], [162], [166]-[167], [172], [174], [177]-[178], [183]-[184], [186]-[189], [191], [193]-[194], [197]-[199], [208]-[211] (and exhibits referred to therein).

¹¹³ Waldron XXN T155-157.

¹¹⁴ Waldron Statement, tab 131, NAB.005.043.0427 at .0436, third dot point.

¹¹⁵ Waldron XXN T156.15-23.

¹¹⁶ See, e.g., Macquarie Concise Dictionary (5th ed, 2009) at 1246.

¹¹⁷ Business Dictionary, www.businessdictionary.com/definition/straw-man.html (accessed 22 March 2018). See also:

<https://www.techopedia.com/definition/14585/straw-man> (accessed 22 March 2018).

¹¹⁸ <http://workingwithmckinsey.blogspot.com.au/2013/07/McKinsey-straw-man.html> (accessed 22 March 2018) (in this blog, the difference between the “straw man” concept used in this way, and the concept as used in the world of politics or debating, is noted).

¹¹⁹ Cf Waldron XXN at T156.30-37.

E.2 Project Beacon, Project Winnow and Root Causes

40. NAB did not confine its attention to the GWS area; its investigations identified further issues in regions beyond GWS,¹²⁰ and as a result in mid-2016 it commenced Project Beacon.¹²¹ Project Beacon was formed to undertake reviews of further instances of banker/Introducer misconduct, to identify systemic factors contributing to the misconduct and to identify and implement solutions.¹²² Project Beacon extended beyond NAB's Retail Banking business and included NAB's Business and Private Banking businesses.¹²³
41. In October 2016, NAB established Project Winnow.¹²⁴ Project Winnow was designed as an overarching project encompassing both the GWS investigation and Project Beacon, but was also tasked with considering risk oversight issues and responsible lending generally – that is, at a whole-of-organisation level.¹²⁵ The Project Winnow Steering Committee met monthly,¹²⁶ and oversaw the seven workstreams identified by Mr Waldron in his statement.¹²⁷
42. One of Project Winnow's workstreams was directed to a “root cause analysis and control environment review”.¹²⁸ Its purpose was to “understand why despite a large number of controls in place to mitigate the risk of poor quality lending processes and lending related fraud systemic issues and one off events continue to emerge”.¹²⁹ The root cause analysis was supervised by the Project Winnow Steering Committee.¹³⁰ Key findings and recommendations were reported to the Steering Committee on 28 August 2017.¹³¹ As set out in Annexure A, NAB has acted to address lacunae and weaknesses in its systems and processes in order to reduce the likelihood of a recurrence of similar misconduct, and to increase the early detection of behaviours which are directed to circumventing preventative systems and processes.

E.3 Assistance to customers experiencing hardship

43. Mr Waldron was cross-examined on documents which evidenced delinquency on loans made through bankers and Introducers identified as having participated in misconduct.¹³² It was put to him that relevant customers were “struggling to make their repayments”. That proposition overlooked an important safety net which such customers have available to them.
44. NAB's response to customers who may have suffered financial hardship as a result of misconduct is not – as the cross-examination by Senior Counsel Assisting implied¹³³ – confined to its standalone remediation program (dealt with in the next section). Customers experiencing financial hardship have access to the NAB Assist program, regardless of their eligibility for remediation under the standalone program. NAB Assist is the NAB team dedicated to assisting customers in financial hardship.¹³⁴ Customers experiencing financial hardship are encouraged to contact NAB Assist, who will work with the customer to find

¹²⁰ Waldron Statement, tab 131, NAB.005.043.0427 at .0430.

¹²¹ Waldron Statement at [124].

¹²² Waldron Statement at [63]; Waldron Statement, tab 131, NAB.005.043.0427 at .0430.

¹²³ Waldron Statement at [63].

¹²⁴ Waldron Statement at [64].

¹²⁵ Waldron Statement at [64].

¹²⁶ Waldron Statement at [65].

¹²⁷ Waldron Statement at [64].

¹²⁸ Waldron Statement at [64(e)], [214].

¹²⁹ Waldron Statement at [215], tab 253, NAB.005.037.0722 at .0724.

¹³⁰ Waldron Statement at [221].

¹³¹ Waldron Statement, tab 254 (meeting minutes and actions), NAB.005.043.0317; see also Project Winnow Root Cause Analysis Workstream document dated 24 August 2017, Waldron Statement, tab 253, NAB.005.037.0722.

¹³² Waldron XCN at T125.24-127.29 & ff, with reference to exhibit 1.10, NAB.032.001.0123.

¹³³ See, eg, Waldron XCN T126.36-127.26; T138.15-140.17; T143.3-36.

¹³⁴ Waldron XCN T140.7-8.

solutions, including (for example) temporary suspension of loan repayments if a person is out of work for a period of time.¹³⁵ The NAB Assist program's focus is customer hardship. Customers experiencing financial hardship as a result of banker misconduct are able to access the program like any other customer.¹³⁶ Mr Waldron gave evidence of NAB Assist working to help a particular customer who was experiencing hardship in circumstances where NAB had not made reasonable inquiries into the customer's financial situation.¹³⁷ Mr Waldron gave evidence that the customer's payments had been significantly reduced as a result of her engagement with NAB Assist.¹³⁸

E.4 Remediation Scheme

45. In August 2016, NAB raised a proposed remediation scheme with ASIC.¹³⁹ At that stage, the proposed scheme related to the GWS matter.¹⁴⁰ Subsequently, however, and in part due to the establishment of Project Winnow, a decision was made to bring together the customer remediation work arising from the GWS matter and Project Beacon.¹⁴¹ NAB then worked to develop the broader scheme, which commenced in November 2017.¹⁴² During the period of the remediation scheme's development, NAB liaised closely with ASIC in relation to the design of the program, including by seeking ASIC's feedback and guidance.¹⁴³ NAB has also engaged KPMG as its independent expert in relation to the scheme.¹⁴⁴
46. The remediation scheme involves four stages: (1) scope of review and remediation (itself involving an initial file review process, and a second file review process); (2) assessment as to whether a remediation event has occurred (including making contact with customers); (3) compensation calculation (where appropriate); and (4) offer and settlement.¹⁴⁵
47. Although no customer has yet received compensation,¹⁴⁶ the remediation process is not a simple one. The initial file review (just one component of the first stage) – involved about 11,000 file reviews.¹⁴⁷ Of those 11,000 file reviews, NAB has now (through the work of the remediation program) identified 1360 customers who may have been affected by the misconduct.¹⁴⁸ Moreover, each stage of the process involves its own complexities.¹⁴⁹ However, the scheme is progressing. As at 9 March 2018,¹⁵⁰ NAB had attempted contact with 71% of potentially impacted customers,¹⁵¹ and the remediation scheme is expected to be

¹³⁵ Waldron RXN T193.30-44.

¹³⁶ Waldron RXN T194.1-3.

¹³⁷ Waldron XXN T137-140. The relevant customer was discussed by Mr Waldron in his statement, as an example of a customer who had suffered financial hardship in servicing a loan affected by Introducer misconduct and whose payment obligations were modified under the NAB Assist program: see Waldron Statement at [29], [283]-[287], esp at [286]. See further the explanation of the NAB Assist program, and how it sits alongside the remediation program, in NAB.032.001.2341, addressed by Mr Waldron during re-examination: Waldron RXN T194.5-43.

¹³⁸ Waldron XXN T140.6-15.

¹³⁹ Waldron Statement at [239].

¹⁴⁰ Waldron Statement at [239].

¹⁴¹ Waldron Statement at [239].

¹⁴² Waldron Statement at [248]. The scheme is set out in the document at Waldron Statement, tab 263, NAB.032.001.2769.

¹⁴³ Waldron Statement at [239]-[248].

¹⁴⁴ Waldron Statement at [269]-[272].

¹⁴⁵ Waldron Statement at [237]. The Remediation scheme document is Waldron Statement, tab 263, NAB.032.001.2769.

¹⁴⁶ Waldron Statement at [273]; Waldron XXN T183.29. By the time of giving evidence, Mr Waldron said that NAB had identified about 26 customers to whom it would be making offers of compensation: Waldron XXN T183.31-40.

¹⁴⁷ Waldron XXN T184.12-15 (completed by November 2017).

¹⁴⁸ Waldron XXN T182.37-47.

¹⁴⁹ See, e.g., Waldron Statement at [257] (referring to the difficulties in contacting customers and having them engage in the process).

¹⁵⁰ When Mr Waldron gave evidence, the figures he identified were current as at 9 March 2018: Waldron XXN T183.21-40. NAB is able to provide up-to-date figures to the Commission upon request.

¹⁵¹ Waldron XXN T183.10-21.

completed by November 2018.¹⁵² Mr Waldron gave evidence that, notwithstanding the large number of customers *potentially* affected by the misconduct, the approximate expected quantum of remediation NAB expects to pay is likely to be at the lower end of the range of \$9 million to \$23 million.¹⁵³

E.5 Submissions on NAB's overall response

48. In light of the above, NAB submits that its overall response to the misconduct has been thorough, and efficient. NAB submits that the Commission should make the following findings in relation to its response:

- (a) NAB commenced its consideration of issues arising when concerns were first raised in April 2015 about Introducer files at a branch in GWS, and commenced investigations promptly after receiving the first whistleblower call on 14 September 2015 – by 23 September 2015 an email from the Manager of the Major Financial Crimes group shows the matter was receiving attention;¹⁵⁴
- (b) NAB conducted detailed and comprehensive investigations of the conduct, focusing not just on GWS but extending to potential misconduct in other areas too;¹⁵⁵
- (c) Through Project Beacon and Project Winnow (including the root cause analysis), NAB took steps to ensure its investigations looked to the systemic issues underlying the misconduct;¹⁵⁶
- (d) The root causes of the misconduct were those summarised in paragraph 17 above;
- (e) The reasons the misconduct went undetected were those summarised in paragraph 24 above;
- (f) The system weaknesses which permitted the misconduct to occur were those summarised in paragraph 32 above;
- (g) NAB, guided by the Project Winnow Steering Committee, has taken appropriate action to remedy the system weaknesses identified by the root cause analysis, in order to improve prevention and detection of misconduct;¹⁵⁷
- (h) NAB's response has included the development and implementation of a remediation scheme which (in addition to the NAB Assist program) will ensure that customers who have suffered financial loss as a result of misconduct will receive compensation;¹⁵⁸ and
- (i) Further, and regardless of their eligibility for compensation under the remediation program, NAB has, through its NAB Assist program, provided and continues to provide assistance to customers who have experienced hardship in connection with the servicing of loans, including loans potentially affected by the misconduct.¹⁵⁹

49. NAB acknowledges – as Mr Waldron acknowledged candidly in his evidence – that some elements of its response have not progressed as quickly as it would have liked.¹⁶⁰ However, NAB submits this has not been as a result of an unwillingness on NAB's part to confront the

¹⁵² Waldron Statement at [257]; Waldron XXN T159.5-8.

¹⁵³ Waldron RXN T194.25-40.

¹⁵⁴ See paragraphs 7 and 8 above.

¹⁵⁵ Waldron Statement at [61]-[63]; Waldron Statement, tab 197, NAB.005.046.1921, tab 200, NAB.020.014.2131.

¹⁵⁶ See paragraphs 40 to 42 above.

¹⁵⁷ See paragraph 42 above, and Annexure A.

¹⁵⁸ See paragraphs 45 to 47 above.

¹⁵⁹ See paragraph 43 to 44 above.

¹⁶⁰ Waldron Statement, tab 148, NAB.005.043.0335 at .0336; Waldron XXN T159.18-T160.22.

seriousness of these issues. In some instances delay has arisen as the result of complexities in the process (for example, difficulties in engaging with customers as part of the remediation scheme).¹⁶¹ However, in NAB’s submission, its overall response has demonstrated that NAB has treated the misconduct seriously and taken care to ensure its response has been thorough, appropriate and considered.

50. Moreover, NAB’s conduct demonstrates it has been frank with ASIC in relation to its identification of, and investigation into, the misconduct, and has sought to work co-operatively and openly with the regulator throughout the process. NAB’s response demonstrates a genuine concern to identify the underlying (structural) issues that may have contributed to the misconduct, and also a commitment to its regulatory and statutory obligations. NAB’s response has been assiduous at an operational, policy, system and regulatory level.
51. Finally, during the course of Mr Waldron’s evidence, at T86.43&ff, the Commissioner made the following statement:

“One thing that I may have to look at, I think, is what the attitude, either of the industry generally, if there were such a thing, participants in the industry, is to the notion of obedience to the law. Obedience to the law that governs the way they conduct their affairs. There may be a difference – I don’t say there is – there may be a difference between a breakdown in controls and an acknowledgment of breach of law.”

52. In NAB’s submission, this case study is in no way illustrative of any insouciance on NAB’s part in respect of breaches of the law, let alone failures to acknowledge the same; nor does it illustrate disregard by NAB of its obligation to comply with the law (whether generally or in this specific instance). On the contrary, it is submitted that this case study illustrates NAB’s willingness:
- (a) to identify, investigate, acknowledge and remediate potential breaches of the law, as well as ‘lesser’ breaches of policy or procedure which may nevertheless have adversely affected customer outcomes;
 - (b) to work hard and apply significant resources to identifying and closing the ‘gaps’ in its systems, processes and policies; and
 - (c) to do so in a way which engages closely, candidly and constructively with the regulator.

F. NAB’S BROADER RESPONSE TO ISSUES ARISING IN RELATION TO THE INTRODUCER PROGRAM

53. The Introducer case study dealt with misconduct identified at a particular point in time, and involving a cohort of Introducers and bankers. NAB’s submissions have dealt with issues it identified in relation to that misconduct, and changes made as a result. However, NAB has also made changes in response to the Sedgwick Review.¹⁶² In assessing the Introducer

¹⁶¹ Waldron Statement at [257]. Given the nature of the misconduct – which included, for example, the falsification of income records – it is perhaps not surprising that contacting and obtaining engagement from customers has been challenging. However, for the reasons already stated, the Commission can be satisfied that customers with affected loans who have suffered financial hardship have not had to wait for the inception of the remediation program for assistance in mitigating that hardship.

¹⁶² Mr Waldron referred to the Sedgwick recommendations during cross-examination at T176.11-17. The Sedgwick recommendation arose from the review of Stephen Sedgwick AO into retail banking remuneration: Stephen Sedgwick, “Retail Banking Remuneration Review”, 19 April 2017 available at https://www.betterbanking.net.au/wp-content/uploads/2018/01/FINAL_Rem-Review-Report.pdf (**Sedgwick Review**).

Program and NAB's response to issues arising in relation to it, the Commission should have regard to NAB's implementation of recommendations made by Mr Sedgwick.

54. Recommendation 20 of the Sedgwick Review concerned Introducers and referrers. In relevant part, it recommended that banks examine their governance of these arrangements to ensure that existing practices are appropriate.¹⁶³ NAB committed publicly to implementing the Sedgwick reforms.¹⁶⁴ In respect of recommendation 20, NAB has implemented changes to improve controls and governance in respect of Introducers. These changes go hand-in-glove with the work undertaken by the Project Winnow Steering Committee in relation to Introducers. In addition to the changes discussed above, the following changes were implemented by NAB in 2017, after the Sedgwick Review:

- (a) by November 2017, NAB had developed and implemented its Introducer training module for all bankers (e-learn);¹⁶⁵
- (b) by October 2017, NAB commenced triangulated reporting to monitor unusual changes in banker and Introducer performance or behaviour;¹⁶⁶ and
- (c) by October 2017, NAB conducted a review of existing broker and Introducer arrangements to ensure compliance with statutory authorisation and to ensure individuals are not acting as both broker and Introducer.¹⁶⁷

55. In NAB's submission, the evidence before the Commission does not justify findings that Introducer programs, *per se*, pose an unacceptable risk to compliant behaviour – for example, because they necessarily prioritise selling over customer outcomes. There is a place in the system for customers to be guided through trusted relationships to a particular bank which might fulfil their lending needs. However, if the Commission forms the view that broader changes should be made, NAB contends that the changes would need to be industry-wide and supported by legislation.

G. THE QUESTION OF REMUNERATION AND INCENTIVES (NOT LIMITED TO INTRODUCERS)

56. In the course of Project Winnow and in light of the Sedgwick Review, NAB has closely considered the question of whether its incentive structure contributes to or encourages misconduct. This analysis has not been limited to the Introducer context.

57. NAB has acknowledged that its incentive structures and targets contributed to a small number of people choosing to behave unethically,¹⁶⁸ and has recognised that changes needed to be made to the way it remunerates its staff and the way it structures its incentive schemes. In addition to changes implemented as part of Project Winnow, changes have also been implemented by NAB as part of its commitment to implement the Sedgwick reforms (which reforms include 8 recommendations directed to remuneration structures for retail bank staff).¹⁶⁹ NAB's changes to remuneration and incentives are set out below.

¹⁶³ Sedgwick Review at 6.2 (page 39).

¹⁶⁴ "NAB Commits to Implementing Final Sedgwick Recommendations", 19 April 2017 available at https://news.nab.com.au/news_room_posts/nab-commits-to-implementing-final-sedgwick-recommendations/.

¹⁶⁵ Waldron Statement at [213(h)]; Waldron Statement, tab 152, NAB.005.043.0341 at .0347.

¹⁶⁶ Waldron Statement at [213(k)]; Waldron Statement, tab 152, NAB.005.043.0341 at .0348.

¹⁶⁷ Waldron Statement at [213(e)].

¹⁶⁸ Exhibit 1.13 (p 5 of NAB Group Response dated 29 January 2018), RCD.0001.0034.0007.

¹⁶⁹ See, e.g., Waldron Statement, tab 136, NAB.005.043.0306, in which reference is made to the Sedgwick report in the context of employee incentives, and the alignment of recommendations as between Project Winnow and the Sedgwick review; Waldron Statement, tab 142, NAB.005.043.0310, at .0311, referring (in the context of the Sales incentives stream) to the review and refinements of recommendations after the Sedgwick review, and provision of an update to the next Steering Committee.

58. By October 2016, NAB had implemented changes to its Star Sales Incentive Program for bankers selling mortgages.¹⁷⁰ A “decelerator” had been introduced which “quite substantially” reduced the total amounts that could be paid to a banker under the target-based reward system, once the banker reached certain levels of revenue.¹⁷¹ NAB also made changes to its scorecard system to reduce the percentage on the scorecard relating to sales (particularly for leaders).¹⁷² The changes to the scorecards are aimed at achieving a better balance between sales targets and customer-service targets, in order to (inter alia) reduce the incentive for employees to engage in misconduct.
59. Further, in August 2017, NAB announced that it was moving its branch managers from the Star Sales Incentive Program¹⁷³ to the group-wide short term incentive plan with effect from 1 October 2017.¹⁷⁴ The purpose of this change was to “see greater emphasis placed on customer outcomes, actions and behaviours, not just product sales for staff incentives”.¹⁷⁵ Mr Waldron gave evidence that by 1 October 2017, all branch managers and call centre team leaders with sales involvement had been transitioned to the group short term incentive plan.¹⁷⁶ Mr Waldron also gave evidence that these changes had been made in light of the Sedgwick recommendations.¹⁷⁷
60. Under the group short term incentive plan (including under the Customer Experience Incentive Program),¹⁷⁸ an employee’s bonus will be reduced if NAB’s conduct requirements (as set out in NAB’s Code of Conduct) have not been met.¹⁷⁹ An employee who has adhered to NAB’s Code of Conduct receives a “green conduct gate” and will be eligible to receive a bonus.¹⁸⁰ An employee who has not adhered to (or completed) NAB’s conduct requirements will receive an “amber conduct gate”, which results in a 25% reduction in any bonus for which the employee might have qualified.¹⁸¹ An employee with a significant conduct breach, multiple minor breaches or remedial actions that have not been satisfactorily completed will receive a “red conduct gate”, and is not eligible to receive any bonus.¹⁸² The calculation of an employee’s bonus also takes into account (where it is appropriate to the role) the employee’s customer service record.¹⁸³
61. NAB acknowledges that the financial category may be a material component of an employee’s score under the current scorecard system, and (within that) a component relates to achievement of targets (which, depending on the employee’s role, might involve sales targets). However, NAB’s work to implement the Sedgwick reforms is ongoing, and (as Mr Waldron stated) “will have impacts on the scorecards going forward.”¹⁸⁴ In NAB’s submission, in making findings in relation to incentives the Commission should take into account the Sedgwick reforms, and

¹⁷⁰ Waldron XN T154.7-13.

¹⁷¹ Waldron XN T154.9-18.

¹⁷² Waldron XN T154.18-21, 27-31. See also Waldron Statement, tab 152 (Winnow Steering Committee - #13, 28 November 2017) NAB.005.043.0341 at .0347: “Retail FY18 scorecards - Less focus on sales and more focus on signature customer experiences & signature customer home loan experience - Complete”.

¹⁷³ From 1 October 2016, known as the Customer Experience Incentive Program (see Waldron Statement, footnote 1).

¹⁷⁴ Waldron XN T167.22-168.2; NAB.005.037.0766 (exhibit 1.16).

¹⁷⁵ Quote from Andrew Hagger (RCD.0021.0001.0168, exhibit 1.17) discussed at Waldron XN T167.38-168.2.

¹⁷⁶ Waldron XN T168.20-33.

¹⁷⁷ Waldron XN T176.13-17.

¹⁷⁸ See Waldron Statement, footnote 1.

¹⁷⁹ Waldron XN T170.4-45. See NAB.005.037.0766 (exhibit 1.16) at .0772.

¹⁸⁰ Waldron XN T170.41-45. See NAB.005.037.0766 (exhibit 1.16) at .0772.

¹⁸¹ Waldron XN T170.47-171.5. See NAB.005.037.0766 (exhibit 1.16) at .0772.

¹⁸² Waldron XN T171.7-10. See NAB.005.037.0766 (exhibit 1.16) at .0772.

¹⁸³ Waldron XN T172.12-41. In addition to an employee’s customer service record, an employee’s “management of risk and compliance is a key element of their performance” and that is why risk management is a mandatory measure within each Performance Plan (that is, scorecard). (See NAB.005.037.0766 (exhibit 1.16), cl 2.5, at .0772.)

¹⁸⁴ Waldron XN T176.11-17.

NAB's public commitment to implement those reforms (which commitment is ongoing, and has been demonstrated in the work already done).

H. NAB'S RESPONSE TO THE AVAILABLE FINDINGS PROPOSED BY SENIOR COUNSEL ASSISTING

H.1 Proposed findings as to misconduct

62. **First proposed finding** – *NAB breached its statutory obligations under s 47(1)(a) of the NCCP, and s 912A(1)(a) of the Corporations Act to do all things necessary to ensure that its credit activities and the financial services covered by its Australian Financial Services Licence were engaged in efficiently, honestly and fairly.*
63. In respect of those bankers the subject of the case study who were terminated by NAB and/or to whom NAB applied a red conduct gate, NAB accepts it did not do all things necessary to ensure that its credit activities and financial services were engaged in efficiently, honestly and fairly.
64. **Second proposed finding** – *NAB breached its statutory obligations under s 47(1)(b) of the NCCP and s 912A(1)(aa) of the Corporations Act to have in place adequate arrangements to ensure that NAB's clients were not disadvantaged by any conflict of interest that may arise wholly or partly in relation to NAB's credit activities or in its provision of financial services.*
65. In NAB's submission, the evidence before the Commission does not establish breaches by NAB of its obligations under s 47(1)(b) of the NCCP, or s 912A(1)(aa) of the *Corporations Act*.
66. **Third proposed finding** – *NAB breached its statutory obligations under s 47(1)(g) of the NCCP and s 912A(1)(f) of the Corporations Act to ensure that its representatives were adequately trained to engage in the credit activities authorised by NAB's credit licence and the financial services covered by Australia's Financial Services Licence.*
67. NAB accepts, consistently with the findings of the root cause analysis, that its approach to training was not fully effective in ensuring that all bankers understood consumer lending process compliance requirements. However, NAB does not accept that it breached its statutory obligations under s 47(1)(g) of the NCCP and s 912A(1)(f) of the *Corporations Act*. There is a difference between recognising that NAB's training was not fully effective, and finding that NAB failed in its statutory obligation to ensure its representatives were adequately trained. The evidence before the Commission was not directed to that particular issue, and does not provide a foundation for so finding.
68. **Fourth proposed finding** – *NAB breached the prohibition in s 128(a) of the NCCP on entering into home loans with consumers in circumstances where it had not made reasonable inquiries about the consumer's financial situations as required by s 130(1)(b) of that Act.*
69. NAB accepts that there have been instances where a breach of s 128(a) of the NCCP occurred due to the conduct of some of the bankers the subject of NAB's GWS and Project Beacon investigations, in circumstances where the banker received financial information in support of loan applications knowing it to be false. However, because the case study has not focused on specific home loans, and has not heard evidence from any consumer in the case study, NAB submits the evidence before the Commission does not support a finding of a specific breach. In the event of an examination of a specific home loan the role of the consumer would be an important factual element in determining whether any breach had in fact occurred.

70. ***Fifth proposed finding*** – NAB breached the prohibition in s 128(a) of the NCCP on entering into home loans with consumers in circumstances where it had not taken reasonable steps to verify their financial situations, as required by s 130(1)(c) of that Act.
71. NAB accepts that there have been instances where a breach of s 128(a) of the NCCP occurred due to the conduct of some of the bankers the subject of NAB’s GWS and Project Beacon investigations, in circumstances where the banker received financial information in support of loan applications knowing it to be false. However, because the case study has not focused on specific home loans, and has not heard evidence from any consumer in the case study, NAB submits the evidence before the Commission does not support a finding of a specific breach. In the event of an examination of a specific home loan the role of the consumer would be an important factual element in determining whether any breach had in fact occurred.
72. ***Sixth proposed finding*** – NAB breached the prohibition in s 133(1) of the NCCP on entering into home loans with consumers in circumstances where those home loans were unsuitable for the consumer.
73. As a general proposition, NAB accepts that the misconduct identified in this case study would have resulted (in some cases) in NAB entering into loans with consumers that were unsuitable for the consumer.¹⁸⁵ However, the evidence before the Commission has not been directed to the identification of specific breaches, in relation to specific consumers. Nor has NAB been afforded the opportunity to put on evidence directed to any particular allegation of a breach of s 133(1) of the NCCP. As a result, it is not open to the Commission to make the proposed finding.
74. ***Seventh proposed finding*** – NAB breached its obligation under s 912D(1) of the Corporations Act to provide a written report to ASIC in respect of the misconduct identified in 2015 in Greater Western Sydney which breached a number of the general obligations imposed on NAB as a financial services licensee by s 912A of the Corporations Act within 10 days after becoming aware of the breach. The evidence establishes a written report to ASIC was not made until 2 February 2016.
75. NAB submits that this finding is not available on the evidence, and disputes that the 2 February 2016 report was the first “notification”. As set out in paragraphs 12 and 13 above, NAB notified ASIC on 21 December 2015 that it was investigating concerns relating to bankers in GWS and that the matter was being investigated internally by: (i) NAB Internal Audit; and (ii) NAB Forensic Services and by KPMG, and would be assessed under NAB’s SERP process. Within 10 days of the matter being considered by the SERP and the making of a determination that there was an event reportable under s 912D(1) of the Corporations Act, NAB submitted a report pursuant to s 912D to ASIC.
76. ***Eighth proposed finding*** – NAB engaged in misleading and deceptive conduct.
77. NAB submits that this finding is not open to the Commission to make. There has been no identification of the conduct that is said to give rise to the proposed finding. No particular statutory provision has been identified. Moreover, the Commission did not hear evidence from any customer affected by conduct that is said to amount to misleading and deceptive conduct.
78. ***Ninth proposed finding*** – NAB engaged in unconscionable conduct.
79. NAB submits that it is not open to the Commission to make a finding that NAB engaged in unconscionable conduct. The nature of the unconscionable conduct has not been identified by

¹⁸⁵ Exhibit 1.13, RCD.0001.0034.0007.

Senior Counsel Assisting, nor has there been any identification of law which has been allegedly breached or the conduct that is said to give rise to the proposed finding. Moreover, the Commission did not hear evidence from any customer affected by conduct that is said to amount to unconscionable conduct.

80. **Tenth proposed finding** – *NAB failed to comply with the expectations of ASIC in relation to responsible lending as set out in Regulatory Guide 209 (credit licensing, responsible lending conduct), which constitutes a recognised and widely accepted benchmark for meeting the responsible lending obligations in the NCCP.*
81. NAB’s alleged non-compliance has not been particularised. Apart from the acknowledgements made by NAB in relation to the failures in its systems generally, NAB cannot respond to this proposed finding in any meaningful way.
82. **Eleventh proposed finding** – *NAB failed to comply with the expectations of ASIC in relation to breach reporting by Australian financial services licensees as set out in Regulatory Guide 78 (breach reporting by AFS licensees), which constitutes a recognised and widely accepted benchmark, this time for meeting the breach reporting obligations in section 912D of the Corporations Act.*
83. NAB submits this proposed finding is not open to the Commission, and refers to paragraph 75 above, and paragraph 113 below.
84. **Twelfth proposed finding** – *NAB failed to comply with the obligations in cl 3.2 and cl 27 of the Banking Code of Practice (being the obligation to act fairly and reasonably towards its customers in a consistent and ethical manner and the obligation to exercise the care and skill of a diligent and prudent banker in selecting and applying credit assessment methods and forming an opinion about the customer's ability to repay home loans).*
85. NAB’s non-compliance has not been particularised. Moreover, the Commission has not heard evidence directed to this alleged non-compliance, in relation to any particular customer. The proposed finding is not open to the Commission.

H.2 Proposed findings as to conduct that falls below community standards and expectations

86. **Proposed finding** – *despite being aware that it had identified approximately 1300 customers who may have been affected by the misconduct that occurred in the period from 2013 to 2016, to date approximately 71 per cent of these customers have been contacted by NAB and no customer has yet been offered any remediation.*
87. NAB refers to paragraphs 45 to 47 above. NAB accepts that it has not yet compensated any customer under the remediation program. However, the remediation program is underway, NAB has addressed (by its evidence) why no customer had yet been offered remediation at the time of the hearing on 19 and 20 March, and NAB expects the scheme to be complete by November 2018. Moreover, as stated at paragraph 44 above, customers who may have suffered financial hardship as a result of misconduct have access to NAB Assist. For these reasons, NAB does not accept that its conduct in relation to remediation falls below community standards and expectations.
88. **Proposed finding** – *NAB was aware of potential misconduct in connection with the Introducer program in Greater Western Sydney since at least April 2015, but did not commence a formal investigation until late October 2015 following two whistleblower disclosures.*
89. NAB refers to paragraphs 7 to 9 and 48(a) above. In the circumstances, NAB submits that this proposed finding is not available on the evidence. NAB does not accept that its conduct in

investigating the potential misconduct in connection with the Introducer Program in GWS fell below community standards and expectations.

H.3 Proposed findings as to the causes of the misconduct the subject of the NAB case study

90. ***Proposed finding*** – *a significant cause of the misconduct was NAB's remuneration and incentive scheme which rewarded bankers for the volume of sales of home loans.*
91. The description in the proposed finding of NAB's remuneration and incentive scheme (during the relevant period) as "rewarding bankers for the volume of sales of home loans" is overly simplistic.¹⁸⁶ The evidence demonstrates a more nuanced approach to incentives that is not appropriately captured in the proposed finding (see section G above). In NAB's submission, the evidence supports a finding that NAB's incentive structures and targets contributed to a small number of people choosing to behave unethically (see paragraphs 19 and 57 above), but does not support the broader formulation in the proposed finding. NAB has previously identified that its incentive structures and targets contributed to the behaviour of a small number of people, and has undertaken reform measures as a result (see paragraphs 57 to 61 above). NAB does not accept that its remuneration and incentive scheme was a "significant" cause of the misconduct, and says the Commission does not have evidence before it to warrant such a finding.
92. ***Proposed finding*** – *a cause of the misconduct was the inadequacy of NAB's policies and processes for the recruitment and training of bankers.*
93. NAB accepts that a cause of the misconduct was the inadequacy of its processes for the training of bankers and NAB has taken action to rectify the identified inadequacy. NAB refers to paragraph 32(c) above. However, the evidence does not support a finding that NAB's policies (as opposed to processes) with respect to the training of bankers was a cause of the misconduct. Nor does the evidence support a finding that inadequacy (whether of policies or processes) in relation to recruitment of bankers was a cause of the misconduct.
94. ***Proposed finding*** – *a cause of the misconduct was the inadequacy of NAB's policies for the recruitment and monitoring of Introducers.*
95. NAB accepts that a cause of the misconduct was the inadequacy of NAB's policies for the recruitment and monitoring of Introducers. NAB refers to paragraphs 19 and 24(b) and (c) above.
96. ***Proposed finding*** – *a cause of the misconduct was the inadequacy of NAB's processes for managing conflicts of interest.*
97. NAB submits that this proposed finding is not open to the Commission on the evidence before it. The key findings of NAB's root cause analysis do not identify an inadequacy of NAB's process for managing conflicts of interest as a cause of the misconduct.¹⁸⁷ No evidence was adduced that would support a finding that, contrary to the root cause analysis, any inadequacies in NAB's processes for managing conflicts of interest were a cause of the misconduct.
98. ***Proposed finding*** – *a cause of the misconduct was the inadequacy of NAB's policies for the prevention and detection of fraud by bankers and Introducers.*

¹⁸⁶ NAB also notes that the phrase "volume of sales" in the incentives context can be understood in different ways: see NAB's Submission in Response to Questions arising from First Round of Public Hearings: Consumer Lending, section C.2.

¹⁸⁷ The key findings are described in the Waldron Statement at [222].

99. NAB accepts this finding and refers to paragraph 17(c) above.
100. **Proposed finding** – *a cause of the misconduct was the inadequacy of NAB's policies and procedures to ensure that its bankers were engaging in responsible lending.*
101. This proposed finding is not open on the evidence. Weaknesses in NAB's policies and procedures meant the misconduct was not identified earlier, but the misconduct itself was the result of the actions of individual Introducers and bankers. Annexure A sets out the actions taken by NAB to ensure – to the extent it is reasonably possible to do so – there is no repeat of the misconduct.
102. **Proposed question** – *is there a disconnect between the formal limitations of the “spot and refer model” and the likely conduct of Introducers in the real world?*
103. NAB accepts that there will inevitably be situations where the conduct of Introducers in the “real world” does not match up to what is required of them under NAB's policies. However, NAB submits that the measures it has put in place in relation to Introducers,¹⁸⁸ including improved understanding of the Introducer role, and monitoring and review,¹⁸⁹ will reduce instances of “disconnect”.

H.4 Proposed findings regarding NAB's mechanisms for redress

104. **Proposed finding** – *the number of customers who have experienced hardship as a result of the misconduct is unknown.*
105. NAB accepts that, until its remediation program is complete, the number of customers who have experienced hardship as a result of the misconduct is not known. In the interim, customers who are experiencing hardship have access to the NAB Assist program.¹⁹⁰
106. **Proposed question** – *were the resources allocated within NAB to the customer response work stream adequate?*
107. Yes. NAB refers to paragraphs 45 to 47 above.

H.5 Opportunity to be heard in respect of any additional adverse findings

108. If the Commission intends to make any adverse findings against NAB or any of its employees in connection with this case study, other than those identified by Senior Counsel Assisting in her closing submissions, NAB seeks notice of the same and an opportunity to be heard in relation to them.

H.6 Questions arising from the Introducer case study on general issues

109. **Question 1:** do remuneration and incentive policies that reward bank employees for volume of sales of loans create an unacceptable risk that bank employees will prioritise the sales of loan products over: (i) the bank's responsible lending obligations; (ii) the bank's statutory obligation to provide loans to customers in a manner that is efficient, honest and fair; (iii) the bank's statutory obligation to have adequate arrangements to ensure that customers are not disadvantaged by any conflict of interest that may arise; (iv) the bank's obligation to ensure that the conduct of its employees in connection with the provision of loans is not misleading, deceptive or unconscionable. **NAB's response:** NAB refers to and repeats paragraph 91 above. Against that background, NAB accepts that some remuneration and incentive policies

¹⁸⁸ See paragraphs 20 to 22 and 26 to 30 above.

¹⁸⁹ See paragraphs 20, 27 and 29 above.

¹⁹⁰ As set out above at section E.3.

can create such a risk, and did so in the instance of the misconduct identified in the case study. However, NAB has identified issues in relation to its policies, and taken steps to address those issues (see section G above). NAB is not in a position to comment on the remuneration and incentive policies of other banks.

110. **Question 2:** whether Introducer programs create an unacceptable risk that banks will breach: (i) their responsible lending obligations; (ii) their statutory obligation to provide loans to customers in a manner that is efficient, fair and honest; (iii) their statutory obligation to have adequate arrangements to ensure that customers are not disadvantaged by conflicts of interest; and (iv) their obligation to ensure, again, that the conduct of their employees in connection with the provision of loans is not misleading, deceptive, or unconscionable. **NAB's response:** NAB has identified issues in relation to its Introducer Program, and has taken steps to address those issues (see paragraphs 19 to 22 above). NAB also refers to its submissions at section F above. NAB is not in a position to comment on the Introducer program of any other bank.
111. **Question 3:** do banks have adequate policies to deter and, if necessary, detect fraud by employees and third parties such as Introducers in connection with loan applications? **NAB's response:** NAB's policies to deter and detect fraud suffered from some inadequacies, which have been appropriately addressed by NAB in various ways (see sections C and D above). NAB is not in a position to comment on the policies of other banks.
112. **Question 4:** do banks have adequate policies to address customer detriment occasioned by misconduct of bankers or third parties such as Introducers in connection with home loans and in a timely fashion? **NAB's response:** NAB considers its policies in this regard to be adequate (see sections E.3 and E.4 above). NAB is not in a position to comment on the policies of other banks.
113. **Question 5:** how do financial services licensees ensure that they comply with the obligation in s 912D of the *Corporations Act* to make a written report to ASIC of any significant breach of the obligations within s 912A of the *Corporations Act* within 10 days? **NAB's response:** the licensee should have, as NAB does,¹⁹¹ an established and sound process to determine whether a significant breach has occurred and if so, to make the report to ASIC within time. NAB is not in a position to comment on the position of other banks.
114. **Question 6** (in relation to HEM) is separately addressed in NAB's submissions on the questions arising generally in relation to the Round One case studies.
115. **Question 7:** do banks too readily permit waivers of their policies in connection with the assessment of home loan applications, including policies in relation to the assessment of serviceability of the loan? **NAB's response:** NAB does not consider its processes and policies too readily permit waivers (see paragraph 34 above). NAB is not in a position to comment on the policies and processes of other banks.

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¹⁹¹ The SERP process, discussed in paragraphs 12 and 13 above.

ANNEXURE A

SCHEDULE OF NAB'S ACTIONS IN RESPONSE TO THE ROOT CAUSE ANALYSIS

*The findings in the table below are the findings arising from NAB's root cause analysis: see [225] to [227] of the Waldron Statement. The findings are:

Finding 1: *Inconsistencies in consumer lending sales practices are resulting in non-compliant process execution. The current approach to recruitment, training and accreditation is not fully effective in ensuring that all bankers understand consumer lending process compliance requirements.*

Finding 2: *Existing monitoring and reporting does not adequately detect and deter non-compliant conduct and fraud behaviours.*

Finding 3: *The current control framework is not effectively designed to mitigate conduct and fraud risks across the end to end value chain.*

	Program/action ¹⁹²	Commencement date	Finding
1.	Improvements to Retail Scorecards ¹⁹³	October 2017	Finding 1
2.	Retail leaders accreditation framework ¹⁹⁴	October 2017	Finding 1
3.	Introducer e-learn training ¹⁹⁵	November 2017	Finding 1
4.	Retail Platinum Banker program (higher levels of training as part of higher levels of accreditation) ¹⁹⁶	Pilot underway; full implementation March 2018	Finding 1
5.	Retail Inspire 2.0 refresh and certification (Inspire is a mind mapping process designed to capture the initial conversation with the customer and understand the customer's needs) ¹⁹⁷	Pilot underway; full implementation March 2018	Finding 1
6.	Retail on-boarding refresh ¹⁹⁸	Pilot underway; full implementation April 2018	Finding 1
7.	Mortgage Writer role established in Business Bank to assist Business Bankers with mortgages ¹⁹⁹	92% complete; full implementation September 2018	Finding 1; Finding 3
8.	Mortgage specialists roles in Business Bank ²⁰⁰	Pilot to commence	Findings 1, 3
9.	Secured lending training pathway ²⁰¹	September 2018	Finding 1
10.	Responsible lending e-learn training update ²⁰²	December 2017	Finding 1
11.	Retail Customer Experience sales incentives monitoring ²⁰³	January 2017	Findings 2, 3
12.	Retail Triangulation report (monitoring banker/customer/Introducer relationships) ²⁰⁴	October 2017	Findings 2, 3
13.	Create a predictive banker conduct model ²⁰⁵	Pilot January 2018; full	Finding 2

¹⁹² Waldron Statement at [225]-[227].

¹⁹³ Waldron XXN T154.18-31, T179.21-24.

¹⁹⁴ Waldron XXN T179.24-28.

¹⁹⁵ Waldron XXN T179.28-29.

¹⁹⁶ Waldron XXN T179.29-39.

¹⁹⁷ Waldron XXN T179.39-42.

¹⁹⁸ Waldron Statement, tab 152, NAB.005.043.0341 at .0347.

¹⁹⁹ Waldron XXN T179.43-180.4.

²⁰⁰ Waldron XXN T179.46-T180.4.

²⁰¹ Waldron XXN T180.4-5.

²⁰² Waldron XXN T180.4-5.

²⁰³ Waldron XXN T180.38-39.

²⁰⁴ Waldron XXN T180.25-33.

²⁰⁵ Waldron XXN T180.4-16.

		implementation September 2018.	
14.	HEM serviceability reporting at banker level to assist in training and compliance activity ²⁰⁶	In pilot; finalised April 2018	Finding 2
15.	Business bank monitoring and reporting lending process uplift	April 2018	Finding 2
16.	GLEE/HEM serviceability reporting down to banker level	In pilot	Finding 2
17.	Bank Assurance program ²⁰⁷	June 2018	Finding 2
18.	Central Assurance Framework ²⁰⁸	August 2018	Finding 2
19.	Central Assurance technology platform enabling bank wide analysis and reporting ²⁰⁹	August 2018	Finding 2
20.	Retail core requirements for all people leaders redefined	October 2017	Finding 2
21.	Introducer/banker monitoring reporting	November 2016	Finding 3
22.	Retail banker/Introducer relationship (reporting)	November 2017	Finding 3
23.	Fraud technology proof of concept (to improve detection of fraudulent documents, including payslips) ²¹⁰	January 2018	Finding 3
24.	Comprehensive credit reporting ²¹¹	Commenced February 2018; full implementation December 2018	Finding 3
25.	SAVie – salary verification uplift ²¹²	Commencing March 2018, ongoing	Finding 3
26.	Retail & Direct accreditation framework ²¹³	In pilot; full implementation March 2018	Finding 3
27.	Retail inspire mind map improvements	Full utilisation March 2018	Finding 3
28.	One Way Same Way process for mortgages within small business teams	September 2017	Finding 3
29.	Process and policy simplification	Ongoing throughout 2018	Finding 3
30.	Customer journeys – improving the customer experience	Ongoing throughout 2018	Finding 3

²⁰⁶ Waldron XXN T180.16-24.

²⁰⁷ Waldron Statement, tab 152, NAB.005.043.0341 at .0352.

²⁰⁸ Waldron Statement, tab 152, NAB.005.043.0341 at .0352.

²⁰⁹ Waldron XXN T180.33-36.

²¹⁰ Waldron XXN T180.40-46.

²¹¹ Waldron XXN T180.46-47.

²¹² Waldron Statement, tab 152, NAB.005.043.0341 at .0348.

²¹³ Waldron Statement, tab 152, NAB.005.043.0341 at .0348 and .0350.