

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

FIRST ROUND OF PUBLIC HEARINGS: CONSUMER LENDING

**SUBMISSIONS OF NATIONAL AUSTRALIA BANK – SUBMISSION IN
RESPONSE TO QUESTIONS ARISING FROM THE FIRST ROUND OF PUBLIC
HEARINGS**

A. INTRODUCTION

1. NAB provides the following submission in response to Counsel Assisting’s invitation to respond to the general questions arising from the case studies considered in the first round of public hearings concerning consumer lending.
2. The questions emerging from the case studies have been posed at a high level of generality, and in NAB’s respectful submission are not capable of a comprehensive or meaningful response that is (a) referable to the evidence presently before this Commission,¹ or (b) within the 25 page limit imposed.
3. In the circumstances, NAB’s approach in responding to the questions has been as follows. It has, in response to a number of the questions posed by Counsel Assisting, identified its ‘institutional’ position on the question asked. NAB has also sought to identify, in a number of instances, key matters which, in NAB’s submission, would need to be properly considered and explored to enable a meaningful answer to be given to the relevant question.

B. GENERAL QUESTION ARISING FROM THE NAB INTRODUCER CASE STUDY²

4. **Question 1:** *Is the practice by banks of defaulting to use of the HEM benchmark when a customer declares living expenses that are less than the HEM benchmark consistent with the statutory requirement to take reasonable steps to verify a customer’s financial situation before entering into a home loan with the customer?*
5. **NAB’s response:** NAB supports industry-wide improvement in the approach to the assessment of expenses and notes that, as an industry benchmark, HEM is routinely reviewed and updated by the Melbourne Institute of Applied Economic and Social Research (**Melbourne Institute**), a pre-eminent economic and social policy research institution at the University of Melbourne. NAB is currently working with several bodies (an industry working group (in which NAB has played a leading role), APRA and the Melbourne Institute) in relation to the use of and the appropriateness of HEM.³ Various options exist which might help to effect industry-wide improvement to the deployment of the HEM benchmark, such as

¹ By the phrase “evidence presently before this Commission”, NAB is referring to documentary evidence, including witness statements and exhibits tendered before the Commission, and oral testimony of witnesses before the Commission, as at the conclusion of the first round of public hearings on 23 March 2018.

² NAB’s response to the remaining questions arising from the NAB Introducer Program case study have been addressed in its submission styled “Submissions of National Australia Bank – Introducer Case Study” (**Introducer Case Study Submissions**).

³ See also Gilfillan XXN T207.5-12.

subjecting the benchmark to an appropriate uplift (as discussed in the evidence of Mr Gilfillan).⁴

6. However, NAB submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, matters including the following would need to be considered at an industry-wide level:
 - (a) whether (and which) credit providers use an income-adjusted HEM benchmark or single HEM benchmark;
 - (b) the extent to which credit providers conduct additional or other enquiries to assess a customer's financial situation, and the steps taken to complete those enquiries;
 - (c) an analysis of the alternative mechanisms to identify an accurate assessment of a customer's expenses (and challenges of doing so);
 - (d) the impact of the use of HEM on customer outcomes;
 - (e) overseas experiences in measuring customer expenses;
 - (f) the enhancements proposed by the Melbourne Institute directed towards arriving at a more sophisticated model of HEM;
 - (g) an analysis of the relative benefits and detriments of individualised versus standardised benchmarks in large institutional contexts;
 - (h) an analysis of the likely completeness and accuracy of customer records of expenses, including cash expenses for the duration over which an individual assessment is carried out; and
 - (i) unintended consequences in moving away from standardised benchmarks (such as a reduction in the availability of credit).

C. GENERAL QUESTIONS ARISING FROM THE OTHER CASE STUDIES

C.1 Case Study - CBA arrangements with mortgage brokers and head groups

7. **Question 1:** *Does the use of upfront and trailing commissions for remuneration of head groups and the brokers who submit loans through head groups lead to poor customer outcomes?*
8. **Question 2:** *Should upfront and trailing commissions be replaced with an upfront flat fee payment?*
9. **NAB's response:** NAB makes the following response to both questions one and two above.
10. It is NAB's position that, rare exceptions notwithstanding, upfront and ongoing trail commissions, which NAB currently pays to brokers and head groups, do not lead to poor customer outcomes. This position is consistent with the findings of ASIC in its review of Mortgage Broker Remuneration (**ASIC Report 516**) which did not find systemic evidence of poor customer outcomes. In NAB's view, the current

⁴ Gilfillan XXN T207.38-43.

remuneration structure enables greater access and affordability, for all consumers, to lending via brokers.

11. Nevertheless, NAB is supportive of industry-wide changes to the use of upfront and trailing commissions, particularly in light of the types of conflicts of interests identified in ASIC Report 516, being Lender Choice Conflict and Product Strategy Conflict.
12. The Combined Industry Forum (CIF) has examined these conflicts and made recommendations (subject to competition law) to change the standard commission model for brokers, namely:
 - (a) the payment of upfront commissions based on the amount drawn down to the customer (rather than the total facility amount) and net of the customer's off-set account balance;
 - (b) a move away from volume-based bonuses in respect of residential mortgages (which NAB has never paid); and
 - (c) a requirement that brokers maintain a conflicts register for all "soft dollar" benefits (i.e. rewards or benefits of a non-cash nature, received from lenders).
13. NAB is supportive of all these changes and is working towards implementing them. In addition, NAB has committed to implement the Sedgwick recommendations.⁵
14. Beyond supporting the CIF and Sedgwick recommendations, NAB submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, matters including the following would need to be considered:
 - (a) the basis on which ASIC did not find systemic evidence of poor customer outcomes in its review of Mortgage Broker Remuneration (being ASIC Report 516);
 - (b) the benefits arising from the ongoing services offered to customers in exchange for trailing commissions and the impact on customers of removing those services;
 - (c) the experience and impacts of broker remuneration reforms on customers in different countries;
 - (d) whether customer outcomes would be improved or worsened by possible changes to the commission structure. In particular, whether such changes could have the effect of creating:
 - (i) unintended consequences in restricting the provision of credit for certain segments of the market (such as first-time home buyers); and

⁵ Being the recommendations contained in Stephen Sedgwick, "Retail Banking Remuneration Review", 19 April 2017.

- (ii) new or increased conflicts of interest (such as the risk that a flat-fee commission creates incentives for brokers to offer customers multiple smaller or ‘split’ loans); and
 - (e) the extent to which a change may affect viability and competitiveness of the industry, and the flow-on effects for customer outcomes.
- 15. **Question 3:** *Is the first mover issue identified in CBA’s evidence a genuine commercial impediment to change in respect of the structure of broker remuneration? If so, what can and should be done to overcome that impediment?*
- 16. **NAB’s response:** NAB acknowledges that issues are likely to arise from a “first mover disadvantage” which will detrimentally affect both the institution which moves first and customer outcomes. The latter is likely to arise because the playing field will become unbalanced, leading to a reduction in effective competition. It is for this reason that NAB’s position on questions such as the commission structures for brokers and a move to flat fees is that the approach to exploring, and implementation of, any legislative change or reform should be industry-wide.
- 17. In respect of the balance of the question posed, NAB submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be provided. Before the question could be answered meaningfully, consideration would need to be given to the matters set out in paragraph 14 above.
- 18. **Question 4:** *Will the program of reforms in the mortgage broking industry, announced by the Combined Industry Forum in 2017, ameliorate the conflicts of interest or any other issues that have been referred to in this case study?*
- 19. **NAB’s response:** In broad terms, yes. NAB supports the program of reforms announced by the CIF in 2017. NAB has already implemented a number of the proposed reforms, including some of those referred to in paragraph 12 above, and it has committed to implementing all remaining reforms by the dates proposed.
- 20. **Question 5:** *(a) Who does the broker act for?; (b) who does the customer think the broker is acting for?; (c) who does the lender think the broker is acting for?; (d) do you give separate answers at separate steps along the way?*
- 21. **NAB’s response:** This is both a legal and a factual question, which – as posed at the current level of generality – is not capable of a simple answer. The answer to this question will depend, in any given case, on matters which are not the subject of evidence presently before the Commission including, amongst other things:
 - (a) the terms of the relevant contract between the broker and the lender, the broker and the customer, the customer and the lender, the aggregator and the broker, and the aggregator and the lender;
 - (b) the content of extra-contractual communications between those parties; and
 - (c) the state of mind of the particular customer and the lender.

C.2 Case Study – misconduct by four Aussie Home Loans brokers

- 22. **Question 1:** *Do remuneration structures that reward mortgage brokers for volume of sales of loans create an unacceptable risk that mortgage brokers will prioritise: (a) the sales of loan products over their responsible lending obligations; (b) their*

obligation to recommend loans to customers in a manner that is efficient, fair and honest; (c) their obligation to have adequate arrangements in place to ensure that customers are not disadvantaged by conflicts of interest; and (d) their obligation to ensure that the conduct of the brokers is not misleading, deceptive, or unconscionable?

23. **NAB's response:** This question uses the phrase "volume of sales" to describe the incentive structure. That phrase could be interpreted as a reference to one of two different forms of volume-based remuneration. If the phrase refers to the standard commission structures under which a broker's income is based on a percentage of the total value of the loans drawn down, NAB's position is:
- (a) that the incentive structures it uses do not lead brokers to fail to prioritise their responsible lending obligations. NAB's experience is that, subject to rare exceptions, brokers do not put sales objectives ahead of their obligations to:
 - (i) conduct responsible lending;
 - (ii) operate in an efficient, fair and honest manner;
 - (iii) not disadvantage customers; and
 - (iv) not engage in misleading, deceptive or unconscionable behaviour.
 - (b) as stated in the combined response to the questions referred to in paragraphs 7 and 8 above, including that for the reasons set out in paragraph 14, there is otherwise insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed.
24. If this phrase refers to volume-based bonuses, where the broker stands to obtain a greater rate of commission or other form of bonus once the total volume of loans reaches a particular threshold, then NAB does not pay such volume-based incentives to mortgage brokers for residential mortgages and does not apply minimum volume thresholds to mortgage brokers. Accordingly, NAB is not in a position to comment on the broker remuneration structures employed by other banks.
25. **Question 2:** *Do credit licensees, whose representatives engage in mortgage broking activities, have adequate systems and processes to prevent fraud, to detect fraud, to respond to fraud, and to identify and address any detriment to current and former customers occasioned by the fraudulent conduct of its representatives?*
26. **NAB's response:** NAB's position is that it has extensive and evolving processes to deal with instances of suspected fraud in the broker system, including through the NAB owned aggregation businesses of Plan Australia, Choice Aggregation Services and FAST.⁶ Because the credit application is assessed by the lender, it is

⁶ Including for example: ordering an independent valuation of the customer's security; processes to verify a customer's identity and financial position; controls specifically designed to deter and minimise fraud in home lending; separation between the team that verifies the loan application and the team that is responsible for the fulfilment and settlement of the loan; ongoing quality monitoring and assurance and improvement processes (including assurance frameworks over the home loan process and portfolio performance monitoring); documentation of the verification process; reporting to broker business development managers (Gilfillan Statement at [18(d)], [24], [26], [28]); Gilfillan XXN T200.30-T201.26; T205.35-43).

the lender's systems which are most likely to detect fraud. However, aggregators, brokers and other credit licensees also have systems and processes to detect fraud. NAB submits that even with its extensive processes, fraud can be difficult to detect, especially in cases where information is falsified in a manner intended to circumvent those processes.

27. Beyond that, NAB submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, matters including the following would need to be considered:
- (a) an analysis of the control environments of all credit licensees whose representatives engage in mortgage broking activities (or at least a representative sample);
 - (b) an in-depth analysis of factors that may have led to broker fraud in the industry; and
 - (c) any remediation activity undertaken throughout the industry and its effectiveness.
28. **Question 3:** *Should ACL holders be made subject to a system that is broadly similar to the ss 912A and 912D reporting obligations of Part 7 of the Corporations Act 2001 (Cth)? Should ACL holders be subject to broadly similar requirements, or is there some reason why ACL holders should be subject to differing reporting obligations from those that apply to AFSL holders?*
29. **NAB's response:** NAB submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, matters including the following would need to be considered:
- (a) an analysis of the differences in risk allocation and alignment or divergence of interests between customers on the one hand, and providers of credit and financial advice on the other (for example, credit providers bear a risk of non-repayment where unsuitable loans are offered, whereas financial advisors do not bear a risk of capital loss in equivalent circumstances);
 - (b) an analysis of the nature of credit products by comparison to investments, and whether variations in credit products and providers, and customer preferences, makes a test phrased in terms of 'best interests' able to be effectively and efficiently applied in the context of consumer credit;
 - (c) an analysis of the differences in reporting requirements and obligations as between ACL holders and AFSL holders; and
 - (d) whether there may be unintended consequences of imposing additional reporting obligations on ACL holders, for example: the imposition of an overly onerous regulatory burden on both licence holders and the regulator, which is not commensurate with the risk profile of the provision of credit, and the risk allocation referred to in (a) above; or alternatively, an undermining of the annual attestation process currently required of ACL holders.

C.3 Case Study – ANZ responsible lending practices in connection with home loans

30. **Question 1:** *Do credit providers have adequate policies to ensure that they comply with their obligations under the National Credit Act when offering broker-originated home loans to customers, insofar as those policies require them to make reasonable inquiries about the consumer's requirements and objectives in relation to the credit contract, to make reasonable inquiries about the consumer's financial situation, and to take reasonable steps to verify the consumer's financial situation?*
31. **NAB's response:** NAB's position is that it supports the improved oversight of brokers by lenders and aggregators as proposed by ASIC in ASIC Report 516 and, as set out in paragraphs 11 to 13 above, NAB is working towards implementing the recommendations proposed by the CIF. However, NAB is not in a position to comment on the policies of other credit providers. Further, NAB submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, matters including the following would need to be considered at an industry-wide level:
- (a) the policies currently in place and how they are implemented generally by credit providers; and
 - (b) the verification processes undertaken by credit providers when analysing information provided by brokers.
32. **Question 2:** *Is the use of the HEM benchmark an appropriate way to deal with the difficulties associated with securing an accurate assessment of living expenses from a customer?*
33. **NAB's response:** NAB refers to paragraphs 5 and 6 above.
34. **Question 3:** *Is the use of the HEM benchmark appropriate in assessing whether a loan is unsuitable for a customer?*
35. **NAB's response:** NAB refers to paragraph 5 above. NAB otherwise submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. With regard to what would need to be explored in order to arrive at a meaningful answer to the question, NAB refers to the matters set out in paragraph 6 above.
36. **Question 4:** *Is the HEM benchmark too conservative a measure of a customer's living expenses?*
37. **NAB's response:** NAB refers to paragraph 5 above. NAB otherwise submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. With regard to what would need to be explored in order to arrive at a meaningful answer to the question, NAB refers to the matters set out in paragraph 6 above.
38. **Question 5:** *Does the widely-known use of the HEM benchmark as a default for customers' living expenses create an unacceptable risk that brokers will fail to make reasonable inquiries about a customer's financial situation, instead opting to declare an amount of living expenses for the customer that is known by the broker to be in the vicinity of the relevant HEM benchmark?*

39. **NAB's response:** Benchmarks, such as the HEM benchmark, provide guidance to assess a customer's expenses, particularly when there are gaps in the information as to expenses provided by customers to the bank (for example, where a customer fails to include cash expenses when estimating their expenses for the purposes of a loan). NAB's position is that the use of the HEM benchmark does not inherently create an unacceptable risk that brokers will fail to make reasonable inquiries about a customer's financial situation (as to which see further paragraph 5 above).
40. NAB otherwise submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, consideration would need to be given to the matters set out in paragraph 6 above, in addition to the need for a full analysis of the scope for, and likelihood of, brokers failing to make reasonable inquiries about a customer's financial situation under any alternative models.
41. **Question 6:** *Is the use of any benchmark suitable?*
42. **NAB's response:** NAB refers to paragraph 39 above. However, NAB submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, consideration would need to be given to the matters set out in paragraph 6 above.
43. **Question 7:** *In light of evidence by a number of witnesses that by and large customers are poor historians when it comes to identifying their outgoings, what does that say, if anything, about judging home loans on a measure of Uncommitted Monthly Income (UMI)?*
44. **NAB's response:** NAB submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, consideration would need to be given to the matters set out in paragraph 6 above.

C.4 Case Study – CBA add-on insurance policies

45. **Question 1:** *Are the processes that financial services licensees have in place for the sale of add-on insurance sufficient to ensure that those entities comply with their obligations under s 912A(1)(a) of the Corporations Act, the obligation to do all things necessary to ensure [that the financial services covered by the licence are provided] efficiently, honestly and fairly?*
46. **NAB's response:** NAB offers three consumer credit insurance (CCI) products which protect customers against risks which may affect their ability to make repayments (NAB Mortgage Protect, NAB Personal Loan Cover and NAB Credit Card Cover). NAB has in place a number of processes to comply with its obligations under s 912A(1)(a) of the *Corporations Act* in respect of these products. NAB regularly reviews its CCI offering and its processes for ensuring compliance with its statutory obligations, and is currently in the process of doing so. It is also an active participant in broader industry and regulatory reviews of insurance and CCI practices, including in conjunction with ASIC, the Australian Bankers' Association (ABA) and the Productivity Commission.
47. NAB is not in a position to comment on the policies and procedures of other financial services licensees.

48. Further, NAB submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, matters including the following would need to be considered at an industry-wide level:
- (a) the outcomes of industry-wide responses to ASIC's report on CCI (**Report 256**), (NAB's being due to ASIC on 7 June 2018), and ASIC's assessment of those responses;
 - (b) the recommendations of the Australian Banking Association (**ABA**) in respect of CCI sales practices; and
 - (c) the draft and (when available) final recommendations of the Productivity Commission into CCI products.
49. **Question 2:** *Are existing legal mechanisms considered in light of the regulatory changes which are anticipated to come into effect under the deferred sales model sufficient to address the issues associated with the sale of add-on insurance to customers identified by ASIC in its Report 256?*
50. **NAB's response:** NAB's position is that the existing legal mechanisms and anticipated regulatory changes, including relating to a deferred sales model, will be likely to be sufficient to address the issues associated with the sale of add-on insurance to customers identified in ASIC Report 256, and be likely to ensure that customers are treated efficiently, honestly and fairly.
51. However, since the industry-wide review into CCI practices and procedures is ongoing, NAB submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, matters including the following would need to be considered:
- (a) how the proposed regulatory changes will operate in practice;
 - (b) how a deferred-sales model for credit card add-on insurance sold with credit cards over the phone and in retail branches will operate in practice; and
 - (c) the data necessary to monitor the successful application of the reforms.
52. **Question 3:** *How do financial services licensees ensure that they comply with their obligation under s 912D of the Corporations Act in relation to reporting significant breaches?*
53. NAB's position is that this question raises the same issue as question 5 (of the general questions) arising from NAB's Introducer Case Study. Accordingly, NAB refers to and repeats its response to that question at paragraph 113 of its Introducer Case Study Submissions.
54. Further, NAB is not in a position to comment on how other financial services licensees ensure compliance with their s 912D reporting obligations.
55. **Question 4:** *What is to be made of the fact that CBA has chosen to withdraw from large parts of this market? Is the Commissioner to make of that that CBA has made a particular commercial judgment which is distinctive to CBA, or is the*

Commissioner to make of that anything about whether other entities can or should be looking at their continued participation in that market?

56. NAB is not in position to comment on the basis of CBA's decision.

C.5 Case Study – CBA personal overdrafts

57. **Question 1:** *In circumstances where banks rely on automated serviceability calculators, are their automated processes adequate to ensure that they comply with their obligation under s 133 of the National Credit Act to only provide a customer with a credit contract that is not unsuitable for the customer?*

58. **NAB's response:** NAB regularly explores emerging technologies to strengthen its automated decision making tools. It is always a priority of NAB's to ensure that the use of such tools is consistent with and facilitates compliance with NAB's obligations under the *National Credit Act*.

59. NAB submits that there is otherwise insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, matters including the following would need to be considered:

- (a) the use of automated serviceability calculators at an industry-wide level and their effect;
- (b) the utility of automated serviceability calculators generally; and
- (c) the actual operation of, and controls on, the use of those tools.

C.6 Case Study – ANZ pre-approved overdrafts

60. **Question 1:** *Do banks have adequate policies to ensure that they comply with their obligations under s 128 of the National Credit Act before offering overdrafts to consumers, including by making reasonable inquiries of customers about their financial situation?*

61. **NAB's response:** NAB's position is that it has adequate policies, which it regularly reviews, to ensure compliance with s 128 of the *National Credit Act* before offering overdrafts to customers.

62. NAB is not in a position to comment on how other banks ensure compliance with their obligations under s 128 of the *National Credit Act*. NAB otherwise submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, matters including the following would need to be considered at an industry-wide level:

- (a) the current policies and processes that banks have in place in relation to overdraft facilities; and
- (b) the implementation and application of those policies.

63. **Question 2:** *Is it acceptable for a bank to decline a request by a regulator to identify and remediate customers who obtained an overdraft facility in circumstances where the lender had not complied with its responsible lending obligations?*

64. **NAB's response:** Generally, NAB's position is that it will always consider and respond to such a request from a regulator and in almost all circumstances comply with it. However, how NAB may respond to a regulator's particular request cannot be answered in the abstract and without regard to specific circumstances.

65. NAB is not in a position to comment on the decisions taken by other banks.

C.7 Case Study – ANZ processing errors

66. **Question 1:** *Are banks' internal systems and procedures adequate to detect processing errors that result in customers failing to receive their entitlements under the terms and conditions of their accounts?*

67. **NAB's response:** NAB's position is that its internal systems and procedures are generally adequate to detect processing errors that result in customers failing to receive their entitlements under the terms and conditions of their accounts. NAB continues to improve and refine its systems and procedures to ensure they are adequate to detect errors, including in view of changes to relevant legislation, internal policies or self-identified events.

68. NAB is not in a position to comment on the adequacy of other banks' internal systems and procedures.

69. NAB otherwise submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, matters including the following would need to be considered at an industry-wide level:

- (a) an analysis of the internal reviews conducted by banks to detect processing errors;
- (b) an analysis of any exception reporting conducted by banks to detect errors during the fulfilment and settlement process;
- (c) an assessment of the post-sales review processes relied on by banks; and
- (d) an analysis of customer's complaints systems.

70. **Question 2:** *Are banks' internal systems adequate to provide timely and full remediation to customers who have suffered detriment as a result of failing to receive their entitlements under the terms and conditions of their accounts?*

71. **NAB's response:** NAB's position is that its internal systems are designed to ensure that, where appropriate, full remediation is made available to customers in a timely way. However, NAB continues to review its systems to improve the timeliness of remediation outcomes.

72. In respect of the remediation program the subject of NAB's Introducer Case Study, NAB refers to paragraphs 45 to 47 and 106 to 107 of its Introducer Case Study Submissions.

73. NAB is not in a position to comment on other banks' internal systems and procedures. Further, posed so broadly, and without identifying the systems to be addressed, there is insufficient evidence to enable a meaningful answer to be given

to the question posed. Before the question could be answered meaningfully, matters including the following would need to be considered:

- (a) how internal systems are used to identify remediation events;
- (b) the circumstances which might give rise to potential remediation events;
- (c) the policies that underpin a bank's approach to remediation events;
- (d) the assessment of whether the remediation ultimately offered reflects the full extent of a customer's entitlement; and
- (e) an assessment of the time taken to remediate affected customers.

74. **Question 3:** *Are banks' remediation and review processes adequate to prevent a repeat of identified processing errors and to ensure that structural, as opposed to interim, changes are made in response?*

75. **NAB's response:** NAB refers to paragraphs 67 to 69 and 71 to 73 above and submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, consideration would need to be given to the matters set out in paragraph 73 above in addition to the following:

- (a) an assessment of the changes implemented by banks in response to remediation events; and
- (b) a consideration of the ways in which banks identify policies that underpin their approach to remediation events.

76. **Question 4:** *Are banks' processes adequate for assessing whether an error such as a processing error (or a series of such errors) is of a systemic nature and meets the criteria for a significant breach that must be the subject of a written report to ASIC within 10 days?*

77. **NAB's response:** NAB's position is that it has in place adequate systems and policies, which are subject to regular review, to assess whether processing errors, or other events, constitute a significant breach.

78. NAB is not in a position to comment on the adequacy of processes employed by other banks to assess whether processing errors, or other events, constitute a significant breach.

79. In response to the broader question, which is posed at a high level of generality, NAB submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given. Before the question could be answered meaningfully, matters including the following would need to be considered at an industry-wide level:

- (a) an analysis of the means by which banks identify and classify events such as processing errors; and
- (b) the policies by which banks outline the processes and roles and responsibilities for the escalation and reporting of significant breach events.

C.8 Case Study – Westpac/St George car loans

80. **Question 1:** *Are the structural arrangements between banks and car dealers for the provision of car loans to consumers likely to result in the contraventions of the banks' responsible lending obligations under the National Credit Act?*
81. **NAB's response:** NAB does not offer secured car loans and it does not accept car loan applications from car dealerships. Further, NAB is not in a position to comment on the structural arrangements between other banks and car dealers for the provision of car loans to consumers.
82. **Question 2:** *Do remuneration and incentive structures that reward car dealers for increasing the volume of their sales of cars or insurance policies, or the interest to be charged to the customer, create an unacceptable risk that: (i) dealers will prefer their own interests to the interests of customers; and (ii) as a result, customers will suffer detriment?*
83. **NAB's response:** NAB refers to its response at paragraph 81 above.

C.9 Case Study – ANZ/Esanda car loans

84. **Question 1:** *Are the arrangements between banks and car dealers for the provision of car loans to consumers likely to result in the contraventions of the banks' responsible lending obligations under the National Credit Act?*
85. **NAB's response:** NAB refers to its response at paragraph 81 above.
86. **Question 2:** *Do remuneration and incentive structures that reward car dealers for increasing the volume of their sales of cars or insurance policies, or the interest to be charged to the customer, create an unacceptable risk that: (i) dealers will prefer their own interests to the interests of customers; and (ii) as a result, customers will suffer detriment?*
87. **NAB's response:** NAB refers to its response at paragraph 81 above.

C.10 Case Study – CBA credit cards

88. **Question 1:** *Do credit providers have adequate policies to ensure that they comply with their responsible lending obligations under the National Credit Act when offering credit cards and credit card limit increases to consumers, insofar as those policies require them to: (i) make reasonable inquiries about the consumer's requirements and objectives in relation to the credit contract; (ii) make reasonable inquiries about the consumer's financial situation; and (iii) take reasonable steps to verify the consumer's financial situation?*
89. **NAB's response:** NAB's position is that its policies, which are subject to regular review, are adequate to ensure compliance with the responsible lending obligations which are the subject of the question. NAB is also proactive in seeking to identify customers showing signs of financial stress and actively seeks to minimise the human and financial impact for customers in hardship circumstances, through the NAB Assist program referred to by Mr Waldron in his evidence.⁷ NAB is not in a position to comment on the policies of other credit providers.

⁷ Introducer Case Study Submissions at [43] to [44].

90. NAB otherwise submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, matters including the following would need to be considered at an industry-wide level:
- (a) the policies deployed by credit card providers in order to meet their *National Credit Act* obligations;
 - (b) the experience and impacts on consumers who engage with those credit providers as a result of those policies, and specifically whether consumers are more likely to fall behind in their credit card repayments (and experience financial hardship) as a result of:
 - (i) credit card providers failing to comply with policies which are otherwise adequate;
 - (ii) credit card providers having in place policies which are inadequate in the first place; and
 - (c) an analysis of the full range of reasons why customers fall into financial hardship from credit card debt.
91. **Question 2:** *More specifically [and following on from question 1 above]: (i) what policies might be appropriate to ensure that reasonable inquiries are made into consumers' discretionary expenditure (including in relation to the categories identified in [209.33] of ASIC's Regulatory Guide 209)?; and (ii) in circumstances where a bank has access to information about a customer's spending, by reason of the fact that that customer has other accounts with the bank, is it necessary for the bank to inquire into the expenses incurred in respect of those accounts to comply with its responsible lending obligations under the National Credit Act?*
92. **NAB's response:** NAB's position is that access to more data allows for better informed credit decisions by enabling a fuller view of a customer's behaviour and indebtedness, thus strengthening responsible lending practices. NAB's systems are directed to such an analysis.
93. Having regard, in particular, to the factors referred to in paragraph 90 above, there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Moreover, NAB is not in a position to comment on the adequacy of the policies and systems adopted by other banks.
94. Before the question could be answered meaningfully, matters including the following would need to be considered:
- (a) the impact on customers and customer sentiment if banks were to inquire further into their discretionary expenditure;
 - (b) the nature of further inquiries which might be feasible and subject to appropriate verification;
 - (c) whether further inquiry could create unintended consequences as a result of the tightening of credit availability, particularly for higher risk and more vulnerable customers; and

- (d) whether further inquiry may have the effect of placing restrictions on the bank's ability to manage the customer relationship, which may have the unintended effect of customers seeking alternate providers, i.e. payday lenders.

C.11 Case Study – Westpac credit card limit increases

95. **Question 1:** *How should a bank assess the unsuitability of a revolving credit card facility, in particular whether it will meet the customer's requirements or objectives?*
96. **Question 2:** *How should a bank assess the unsuitability of credit card limit increases, in particular what is the appropriate level and period of repayment that ought to be taken into account, including having regard to the legislative reforms that are to take effect from 1 January 2019?*
97. **NAB's response:** NAB makes the following response to both questions one and two above.
98. NAB's position is that:
- (a) it considers that existing credit decision-making statistical models operate effectively to assess suitability and assign a conservative credit limit, both upon the acquisition of and throughout the lifespan of the credit card;
 - (b) it supports the implementation of measures designed to ensure that a greater number of consumers are able to repay their borrowings and credit limit within a reasonable period; and
 - (c) in any event, the issue is currently to be dealt with pursuant to the *Treasury Laws Amendment (Banking Measures No. 1) Act 2018* (Cth), which will take effect from 1 January 2019, and introduces new sections into the *National Credit Act* that will require NAB and other banks to consider whether a consumer could comply with an obligation to repay an amount equal to the credit limit of the contract within a period of time as determined by ASIC.
99. NAB otherwise submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be provided to the question posed. Before the question could be answered meaningfully, matters including the following would need to be considered:
- (a) industry data examining whether a non-mandatory approach to defining what constitutes a 'reasonable period' ought to be adopted;
 - (b) whether applying a 'one-size fits all' rule to the market may have the effect of: (i) constraining the diversification of offers and products; (ii) deterring new market entrants; and/or (iii) reducing the availability of credit cards to particular customers; and
 - (c) the benefits in continuing to use existing solutions that are based on comprehensive statistical models for the forecast of affordability which have been developed and improved over many years.

100. **Question 3:** *Can a bank utilise an automated system for determining eligibility and suitability of credit card limit increases in order to comply with their responsible lending obligations under the National Credit Act?*
101. **NAB's response:** NAB's credit limit assessment processes involve both manual and automated elements. NAB's position is that its assessment processes are adequate for complying with its responsible lending obligations.
102. NAB is not in a position to comment on the verification systems used by other banks. Further, NAB submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, the matters including the following would need to be considered:
- (a) whether moving away from automation will detract from the application of statistically valid modelling;
 - (b) impacts on customer experience and the timeliness of assessing credit limit applications of new assessment models; and
 - (c) whether non-automated assessment models can facilitate government initiatives currently underway, such as the Comprehensive Credit Reporting and Open Banking initiatives, which are predicated on automated assessment models.
103. **Question 4:** *How should banks respond when ASIC issues guidance to entities by way of correspondence or a Regulatory Guide?*
104. **NAB's response:** NAB's position is that the guidance provided by regulators, including ASIC, is important and subject to careful consideration. It is for that reason that NAB's Regulatory Strategy and Affairs team is dedicated to active and regular engagement with regulators, including ASIC. This engagement includes, amongst other things, the consideration and, when appropriate and in conjunction with the Compliance team, the implementation of relevant guidance provided by way of correspondence, Regulatory Guides, and the design of compliance systems and plans.
105. NAB is not in a position to comment on how other banks should respond to ASIC guidance by way of correspondence or Regulatory Guides.
106. NAB otherwise submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, the matters including the following would need to be considered:
- (a) an analysis of the findings of recent reviews and reforms, including:
 - (i) ASIC's "Overlimit, Credit Card Industry Review";
 - (ii) the *Treasury Laws Amendment (Banking Measures No. 1) Act 2018* (Cth); and
 - (iii) the Code Compliance Monitoring Committee's "Own Motion Inquiry Provision of Credit: Examining banks' compliance with the

provision of credit obligations under clause 27 of the Code of Banking Practice” dated January 2017; and

- (b) the specific character and circumstances of each guidance or correspondence.

C.12 Case Study – Citi International transaction fees

107. **Question 1:** *Are the terms and conditions provided to consumers in respect of credit cards specifically, and credit products generally, too complex for consumers to understand the circumstances in which they will be liable to pay fees?*
108. **NAB’s response:** NAB’s position is that its terms and conditions provided to customers in respect of credit cards specifically and credit products in general are not too complex for customers to understand the circumstances in which they are liable to pay fees.
109. NAB is not in a position to comment on the terms and conditions imposed by other banks.
110. NAB further submits that there is insufficient evidence, from both banks and consumers, before the Commission to enable a meaningful answer to be given to the question posed. Before the question could be answered meaningfully, matters including the following would need to be considered:
- (a) the terms and conditions of each credit card provider;
 - (b) the results of market research, data and analytics on whether consumers believe the terms and conditions provided are too complex; and
 - (c) consumer feedback on whether consumers understand the circumstances in which they are liable to pay fees.
111. **Question 2:** *What steps could, and should, banks take to ensure more transparency in respect of the circumstances in which customers are charged fees in connection with credit products?*
112. **NAB’s response:** NAB’s position is that it supports policies that can improve a consumer’s financial awareness and understanding of fees charged in connection with credit products. NAB considers that the current regulatory framework appropriately requires transparency and disclosure of fees in advertising and marketing material.
113. NAB is not in a position to comment on what steps could and should be taken by other banks. Moreover, and in light of the level of generality of the question as posed, NAB submits that there is insufficient evidence presently before the Commission to enable a meaningful answer to be given. Before this question could be answered meaningfully, matters including the following would need to be considered:
- (a) the particular policies adopted by particular banks;
 - (b) customer feedback on what steps, if any, banks could take to ensure more transparency in relation to credit card fees;

- (c) whether transparent disclosure of fees influences a customer's choice of credit card;
- (d) the extent to which credit card fees are offset as a result of the customer's wider banking relationship; and
- (e) whether any regulatory changes could have an unintended effect on the viability and competitiveness of the banking industry.

3 April 2018

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