

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

ROUND 3 HEARINGS – LOANS TO SMALL AND MEDIUM ENTERPRISES

SUBMISSIONS OF BANK OF QUEENSLAND LIMITED – CASE STUDY

8 JUNE 2018

A. INTRODUCTION

1. This submission addresses the findings proposed by Senior Counsel Assisting in relation to the Bank of Queensland Limited (**BOQ**) case study during closing submissions for the round 3 hearings of the Commission on 1 June 2018.
2. This submission is provided pursuant to the grant of leave given to BOQ by the Commissioner pursuant to paragraph 1 of the order granting leave to appear dated 15 May 2018.
3. The BOQ case study relates to a business loan granted to Suerich Pty Limited (**Suerich**) for the purchase of a Wendy's ice-cream business. The business loan granted to Suerich was addressed in a statement of Mr Snell (General Manager, Performance, Product and Governance within the BOQ Business division of BOQ).¹
4. The loan was guaranteed by Ms Suzanne Riches and was originated in 2012 through a branch of BOQ in Pirie Street, Adelaide (**Pirie Street Branch**). Ms Riches dealt primarily with the branch manager of the Pirie Street Branch. BOQ terminated its relationship with the branch manager in 2013.
5. BOQ acknowledges and deeply regrets that its conduct in approving the loan to Suerich involved maladministration. The Snell Statement addressed the procedures introduced and steps taken by BOQ from 2012 to present to ensure that circumstances such as those in the Suerich matter do not recur.

B. RESPONSE TO SENIOR COUNSEL ASSISTING'S SUBMISSIONS IN RELATION TO THE FACTS OF THE SUERICH MATTER

6. Senior Counsel Assisting made submissions about the facts of the Suerich matter at T3031.35 – 3032.20. BOQ accepts that the evidence supports the finding of those facts subject to the following four comments.
7. First, BOQ submits that while it is open to the Commission to find that Ms Riches subjectively felt that there was "no way to get out of the contract" with Wendy's,² it is not clear from the evidence whether such a belief was, as a matter of law, correct or reasonably held.³ Ms Riches says she would have pulled out of the Wendy's contract in the cooling off period if she could have. It is not clear from the evidence what the relevant cooling-off period was under the Wendy's contract, when it commenced and whether Ms Riches acted in error or correctly. There is no evidence that any belief held

¹ Statement of Douglas Robert Snell dated 15 May 2018 with Exhibit DRS-2 in response to Rubric 3-8 tendered as exhibit 3.34 (BOQ.0001.0087.0001) (**Snell Statement**).

² Senior Counsel Assisting at T3032.9.

³ See the submissions made by Senior Counsel for BOQ at T2291.8-21.

by Ms Riches about her position in relation to the applicable cooling-off period was induced by any conduct on the part of BOQ.

8. Secondly, BOQ fully acknowledges that it made clear errors in the way it assessed Suerich/Mr Riches' capacity to service the loan. BOQ deeply regrets these errors. It also accepts that the evidence establishes that Ms Riches consulted with an adviser about the purchase of the Wendy's business and was advised that "the bottom line profit looked 'skinny'".⁴ BOQ did not know this at the time that the loan was arranged and, indeed, first became aware - sometime between when the FOS complaint was lodged by Ms Riches in July 2014 and 12 December 2014⁵ - that Ms Riches had obtained professional advice about the Wendy's business before the purchase was completed to the effect that Ms Riches should not purchase the business but did not have access to that advice.⁶ It is not clear from the evidence what other advice Ms Riches received about her capacity to repay the loan or cooling-off periods. Access to all advice received by Ms Riches was requested by BOQ but the documents were not made available or otherwise put before the Commission.⁷
9. Thirdly, BOQ accepts that it concluded internally after the FOS complaint was lodged by Ms Riches in July 2014 that it had engaged in irresponsible lending.⁸ BOQ regrets not making the concession earlier in time than it did. BOQ is also reviewing its practices in relation to dealing with FOS matters in light of this case study.
10. BOQ notes that the question of irresponsible lending was not the only matter in dispute before FOS. The letter dated 9 December 2014 from the FOS to BOQ⁹ described the matters to be investigated as follows:
 - (a) Did BOQ engage in irresponsible lending when it approved the Business Loan in October 2012?
 - (b) Did BOQ's application process cause the delay of the settlement for the purchase of the business?
 - (c) If yes, has Ms Riches incurred a loss as a result for which BOQ should compensate her?
 - (d) What is the appropriate resolution to this dispute?

BOQ accepts that the evidence supports a finding that it informed the FOS that BOQ was of the view that the FOS's understanding of the dispute was correct.¹⁰ However, given the other issues in dispute, BOQ submits that the evidence does not establish that the FOS dispute would have been resolved at an earlier time had BOQ conceded it engaged in irresponsible lending earlier than it did so.¹¹

⁴ Senior Counsel Assisting at T3031.43-44.

⁵ Snell Statement, Tab 121 (BOQ.0001.0036.0244); Snell Statement, Tab 122 (BOQ.0001.0023.0938).

⁶ Snell Outline, Tab 122 (BOQ.0001.0023.0938) which states in part "... we do not hold a copy of this correspondence..."; Senior Counsel Assisting at T2338.6-8.

⁷ T2289.18-2290.2 and T2297.19-21.

⁸ Senior Counsel Assisting at T3032.16-17.

⁹ Exhibit 3.38 (FOS.0012.0001.1939).

¹⁰ Snell Statement, Tab 121 (BOQ.0001.0036.0244).

¹¹ Snell Statement, Tab 124 (BOQ.0001.0023.1750).

11. Fourthly, while BOQ did not concede to the FOS that it had engaged in irresponsible lending in response to the letter dated 9 December 2014 from the FOS,¹² by BOQ's letter dated 10 June 2015, it accepted the FOS recommendation of 15 May 2015 in which that finding was made.¹³

C. PROCEDURES INTRODUCED AND STEPS TAKEN FROM 2012 TO PRESENT

12. BOQ submits that the evidence establishes that BOQ has taken steps since 2012 to seek to ensure that circumstances such as those experienced in the Suerich matter do not recur.
13. The Snell Statement describes at [248] to [250] the changes to the policies and procedures relating to loan origination that have occurred since 2012.
14. The Snell Statement also addresses at [252] to [322] the changes to the policies and procedures that have occurred since 2012 which are directed to improving among other things:
- (a) compliance with its policies by bankers at corporate-owned branches and owner-manager owned branches;
 - (b) compliance with regulatory and legislative requirements;
 - (c) identification, monitoring, minimisation and control of operational and compliance risks;
 - (d) human error prevention and detection; and
 - (e) meeting customer requirements.

D. RESPONSE TO AVAILABLE FINDINGS PROPOSED BY SENIOR COUNSEL ASSISTING

Code of Banking Practice

15. Senior Counsel Assisting submitted that it is open for the Commission to make three findings of breaches by BOQ of clauses of the Code of Banking Practice, being:
- (a) *First proposed finding:* BOQ breached clause 27 of the Code of Banking Practice in failing to exercise the care and skill of a diligent and prudent banker in its approval and assessment of the Suerich business loan.
 - (b) *Second proposed finding:* BOQ breached clause 3.1(b) of the Code of Banking Practice in failing to promote an informed decision of Ms Riches by failing to provide effective and timely disclosure of the term of the loan.
 - (c) *Third proposed finding:* BOQ breached clause 3.2 of the Code of Banking Practice in failing to act fairly and reasonably towards Ms Riches in contesting the FOS complaint despite being aware of the maladministration in the inception of the loan.
16. The first and second findings proposed by Senior Counsel Assisting relate to the dealings between Ms Riches on behalf of Suerich and BOQ in 2012 up to the execution of the

¹² Snell Statement, Tab 121 (BOQ.0001.0036.0244).

¹³ Snell Statement, Tab 126 (BOQ.0001.0023.0556).

Letter of Offer on about 15 October 2012.¹⁴ BOQ submits that as at 2012 the applicable version of the Code of Banking Practice was as published by the Australian Bankers' Association (as it was then named) in August 2003 with subsequent amendments published in May 2004 (**2003 Code**).

17. The third finding proposed by Senior Counsel Assisting relates to the dealings between Ms Riches and BOQ in connection with the FOS dispute in 2014 and 2015. At that time, the applicable version of the Code of Banking Practice was as published by the Australian Bankers' Association (as it was then named) in 2013 (**2013 Code**).

First proposed finding: BOQ breached clause 27 of the Code of Banking Practice in failing to exercise the care and skill of a diligent and prudent banker in its approval and assessment of the Suerich business loan

18. The first proposed finding appears to proceed on the basis that the 2013 Code is applicable to the relevant conduct of BOQ. As noted above, BOQ submits that the 2003 Code is applicable to the conduct the subject of this proposed finding.
19. Clause 27 of the 2013 Code provides that before a bank offers, gives the customer, or increases an existing, credit facility, the bank will exercise the care and skill of a diligent and prudent banker in selecting and applying its credit assessment methods and in forming its opinion about the customer's ability to repay the facility. This obligation is in the same terms as the obligation under clause 25.1 of the 2003 Code.
20. BOQ accepts that the verification of the financial situation of Ms Riches and Suerich fell short of the standard set by clause 25.1 of the 2003 Code.
21. If the first proposed finding is made by the Commission, BOQ submits that for the purposes of clause 34(i) of the 2003 Code the Commission should also find that the breach is not serious or systemic non-compliance with the Code of Banking Practice and that BOQ has taken steps to prevent a breach reoccurring having regard to the following:
- (a) the breach relates only to the Suerich matter; and
 - (b) BOQ has taken steps since 2012 to ensure that circumstances such as those in the Suerich matter do not recur as referred to at paragraphs 13 and 14 above.

Second proposed finding: BOQ breached clause 3.1(b) of the Code in failing to promote an informed decision of Ms Riches by failing to provide effective and timely disclosure of the term of the loan

22. The second proposed finding also appears to proceed on the basis that the 2013 Code is applicable to the relevant conduct of BOQ. As noted above, BOQ submits that the 2003 Code is applicable to the conduct the subject of this proposed finding.
23. Clause 3.1(b) of the 2013 Code provides that a bank will promote better informed decisions about its banking services by providing effective disclosure of information. The clause does not contain an obligation to provide "timely" disclosure of information (although an obligation to communicate in a "timely and responsible manner" is contained in clause 3.1(e) of the 2013 Code).
24. The obligation in clause 3.1(b) of the 2013 Code is in the same terms as the obligation in clause 2.1(b) of the 2003 Code. However, the 2003 Code does not contain an obligation to communicate in a "timely and responsible manner" similar to that contained in clause 3.1(e) of the 2013 Code.

¹⁴ Snell Statement, Tab 83 (BOQ.0001.0023.1114).

25. BOQ accepts that the disclosure of the term of the loan to Ms Riches fell short of the standard to be expected under clause 2.1(b) of the 2003 Code.
26. If the second proposed finding is made by the Commission, BOQ submits that for the purposes of clause 34(i) of the 2003 Code the Commission should also find that the breach is not serious or systemic non-compliance with the Code of Banking Practice and that BOQ has taken steps to prevent a breach reoccurring having regard to the following:
- (a) the breach relates only to the Suerich matter;
 - (b) the evidence establishes that Ms Riches was aware of the term of the Suerich business loan and understood the term when she accepted the offer;¹⁵
 - (c) it is not clear whether Ms Riches' belief that there was no way to get out of the contract with Wendy's was correct as referred to at paragraph 7 above;
 - (d) the breach has occurred because the branch manager of the Pirie Street Branch issued Conditional Letters of Offer to Ms Riches without authority in breach of applicable BOQ policy;¹⁶
 - (e) the branch manager of the Pirie Street Branch was terminated by BOQ in 2013;¹⁷ and
 - (f) BOQ has taken steps since 2012 to ensure that circumstances such as those in the Suerich matter do not recur as referred to at paragraphs 13 and 14 above.

Third proposed finding: BOQ breached clause 3.2 of the Code in failing to act fairly and reasonably towards Ms Riches in contesting the FOS complaint despite being aware of the maladministration in the inception of the loan

27. Clause 3.2 of the 2013 Code provides that a bank must act fairly and reasonably towards customers.
28. BOQ accepts that:
- (a) after the FOS complaint was lodged by Ms Riches in July 2014, BOQ had internally concluded it had engaged in irresponsible lending;
 - (b) BOQ did not concede to FOS and Ms Riches that it had engaged in irresponsible lending until after the FOS recommendation on 15 May 2015; and
 - (c) this conduct comprised a failure by BOQ to act fairly and reasonably towards Ms Riches in relation to the FOS complaint in breach of clause 3.2 of the 2013 Code.
29. BOQ submits that it was not a breach of clause 3.2 of the 2013 Code for BOQ to contest the FOS complaint in circumstances where:
- (a) BOQ had been informed by FOS after the lodgement of the FOS complaint that Ms Riches had obtained advice about the Wendy's business before the purchase was completed to the effect that Ms Riches should not purchase the business as referred to at paragraph 8 above;

¹⁵ Ms Riches at T2283.38-40; T2284.5.

¹⁶ Mr Snell at T2325.41, T2326.1-6; Snell Statement, [154]-[156].

¹⁷ Snell Statement, [144].

- (b) in addition to whether BOQ engaged in irresponsible lending, there were three issues in dispute before the FOS as referred to at paragraph 10 above;
 - (c) the evidence does not establish that the FOS dispute would have been resolved earlier had BOQ conceded that it had engaged in irresponsible lending prior to when it did in fact do so as referred to at paragraph 10 above; and
 - (d) the evidence supports a finding that BOQ suspended all enforcement action during the period that FOS was dealing with the dispute.¹⁸
30. If a finding is made by the Commission in connection with BOQ's conduct in relation to the FOS dispute, BOQ submits that for the purposes of clause 36(j) of the 2013 Code the Commission should also find that the breach is not serious or systemic non-compliance with the Code of Banking Practice and that BOQ has taken steps to prevent a breach reoccurring having regard to the following:
- (a) the breach relates only to the Suerich matter; and
 - (b) the matters referred to at paragraphs 29(a) to 29(d) above.

¹⁸ Mr Snell at T2343.24-26; Snell Statement at [193].