

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

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

Round 4 Hearing - Issues affecting Australians who live in remote and regional communities

Closing Submissions

PART B - QUESTIONS ARISING FROM THE CASE STUDIES

Topic 1: ANZ Case Study (former Landmark customers)

Question 1: Consideration of the connection between fairness and honesty as a community standard and the requirement in the Code of Banking Practice (Code) (and to the extent appropriate, section 912A of the Corporations Act 2001 (Corporations Act) and the general conduct provisions of the National Consumer Credit Protection Act 2009 (NCCP Act)) to act in a fair, reasonable, consistent and ethical manner. [T4102.8 - 15]

1. During the closing submissions for this round of hearings, the Commissioner and Counsel Assisting posed a number of questions regarding the connection between fairness and honesty as a community standard, the requirement in clause 3.2 of the Code, and the general conduct provisions in section 912A(1)(a) of the Corporations Act and section 47 of the NCCP Act.
2. The issue arises because each of those norms of conduct involves a consideration of the concepts of "fairness" and "honesty", namely:
 - (a) in considering whether conduct falls below community standards and expectations, consideration is often given to whether the conduct was "fair" or "honest";
 - (b) Clause 3.2 of the Code provides:

We will act fairly and reasonably towards you in a consistent and ethical manner. In doing so we will consider your conduct, our conduct and the contract between us.
 - (c) Section 912A(1)(a) of the Corporations Act provides that a financial services licensee must:

... do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly.
3. The concepts of "fairness" and "honesty" permeate each of these norms of conduct. While there is no difference in the content of the word "honestly", wherever it is used, there exists a significant qualitative difference between a concession that a financial institution, in a particular case, or more generally, may not have acted "fairly" according to community standards or expectations, and, the content of that word as contained in the Corporations Act and NCCP Act and the Code.
4. An assessment of community standards and expectations requires a consideration of conduct from the perspective of a reasonably representative cross-section of the community and will be focussed on the bank's interaction with individual customers. It is not a legal norm of conduct - it is a moral norm of conduct. A particular individual, or the community at large, would not be expected to have a concern for the position, challenges and rights of the financial institution, either as a primary, or even subsidiary consideration.

There is no criticism in that. CBA repeats its submissions from Part A of Round 1.¹ The community's expectations of whether conduct is fair in a particular case are likely to be understandably premised heavily on the concerns and situation of the particular individual, without consideration of any wider issues that the legal norms do recognise.

5. Two matters differentiate the concept of fairness, as employed in the relevant legal norms, as opposed to its use by the community. First, as used in the legal context, the use of the word is generally directed to systemic breaches, rather than failings in a particular case. Secondly, and importantly, the use of the word in composite expressions in a legal context derives its meaning from that context to refer to a commercial morality that recognises the commercial environment in which the financial institution operates, and the challenges that scale brings, and the existence of countervailing obligations and rights of the financial institution.
6. Clause 3.2 of the Code is a legal norm of conduct, and while it directs attention to the relationship between the bank and an individual customer, as noted in paragraph 17 of CBA's Part A submission for this Round 4, in CBA's submission it will also involve a consideration of a number of factors, including whether conduct was deliberate or dishonest, whether it adversely impacted a customer, and the broader context of the bank's relationship with that customer.
7. The general conduct provisions of the Corporations Act and the NCCP Act requires a different assessment. Analysis of the compendious phrase "efficiently, honestly and fairly" requires consideration of conduct in the context of the business operation as a whole and is concerned with considerations of whether there are systemic issues with the "financial services covered by the licence", rather than individual incidents or events.
8. A relevant and important example of the conceptual difference of "fairness" when considering legal norms as opposed to community standards, is the use of financial indicator covenants in contracts as a means of asserting that a customer is in default. There has been repeated reference throughout the Commission, and in other forums, to the use of those covenants as being below community standards and expectations.
9. CBA has conceded that matter on occasions, recognising that the community has the view, in large measure, that it is not "fair" to consider a customer in default unless they have failed to make monetary payments. That recognition does not equate to an acceptance that using financial indicator covenants is misconduct or the breach of any legal norm of "fairness". Putting to one side for present purposes the very real matter (and all it traditionally signifies) that such covenants are used as a matter of contractual right, their practical significance has been proven to protect the security interest where the performance or behaviour of the debtor may be jeopardising that interest in order to meet payment obligations or otherwise. That practical reality has long been supported by legislation that actually makes it easier to enforce for non-monetary defaults (e.g. section 58A of the Real Property Act 1900 (NSW)), and judicial authority. That does not gainsay the fact that a financial institution may concede that using financial indicator covenants, particularly in relation to certain categories of customer, and at certain times, might fall below community standards and expectations, particularly where the community may expect the financial institution to "support" the customer in difficult conditions, notwithstanding objective evidence of the lack of viability of a commercial enterprise or the erosion of the security, or the obligation on a financial institution to protect the interest of depositors, in order, amongst other things, to ensure that credit is available for the community.
10. It is for these reasons that it may be accepted that conduct falls below community standards and expectations, but that different conclusions may be reached in considering whether that same conduct amounts to a contravention of the Code or the general conduct provisions of the Corporations Act or the NCCP Act.

¹ at paragraphs 38 to 42.

11. It follows, in CBA's submission, that there will be occasions where conduct, which is properly regarded as unfair and therefore falling below community standards and expectations, is not "misconduct" as that term is defined in the Letters Patent.

Question 2: What does it mean for a bank to act fairly and reasonably towards a customer in a consistent and ethical manner? What does that obligation require of a bank in relation to agribusiness customers in an enforcement context? [T4108.13 - 16]

12. CBA considers that acting fairly and reasonably towards customers in a consistent and ethical manner requires a bank to comply with the law, and to have ethical policies and processes in place which appropriately take into account specific needs of particular categories of customers (such as agribusiness customers) and applying them consistently. This will include demonstrating empathy and flexibility and providing reasonable assistance where warranted.
13. Agribusiness customers often exist in a market and operating context that differs materially to that faced by other businesses. The obligation for a bank to act fairly and reasonably towards agribusiness customers in a consistent and ethical manner requires a bank to recognise those features, including in an enforcement context. In particular, agribusinesses may be highly cyclical and more susceptible to factors outside their control such as climate and natural disaster, domestic and global commodity prices and international trade developments (e.g. bans, tariffs or treaties). Unfavourable changes in these factors can result in varying levels of financial difficulty. Further, agribusiness customers' primary personal and business assets, specifically their home, are often co-mingled. For these reasons, whilst a consistency of approach is appropriate, CBA's response will always be determined on a case-by-case basis.
14. The factors outlined at paragraph 13 above may result in temporary or long-term financial difficulty, which is appropriately considered and reflected in any proposed enforcement action. Additionally, the impact of enforcement action in relation to property which is both the business asset and family home must be considered. CBA also has an Agribusiness team within its Group Credit Structuring (**GCS**) division to enhance the support that CBA (including Bankwest) provides to agribusiness customers.
15. CBA's preferred outcome is to achieve the sustainable rehabilitation of the facility such that the customer is able to retain their assets and continue operating their business. In cases of financial difficulty, CBA's objective is to have regard for the personal circumstances of the customer and provide them with appropriate support to respond to their circumstances. This may lead to the temporary deferral of repayment obligations or, in some instances, waiver of part or all of a customer's obligations to CBA.
16. Reflective of the above considerations, CBA typically works with agribusiness customers for a longer period of time prior to taking enforcement action. This illustrates CBA's commitment to find a mutually acceptable outcome, which is specific to the customer's circumstances.
17. Ultimately, if an agribusiness customer's loan is unable to be rehabilitated, enforcement action may be necessary. Should enforcement action be appropriate, CBA's preference is to participate in Farm Debt Mediation (**FDM**) in order to reach a resolution and agreed outcome. CBA views the FDM process as positive and constructive as it greatly assists in delivering an acceptable outcome for both parties.

Question 3: What weight should a bank give to the interests of the customer when making decisions about agribusiness customers experiencing financial difficulty? How should a bank balance the competing interests of the customer and the bank in that context? [T4108.16 - 19]

THE COMMISSIONER: *As that second question and competing interests, it would be of assistance if parties addressing that question identified with some care and precision what exactly are the interests that are in competition. At least at one level, an available view may be that the minimising of loss to the bank will minimise loss to the customer and to that extent the interests of both parties are parallel, rather than competing. To approach it only in that way may, perhaps - I don't say it does - obscure issues about increased cost of capital and the like that arise in connection with non-performing loans, but be that as it may, generalised references to competing interests are likely to be less helpful than more particular and specific identification of the interests that are in competition and require resolution according to the party submitting one way rather than the other. [T4108.23 - 33]*

18. During the normal course of a loan, the bank's and customer's interests are aligned. Both anticipate and desire that the customer's business will be successful, with such success facilitated in part by the loan, and as such, all terms and conditions, including repayment obligations will be complied with. The financial success of the customer's business has flow on benefits to the broader community and the role the bank plays in supporting it, which also reflect common interests.
19. Where a customer experiences financial difficulty, they may be temporarily or permanently unable to meet all of their obligations under the loan contract. Both parties have a common interest in achieving the customer's recovery from financial difficulty and that they continue to meet their obligations under the loan agreement, and appropriately deal with any arrears. However, circumstances will exist where the bank is at risk of financial loss. At times in these circumstances, the customer may be less objective about their financial circumstances and the viability of their business, due to the emotional commitment they have made and the potential for business and personal assets to be co-mingled.
20. At this point, the parties' interests may partially diverge – but not necessarily in a financial sense. The divergence arises if the bank and the customer have a different view about whether the customer can recover from financial difficulty. The bank must make economically rational judgements including, in some cases, to enforce its security having regard to the shareholders, depositors, other borrowers and potentially regulators.
21. CBA is acutely aware that the implications of enforcement are generally greater in smaller regional communities than other sectors of the Australian economy.
22. CBA has regard for the interests of agribusiness customers in financial difficulty. CBA therefore considers factors such as:
 - (a) the prospects of rehabilitating the loan;
 - (b) the potential for achieving a mutually agreeable solution, through direct engagement and ultimately FDM;
 - (c) the likely impact of taking enforcement action on both the customer, and the regional community; and
 - (d) balancing these against CBA's broader responsibilities to shareholders, depositors, other borrowers and regulators.
23. When a customer is experiencing financial difficulty, CBA works with the customer to try to find a sustainable plan to address the situation. This may include options such as:
 - (a) bank staff working with customers to identify and consider options for improving profitability or cash flow;

- (b) rescheduling in repayment arrangements, including repayment frequency;
- (c) varying the term of the loan;
- (d) varying the amount outstanding under the loan, by writing off part of the debt; or
- (e) sale of security or other assets to pay down the debt.

Question 4: Third, in what circumstances is it both best for the customer and best for the bank to appoint an external administrator? [T4108.19 - 21]

- 24. When there is no reasonable prospect of a loan being rehabilitated, it may be in the customer's and the bank's interests to appoint an external administrator, if the customer is unwilling or unable to arrange for an orderly wind up of the business and the sale of all relevant assets. That will include where the customer does not have the capacity or desire to manage their affairs. Further, a customer may seek to limit their exposure to any further director's liability from insolvent trading, or to minimise any further diminution of the customer's equity in the business and/or any increase in the ultimate liability of the customer.
- 25. Broadly speaking, neither the bank nor the customer want an external administrator to be appointed and they are usually only appointed as a last resort, and, in states where a FDM framework exists, only following FDM with the customer. CBA considers that it is preferable for the parties to work together to seek to achieve the common objective of maintaining the operation of the business by rehabilitating it and agreeing on a sustainable plan (as outlined above at paragraph 23) or discharging the loan obligations. Accordingly, it is rare for an external administrator to be appointed for agribusiness customers.
- 26. In many instances of administrator or receivership appointments, both the customer and the bank may incur a loss, so it is in the interests of all parties to ensure that the assets are sold on the best possible terms and that the administrator or receivership and other costs are reasonable and proportionate.

Topic 2: Rabobank case study (Bauer)

- 27. CBA's position in respect of the questions for all parties with leave to appear to answer relating to the Bauer Case Study are set out below in the context of the CBA / Bankwest Case Study (Ruddy).

Topic 3: CBA / Bankwest Case Study (Ruddy)

Question 1: Do remuneration and incentive policies that reward bank employees for the volume of loans sold create an unacceptable risk that bank employees will prioritise the sale of loan products over the bank's responsible lending obligations, over the bank's statutory obligations, including to provide loans in a manner that is efficient, fair and honest, and to have in place adequate arrangements to ensure that customers are not disadvantaged by any conflict of interest that may arise in relation to the provision of loans, and over the bank's obligations to act fairly and reasonably towards customers in a consistent and ethical manner? [T4118.24 - 32]

28. As detailed in CBA's Part B submissions to the Commission in respect of the Round 3 hearing into small to medium enterprise lending dated 12 June 2018,² CBA considers that the sales culture for all business bankers should discourage a primary focus on financial incentives. Rather, CBA aims to achieve a balanced focus, having regard to customers, employees, shareholders and the communities within which CBA operates. In line with all employees across CBA, employees that support business banking activities are encouraged to focus on a range of objectives and targets that balance the needs of all stakeholders. CBA considers that its performance management framework is designed to achieve the right balance with employees focusing on a range of objectives rather than being focussed on financial outcomes and sales.
29. CBA works to mitigate any risk of prioritising product sales or mis-selling through a range of controls, monitoring and investigation of incentive arrangements and practices. The Performance Management Framework is one of the tools adopted to mitigate this risk. CBA's Performance Management Framework assesses employees taking into account "what" was achieved (through specific Key Performance Indicators (**KPIs**)), as well "how" it is achieved through the assessment of Values and Risk Management.
30. Group KPI guidance states that KPIs are set at the start of the financial year adopting a balanced scorecard approach typically across four key result areas (**KRAs**): Customer, Shareholder, People and Strategic Priorities. Each year, the Group provides guidance on the appropriate weighting of KPIs across these KRAs.
31. For the majority of CBA staff who participate in the discretionary Short Term Variable Remuneration (**STVR**) plan, remuneration outcomes are determined holistically considering the "what" and the "how" as equally important. Incentive outcomes take into account KPI performance results as well as how well the individual has demonstrated CBA's Values and the outcome of their Risk Assessment.
32. Additionally, employees who participate in the discretionary STVR plan are subject to the Risk Assessment as part of their performance review. If the risk requirements are not fully met, the result is a 'partially met' or a 'not met' risk rating. Not meeting risk management expectations regardless of KPI performance could lead to incentive outcomes being reduced including to nil, where appropriate.
33. Additionally, CBA seeks to adopt a needs-based sales and service culture which prioritises quality of customer engagement (for example as measured by a Net Promotor Score), and a focus on ensuring products sold are appropriate for a customer's needs and financial circumstances. Controls such as management oversight, risk challenge and assurance and mandatory training programs seek to mitigate the risk of inappropriate sales practices.

² at paragraphs 57 to 60.

Question 2: Is it appropriate for financial services entities to conduct internal appraisals, as opposed to obtaining independent valuations of farms and other rural property? If so, in what circumstances is it appropriate? [T4114.12-14]

34. There are legitimate and valid reasons for undertaking internal valuations, including in areas where expert valuers are unavailable. For example, in some circumstances the requirement to obtain an independent valuation could disadvantage the customer by adding significant cost and time to the process due to the specific nature of rural properties. For this reason, CBA does rely on internal bank valuations completed by accredited staff. In these cases, the valuation officer must comply with CBA policy and measures are in place to manage risk.
35. In particular, CBA notes that time may be of the essence, for example if a customer wishes to purchase a property at auction or to take immediate advantage of a commercial opportunity, but funding is conditional on a valuation and a valuation cannot be obtained in an expedient manner due to timely availability of rural valuers.
36. Where CBA considers appropriate circumstances exist to conduct an internal appraisal, it also considers it is imperative to have suitable controls in place. These controls include:
- (a) accreditation of staff permitted to undertake the appraisal;
 - (b) annual education requirements for staff to retain their accreditation; and
 - (c) oversight and quality assurance of internal appraisals conducted, including risk management controls and management of conflicts of interest.
37. Where a loan is determined to be troublesome or impaired, CBA does not consider that it is appropriate to permit the use of internal valuations and that position is reflected in CBA policy.

Question 3: Is it appropriate for staff involved in origination of the loan to conduct or otherwise be substantively involved with such appraisals? [T4114.14 - 16]

38. As outlined at paragraph 34 above, CBA considers that it is appropriate in certain circumstances for qualified staff members involved in origination of a loan to conduct, or otherwise be substantively, involved in completing internal valuations. In these circumstances, such staff members must be subject to appropriate controls, including accreditation, oversight and assurance.

Question 4: Should there be minimum levels of qualification, skill and experience before a bank employee can be authorised to conduct appraisals? If so, what are the appropriate minimum levels? [T4114.16 - 18]

39. CBA considers that it should be mandatory, for all staff members completing valuations to undertake externally recognised valuation training, as well as meet CBA's own internal policies.
40. CBA's current practice, and what it considers the appropriate minimum standards, includes that an employee must:
- (a) have successfully completed a recognised valuation program – CBA internal valuers currently undertake the Marcus Oldham Accreditation program (Executive Certificate of Agribusiness (Rural Valuation)); or
 - (b) have a valuing qualification recognised by the Australian Property Institute (or equivalent) and hold appropriate accreditation/licences in the State or Territory in which they are valuing.

41. In respect of both 40(a) and 40(b) above, the employee needs to have the necessary knowledge and experience of the rural property / industry to be able to carry out the valuation.
42. Finally, CBA notes the following additional measures it has in place in respect of internal valuations:
- (a) Maximum individual property valuations and aggregate facility limits are set where internal valuations cannot be undertaken or accepted without second independent sign-off;
 - (b) The credit facility is not a Troublesome or Impaired Asset;
 - (c) CBA maintains a list of bank employees holding valuation qualifications; and
 - (d) Ongoing policy review of the minimum qualifications, skills, experience and governance to ensure it remains contemporary.

Question 5: Should there be a code that sets out the requirements for the conduct of internal appraisals by financial services entities, either in respect of rural properties or more generally? If so, what form should that code take? [T4114.18 - 21]

43. CBA does not believe the creation of an additional code governing internal appraisals is warranted given that internal appraisals should occur only in limited circumstances (as detailed above), or would add any material value to protecting customers' best interests. Adding additional compliance obligations to the conduct of internal valuations would not introduce additional protections for customers, but would impede banks' ability to offer a service which can offset a material disadvantage customers may otherwise face.

Question 6: If it is inappropriate for financial services entities to conduct internal appraisals of property to be taken as security, what should be done to stop or discourage that practice? [T4114.23 - 25]

44. As detailed above, CBA considers that circumstances exist in which it is appropriate for valuations to be conducted internally.

Question 7: Are the legislative obligations on financial services entities to provide documents prior to a farm debt mediation such as the obligation in section 21 of the Farm Business Debt Mediation Act in Queensland, sufficient? Should they be extended to oblige financial services entities to provide information on request as well as documents? [T4114.25 - 29]

45. CBA considers legislative obligations on financial services entities to provide documents prior to FDM are appropriate. In particular, CBA notes that recent legislative changes which were passed by NSW Parliament on 3 May 2018,³ will introduce a new provision into the *Farm Debt Mediation Act 1994 (NSW FDM Act)* that allows the mediator to facilitate the exchange of information between the farmer and the bank for the purpose of assisting the parties to resolve the issues which are the subject of the mediation.⁴
46. As noted above, and as outlined in CBA's submissions to the Commission relating to agribusiness dated 18 May 2018,⁵ CBA considers FDM schemes as a constructive and positive function which allows banks and farmers to develop mutually agreeable solutions in relation to loans.

³ *Farm Debt Mediation Amendment Act 2018* No 16.

⁴ Section 18D of *Farm Debt Mediation Act 1994*.

⁵ at paragraphs 22 to 26.

47. CBA supports a nationally consistent farm debt mediation scheme based on the model currently operating in New South Wales. CBA believes the NSW FDM Act represents a sensible platform for adoption as a nationally consistent farm debt mediation scheme.
48. The key benefits around the NSW FDM Act are:
- (a) The legislation is well established and has been in operation for over 20 years. It has provided a structured face to face negotiation process supervised by an accredited independent person, which can assist farmers and the bank to reach an agreement;
 - (b) The principle that creditors are required to offer mediation to a farmer in default before enforcement action can be taken; and
 - (c) The opportunity for earlier farmer-initiated mediation when a farmer is not in default. Early mediation is more likely to lead to a mutually acceptable financial outcome than one undertaken at a later stage.
49. CBA considers that the legislative obligations set out in the NSW FDM Act are sufficient to enable banks and their customers to mediate any disputes effectively and do not need to be extended.

Topic 4: NAB Case Study (Smith)

Question 1: To what extent does default interest reflect the cost to financial services entities of carrying impaired loans? [T4122.2 - 3]

50. For a loan which is in default relative to a loan that is being appropriately serviced, there are a number of additional risks and costs imposed upon CBA that arise.
51. Examples of these additional costs include:
- (a) **Cost of capital:** the amount of capital that APRA requires a financial institution to hold for a customer that is in default is generally higher than one who is not in default;
 - (b) **Collective provisioning costs:** when a customer's credit grade deteriorates, this may increase the amount of collective provisions a financial institution is required to hold. This directly impacts the financial institution's profit and loss;
 - (c) **Account management costs:** customers in default require additional management, communication and oversight and this is a direct driver of additional costs.
52. Decisions around when to apply a default interest rate, and the amount of the rate, are made on a case by case basis. These decisions are informed by factors such as the type, severity and duration of default as well as the conduct and history of the customer with the Bank. The precise flow through of these costs to default interest rates has varied over time.
53. CBA has no targets for default interest rate revenue. CBA's preferred outcome is the successful rehabilitation of the loan and customer's business such that the business continues and is able to meet or discharge all existing obligations.

Question 2: Should there be a moratorium on the charging of default interest in respect of farm debts secured by farm debt mortgages during periods when the farm property is affected by natural disaster? If so, how should such a moratorium be implemented? By legislation? By an industry code? Or by some other means. [T4122.3 - 7]

54. CBA recognises that customers in regional Australia, including farmers, face unique challenges such as those caused by natural disasters. The impact of a natural disaster on a farming enterprise can vary depending upon their location, local environment and investment in infrastructure. It is in recognition of the specific impact that each natural disaster may have on individual farming businesses, that CBA extends all relevant natural disaster relief offerings such as repayment holidays, pre-approved term extension and waiving of establishment / restructuring fee⁶ and financial hardship assistance such as contract variation, offering a repayment deferral or reduced payments over a specified time period or short, medium or long-term payment arrangements.⁷ The appropriate support, which CBA may offer from time to time, is then tailored to the customer's specific needs. CBA notes that there are a range of alternative or additional dispensations that may be offered to customers in the event of a natural disaster. In such circumstances, CBA often makes available tailored assistance packages. By way of example, in June 2018 CBA made available a drought assistance package for impacted customers that provided extended special assistance measures that, amongst other things, included a business loan repayment pause for an agreed term (within the original contracted term remaining), an extension to a customer's business loan term for an agreed period, waiving fees and charges related to business loan structures and cash management options.
55. Based on the above, and the necessity to consider each customer's circumstances on a case by case basis, CBA does not consider that imposing a general moratorium on the charging of default interest in respect of farm debts secured by farm debt mortgages during periods when the farm property is affected by natural disaster would be appropriate.

Question 3: In what circumstances should the moratorium come into effect? In what circumstances should the moratorium be lifted? Similarly, should there be a moratorium on the taking of enforcement action in respect of farm property while that property is, or soon after that property has been, affected by natural disaster? If so, how should such a moratorium be implemented? In what circumstances should it come into effect? And in what circumstances should it be lifted? [T4122.7 - 15]

56. CBA does not believe it would be appropriate to mandate a collective moratorium on the charging of default interest. As outlined at paragraph 54 above, the decision to cease or defer charging default interest must be made on an individual basis, to allow consideration of the factors relevant to that customer's circumstances. These principles are equally applicable to enforcement action, which must also be considered with regard for the specific factors present in each individual customer case.

Question 4: Should provision be made in the farm debt mediation acts or another legislative in development or binding code to facilitate earlier discussion between financial services entities, farmers, and third parties such as rural financial counsellors in cases where farmers face actual or probable financial distress? Should there be a uniform Farm Debt Mediation Act? If so, is any of the current Acts in a suitable form for uniform adoption? [T4122.15 - 20]

57. CBA is committed to supporting our farming customers in times of financial difficulty and is open to exploring new approaches to how the industry can achieve this. As noted above, CBA supports a nationally consistent farm debt mediation scheme based on the model currently operating in New South Wales.

⁶ Exhibit GC-6 to Witness statement of Grant Cairns in response to Rubric 4-27 dated 19 June 2018 (Cairns WS) paragraph 52 ([CBA.0517.0161.4000]).

⁷ Cairns WS, paragraph 44.

58. Under the NSW FDM Act, there are no restrictions preventing any party from requesting a mediation at any point in the negotiation process or entering into discussions about actual or probable financial distress. As noted above, it is CBA's preference to work with customers to resolve financial difficulty and CBA considers that entering into early discussions with agribusiness customers facing problems with the health of their loans is highly beneficial to both parties reaching a mutually agreeable resolution. CBA does not consider it necessary to make a formal provision requiring early discussion.
59. In addition, CBA notes that the Federal Government's soon to be established Australian Financial Complaints Authority will provide further opportunities for farmers to access external dispute resolution, with farmers able to access up to \$2 million in compensation under the new scheme from 1 November 2018.

Topic 5: Rural Bank Case Study

Question 1: How should banks balance the competing interests of strengthening the long-term relationships with their customers and being prepared to act decisively, where necessary, particularly to safeguard shareholder interests? [T4126.16 - 18]

60. CBA considers that the interests of customers and shareholders typically align, particularly over the longer term. Both stakeholder groups desire a stable, competitive bank which offers a compelling customer value proposition and builds long-term, sustainable customer relationships.
61. However, CBA acknowledges that commercial decisions must balance the interests of shareholders, depositors, other borrowers and potentially regulators, and at times it will be necessary to act decisively to safeguard shareholder interests (just as at times it will be necessary to act decisively to protect customers' interests). Where such decisive action is misaligned with individual customers' immediate interests, for example in the increase of interest rates or implementation of enforcement action, the customers' interests remain of vital consideration. For example, imposing default interest rates may be necessary to safeguard shareholder interests by mitigating and deterring potential loan losses, however such rate increases must also have regard for the impact they may have on the customer, including their ability to meet ongoing commitments, their prospects for loan rehabilitation and their susceptibility to financial hardship.
62. Managing the risk of loans to small and medium-sized businesses, including loans to farms and agribusinesses, is a dynamic exercise. These borrowers operate in numerous and varied markets and need to respond to complex and frequently volatile conditions. To deliver on its prudential obligations CBA must be constantly alert to changes in business conditions in these markets, particularly where these have the potential to apply in similar and negative ways to multiple classes of business borrower. A certain quantum of losses is expected from any group of business loans. However, if negative changes in business conditions are not closely monitored and responded to, then the risk of CBA incurring significant losses of shareholder and depositor funds can increase rapidly, as can the likelihood of borrowers encountering difficulties that are persistent, onerous and costly to resolve. Despite this potential for changing market conditions, banks must deal with customers in a consistent manner, in accordance with the requirements of the Code.

Question 2: How should banks balance portfolio growth against the need to monitor and manage their existing clients? [T4126.19 - 21]

63. CBA has an obligation to manage risks from existing loans, as described in the previous response. Equally, it is a reasonable expectation of CBA's shareholders that management will grow the business in a manner that is both prudent and sustainable. In a competitive market consistently putting the interests of potential customers that are new to the bank ahead of those of existing customers will result in a net loss of market share, lower customer satisfaction and / or reputational damage as competitors actively pursue the customers of poorly performing incumbents.

64. CBA has a number of processes designed to ensure ongoing monitoring and management of its existing client bases. These include the allocation of a dedicated relationship manager to many business customers, processes to ensure regular, high quality client engagement, annual reviews of in-life loans over a certain value and monitoring and intervention processes for loans that are at risk of becoming or that have become troubled or impaired.

Question 3: Do banks have appropriate policies in place for dealing with external events that may impact an agribusiness loan portfolio? If not, what should those policies entail? And should banks be required to contact individual customers when they become aware of misconduct in relation to their accounts? [T4126.23 - 26]

THE COMMISSIONER: Those two last questions, external events and contact with customers, raise their own sets of issues. The first two questions, the ones I want to direct attention to, when we go to the Code of Banking Practice we observe at the moment the provisions of clause 27, imposing the - or requiring the exercise of care and skill of a diligent and prudent banker in connection with provision of credit. In the course of dealing with the first two questions you have identified, it would seem to me that there may be utility in the - in those making submissions considering whether shareholders, customers, the public more generally, would expect banks to abide by a standard described as the standard of care and skill of a diligent and prudent banker. Not only in deciding whether to provide credit, which is now dealt with by the Code of Banking Practice, but is it the same standard or a different standard that applies in deciding whether to vary the terms of credit, as, for example, re-price or alter the terms. Is it the same standard or a different standard that should apply in deciding whether, when and how to enforce the credit contract? The three questions, whether, when and how, call for distinct and different consideration. You may or may not get to the same answer in respect of each of them - I don't know - but whether to enforce, when you enforce, not least how you enforce, seem to me to raise considerations that may require separate examination. [T4126.28 - 47]

Applicable clause of the Code

65. In CBA's view, in circumstances where external events impact an agribusiness loan portfolio and result in variation of the terms of credit or enforcement of the credit contract, clause 3.2 of the Code will apply. CBA considers that varying terms due to external events or taking enforcement action should be looked at in the holistic context of whether CBA's conduct is fair and reasonable often coupled with financial hardship considerations (see CBA's responses to Questions 2 and 3 above under the NAB Case Study). CBA considers that this broad standard is more appropriate. The standard of a diligent and prudent banker (as required by clause 27 of the Code) is a more targeted standard which has obvious application at the origination of a loan, but it leaves less room for considerations of fairness and reasonableness which are important considerations when it comes to an assessment of conduct at enforcement.

Policies to address external events

66. CBA has frequently extended assistance to farmers in rural and regional areas to help manage short and medium term crises, including external events. The nature of this assistance is usually determined on a case by case basis, recognising that individual customers will have unique requirements in response to the same event. We believe it is imperative that banks have the flexibility to tailor solutions to meet individual customer needs on a case by case basis.
67. CBA has a general Disaster Relief policy, pursuant to which CBA may offer additional support for customers, including agribusiness clients, affected by the disaster in a way that would normally be outside of policy guidelines.⁸

⁸ Cairns WS, paragraphs 52 -54.

Misconduct

68. CBA supports the principle of being open and transparent around findings of misconduct. This includes looking at how we can make customers aware of potential adverse impacts as a result of any misconduct in relation to their accounts.
69. There are a number of legal obligations banks need to consider before disclosing any cases of misconduct in relation to employees. For instance, consideration needs to be given to whether the misconduct has been substantiated, whether any contractual obligations exist such as non-disclosure or non-disparagement clauses contained in an employment related deed of release and whether other legal ramifications may arise from such disclosure, such as breaches of privacy laws or allegations of defamation.

Topic 6: ANZ Case Study (Save the Children)

Question 1: In what circumstances, if any, is it appropriate for a bank to challenge, directly or indirectly, a customer's expressed wish to have a basic account? [T4146.36 - 38]

70. CBA's basic account is the Streamline Basic account. The account is available to holders of one of the following Commonwealth of Australia concession cards that have their government pension or payments paid into the account:
- (a) Commonwealth Seniors Health card;
 - (b) Commonwealth Pensioner Concession card;
 - (c) Commonwealth Health Care card.
71. Features of the Streamline Basic account include no monthly account fees, unlimited free electronic withdrawals and unlimited free assisted withdrawals. Overdrawing approval fees and dishonour fees do not apply. An informal overdraft limit is not available on the account. The account does not earn interest.
72. If a customer is eligible and requests a Streamline Basic account, CBA would not challenge the customer's request. However, if the customer, at the same time, expresses a banking need which would not be fulfilled by a Streamline Basic account (for example, saving money or an interest bearing account), CBA staff are trained to provide the customer with information about other accounts which may satisfy that need, so that the customer can make an informed choice as to which is the best product for them.

Question 2: Do banks take sufficient steps to promote the availability of fee-free accounts to eligible customers? [T4147.47 - T4148.1]

73. CBA considers that it takes sufficient steps to promote the availability of its Streamline Basic account to eligible customers. These steps include:
- (a) CBA promotes its Streamline Basic account on the CommBank website, including on the 'Transaction Accounts' page and the 'Streamline Basic Product' page;
 - (b) CBA offers the Streamline Basic account to eligible customers using CBA's Indigenous Customer Assistance Line (**ICAL**), a dedicated telephone banking line for geographically isolated Indigenous customers;
 - (c) CBA Frontline staff (Direct Banking and Branch) are trained to promote the Streamline Basic account to eligible customers; and
 - (d) The Streamline Basic account is also promoted on the Affordable Banking website that is provided by the Australian Banking Association (**ABA**).

74. CBA is committed to increasing awareness, and promotion, of fee-free accounts to eligible customers and has signed up to the revised Banking Code of Practice (**Revised Code**). The Revised Code includes an obligation to raise awareness of affordable banking products and services such as basic, low or no fee accounts.

Question 3: Are banks' identification requirements appropriate for Aboriginal and Torres Strait Islander customers? If so, are those identification requirements sufficiently understood and implemented by staff on the ground? [T4148.1 - 4]

75. CBA has adopted modified identification processes for Indigenous customers who access its ICAL service. CBA also accepts the need to balance the specific identification challenges faced by these customers whilst ensuring that CBA meets its statutory obligations in relation to identification of customers, as well as minimising fraud risk.⁹
76. For Indigenous customers in rural and remote areas that do not have access to the ICAL service, CBA also accepts the Isolated Area Aboriginal and Torres Strait Islander Identification form as proof of identification.
77. CBA believes that it has appropriate identification processes to cater for Indigenous customers in rural and remote communities and that these processes are well understood by the ICAL team. CBA continues to consider ways to improve awareness of the acceptance of the Isolated Area Aboriginal and Torres Strait Islander Identification form with other Frontline teams.
78. Customers with non-standard identification, English as a second language and low levels of literacy may find it challenging to comply with our standard ID processes. CBA will continue to review and evolve its approaches to vulnerable customers, including Indigenous customers, while ensuring it continues to comply with the relevant AML/CTF requirements.
79. CBA anticipates that improved digital connectivity in rural and remote communities will provide further opportunities to improve and simplify its identification processes for remote Indigenous customers and also notes that, under the Revised Code, it will be working to ensure it meets its obligations to all Indigenous customers in respect of identification requirements.

Question 4: Do financial services entities have in place appropriate policies and procedures to assist Aboriginal and Torres Strait Islander people to overcome obstacles associated with geographical remoteness to address the cultural barriers to engagement that some of these people face, to address the linguistic barriers to engagement that some of these people face, and to address the obstacles posed by the financial literacy levels of some of these people? And if appropriate policies and procedures are not in place, what changes should be made to those policies and procedures to deal with those matters? [T4148.6 - 13]

80. Whilst CBA has introduced ICAL and the modified identification processes outlined above to improve access to banking services for customers in remote communities, CBA acknowledges that more can be done to support these customers.
81. All ICAL agents receive cultural sensitivity training to better enable them to support and identify customers where English is not their first language. However, CBA notes that in a report commissioned by CBA from Ernst & Young in 2017, entitled "Remote Indigenous

⁹ Witness statement of Sian Lewis in response to Rubric 4-12 dated 15 June 2018 (**Lewis WS**), paragraph 12; paragraphs 48 - 57 and paragraph 64. See also CBA's procedures entitled: "Complying with special identification requirements" Exhibit SL-8 to Lewis WS ([CBA.0517.0120.0204]); and "Account opening for Community Indigenous/Torres Strait Islander customers" Exhibit SL-9 to Lewis WS ([CBA.0001.0333.1779]).

Customers - Needs Assessment and Gap Analysis" and dated March 2018,¹⁰ Ernst & Young concluded that:

- (a) The scale of the need for financial counselling and support with financial capability is not being met;
- (b) Consumer organisations that provide education, advocacy and financial counselling services to Indigenous customers across the nation, naturally have a finite capacity to support Indigenous customers. Limited resources often impact the support and assistance available to remote customers; and
- (c) Although ICAL provides assistance to Indigenous people in remote communities, overall banking products and services have not been designed to accommodate lower levels of English language, different cultural norms and ways of communicating.¹¹

82. As noted above in respect of identification requirements, improved digital connectivity in remote communities will provide further opportunities to improve reach and scale of financial education. CBA continues to work with community groups to better improve its services to customers in remote communities. CBA has recently decided to extend ICAL's operating hours to ensure better access for Western Australian customers and continues to consult with community groups and the remote communities themselves with a view to continually improving its services.¹²

Question 5: Should more banks have a telephone service staffed by employees with specific training in assisting Indigenous consumers? [T4148.13 - 15]

83. Yes, CBA considers that that this may assist with improving access to banking services for Indigenous consumers. CBA also recognises that any expansion to telephone banking services requires close consultation with local organisations on the ground to ensure services are delivered in a way that is beneficial for customers and the broader community.

Topic 7: Informal overdrafts

Question 1: Is it lawful for informal overdrafts to be offered on an opt-out rather than an opt-in basis to recipients of government benefits in circumstances where the costs of utilising the informal overdrafts are high and where informal overdrafts may not be adequately notified to customers. If lawful, is it appropriate? If so, what policies and procedures should banks put in place to minimise the risk of consumer detriment in respect of those products? [T5141.18 - 32]

84. CBA's view is that it is lawful and appropriate to provide recipients of government benefits with an informal overdraft in circumstances where the feature is offered responsibly, with sufficient disclosures and the ability to opt-in or opt-out at any time.

Offered responsibly

85. CBA provides an informal overdraft for the purpose of assisting customers in the event that, through mistake or inadvertence, they forget to put sufficient funds into their account to cover an unexpected payment. The informal overdraft may assist customers to make the payment, and also to avoid fees and penalties which may arise, for example, where a cheque bounces or a direct debit is not paid, and in some cases, to assist them to retain any discounts which may apply when bills are paid on time. It may also assist customers to avoid cancellation of essential services. The informal overdraft is not intended to be used by customers as a form of credit nor in a way that may cause customers financial hardship.

¹⁰ Exhibit SL-21 to Lewis WS, paragraph 77 ([CBA.0001.0333.2033]).

¹¹ Lewis WS, paragraphs 76 and 77.

¹² Lewis WS, paragraphs 38, 67 and 88 - 89.

86. Accordingly, CBA does not offer an informal overdraft to:
- (a) holders of the Streamline Basic account – that is, CBA’s basic bank account available to customers who hold a pension card as listed in paragraph 70 and receive government benefits;
 - (b) Customers who have been declined a formal overdraft in the past 6 months;
 - (c) Customers who are insolvent;
 - (d) Customers who are in financial hardship; and
 - (e) Customers who have a poor credit history with CBA.
87. The following controls also apply:
- (a) Where an informal overdraft is provided to account holders who are recipients of a government benefit but who do not hold a Streamline Basic account, the informal overdraft limit is set at a maximum of \$200; and
 - (b) Customers who already have a formal overdraft or who are new to CBA (that is, originated within the past 3 months), have their informal overdraft limit, if it is otherwise available, set at a maximum of \$50.

Appropriate disclosures

88. CBA’s *Transaction, Savings and Investment Account* terms and conditions are provided to all customers at account origination both in branch and online. These terms and conditions disclose in plain English, what an informal overdraft is, when it may arise, what the consequences of overdrawing an account is and that fees and interest may apply. The terms and conditions also clearly disclose that that customers can request that an informal overdraft be removed at any time.
89. In addition, at account origination in a CBA branch and Direct Banking, staff are required to read mandatory scripting to customers, which includes specific reference to the informal overdraft – in particular, what it is and, what fees and interest apply. Similar up-front disclosures are not currently made during online originations, however CBA is building a solution to address this.
90. CBA customers can request the removal of an informal overdraft at any time.

Offered on an opt-in basis

91. At account origination in a CBA branch and Direct Banking, mandatory scripting requires staff to specifically ask customers if they want the informal overdraft feature - that is, to opt-in. Where an account is opened online, customers can contact CBA at any time following origination, to ask for the informal overdraft feature to be removed. CBA is currently developing system functionality to permit customers to elect whether or not they want the informal overdraft feature in digital channels.

Question 2: Should any other aspect of the current regulatory regime in respect of informal overdrafts be reformed to minimise the risk of consumer detriment? And do ADIs presently have adequate policies in place for the implementation of the code of operation? [T4151.32 - 35]

92. CBA does not consider any aspect of the current regulatory regime needs to be reformed in respect of informal overdrafts. CBA considers that it currently has adequate safeguards in place to minimise risk of customer detriment, the parameters of which are provided by the current regulatory regime.
93. As a member of the ABA, CBA subscribes to the Code of Operation. The Code of Operation is a non-legally binding statement of best practice between Department of Human Services, Department of Veterans' Affairs and the representative bodies, including the Australian Banking Association. The Code of Operation applies to the recovery of debts that arise from customers' overdrawn accounts where no repayment arrangement already exists.
94. Where an account that is overdrawn, is an account into which income support or DVA payment is received, CBA permits the account holder to retain 90% of those funds in any fortnightly period. That is, CBA instructs staff not to apply more than 10% of any income support or DVA payment received in any fortnightly period to the reduction of a debt caused by overdrawing, in these circumstances. On this basis, CBA considers it has adequate policies in place to implement the Code of Operation.