

Westpac Banking Corporation General submissions on experiences with financial services entities in regional and remote communities

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

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A. INTRODUCTION

- 1 These submissions set out the responses of Westpac Banking Corporation (**Westpac**) to the Commission's invitation following the round 4 hearings which considered experiences with financial services entities in regional and remote communities.
- 2 Westpac notes that on 11 May 2018, the Commission requested information in relation to lending for agribusiness purposes (**RFI7**). Westpac provided a response to RFI7 dated 23 May 2018 (**RFI7 Response**). Westpac adopts its RFI7 Response for the purposes of these submissions as it traverses many of the issues identified or considered by the Commission as part of the round 4 hearings in relation to agribusiness.

B. FARMING FINANCE

GENERAL QUESTIONS ARISING FROM THE ANZ CASE STUDY

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?¹ 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?²

- 3 Clause 3.2 of the Code of Banking Practice (**COBP**) requires Westpac to “act fairly and reasonably towards [the customer] in a consistent and ethical manner”.
- 4 Given the array of situations in which a bank may have dealings with a customer, it is difficult to define uniformly what it means for a bank to act fairly and reasonably towards a customer in a consistent and ethical manner in all situations. The question inevitably is one of perspective or judgment and raises subjective and objective considerations that will often be dependent on the circumstances. In that regard, it is worth noting that clause 3.2 (second sentence) recognises that considerations relevant to the discharge of the obligation include the bank's conduct, the customer's conduct and the contract between them.
- 5 Enforcement action involves Westpac accelerating the repayment of the debt or exercising its rights in respect of security (such as taking possession of assets) when a customer is in default of certain obligations under the loan agreement. The majority of instances in which there is customer default do not result in enforcement action. It is Westpac's preference and practice to work with customers in financial difficulty, and wherever possible, to restore a customer's financial position, as discussed below.
- 6 Whilst it is difficult, in the abstract, to elaborate on the scope of the obligation under clause 3.2 of the COBP, in any enforcement context, the obligation is likely to require a bank to treat the customer with respect and to give due consideration to the customer's interests, in considering the process and the potential outcome for the customer of any proposed enforcement action, as well as the bank's interests consistent with its contractual entitlements.
- 7 In relation to agribusiness customers, in an enforcement context, the obligation under clause 3.2 likely requires a bank to respect the customer's emotional and generational connection to the land and, often, their desire to remain on their farm if possible. Consistent with that obligation, Westpac's primary objective where possible is to keep the customer on their farm in

¹ Transcript 6 July 2018 (Orr QC), T4108:13-16.

² Transcript 6 July 2018 (Orr QC), T4108:16-19.

a sustainable manner. Where that cannot occur, Westpac will have a discussion with the customer to help the customer understand the enforcement process and its possible consequences. It is Westpac's experience that Farm Debt Mediation greatly assists this process. In addition, under clause 28 of the COBP, Westpac has an obligation to assist customers to try and overcome financial difficulties in respect of any credit facility they have with Westpac. This obligation applies before enforcement action is taken. The obligation includes:

- (a) dealing with any authorised financial counsellor or representative of the customer including meeting to discuss options available;
- (b) making information about its processes for dealing with customers in financial difficulty available on Westpac's website or in another form requested by the customer; and
- (c) responding promptly to any requests for assistance and ensuring staff are trained in relation to the hardship provisions of the COBP and the National Credit Code, where it applies.

8 The revised COBP will articulate the values of the banking industry, expanding on, and explaining the commitment to act fairly and reasonably, and in a consistent and ethical manner.³ The revised COBP contains a number of prescriptive promises governing the subscribing banks' contractual arrangements with small businesses and includes a new part dedicated to lending to small businesses (Part 6). These and other provisions of the revised COBP include:

- (a) broader 'responsible lending' obligations (Chapter 17);
- (b) obligations when dealing with customers in financial hardship (Part 9);
- (c) specifying the non-monetary events which may be relied upon to trigger default and the remedy periods applicable to such events (clause 77);
- (d) material adverse change clauses may not be relied on as an event of default in any standard form small business lending contract (clause 81);
- (e) prohibitions on using financial indicator covenant clauses in standard small business lending contracts, other than in certain specialised finance contracts (clause 82);
- (f) small business borrowers must have a reasonable period of time to remedy a remediable non-monetary default, with a standard 30 days' remedy period for defaults (clauses 72 and 78);
- (g) minimum notice periods if a bank is unwilling to renew a borrower's facility when the term expires (clause 83);
- (h) an obligation to ensure a bank's processes in relation to expert valuations are fair and transparent (clause 85);
- (i) obligations on banks to act fairly when using investigative accountants and insolvency practitioners (clause 86).

³ Letter dated 19 December 2017 to Peter Kell, Acting Chairman, ASIC, from Anna Bligh, CEO of the ABA [ABA.001.007.0576 at .0684] Exhibit 3.144.1.

- 9 While the substantive effect of these provisions is presently addressed in Westpac's practices, policies and guidelines and standard loan terms for small business customers, governed by the unfair contract term provisions, the inclusion of the above provisions in the revised COBP sets standards that will apply across the industry. The revised COBP also extends the protections relating to the unfair contract terms legislation beyond the thresholds required by law, applying to small businesses falling within the definition of 'small business' in the revised COBP.⁴ Westpac believes that the revised COBP will apply to more than 90% of its agribusiness customers.⁵
- 10 The obligations under the COBP are in addition to the obligations under section 420A of the *Corporations Act* where the enforcement action involves taking possession of, or appointing a receiver or receiver and manager to, property owned by a corporate customer. In effect, section 420A requires a mortgagee in possession or a receiver, or receiver and manager, to take reasonable care to ensure the property is sold for not less than its market value or otherwise for the best price reasonably obtainable, having regard to the circumstances existing when the property is sold.⁶ If Westpac appoints a receiver, or receiver and manager, then Westpac requires the receiver, or receiver and manager, to report to it on a regular basis with details of the strategy, the process and progress on the sale of the property. Prior to accepting an offer of sale the receiver, or receiver and manager, is required to advise details of the purchaser, sale price and terms and conditions of the sale and obtain Westpac's approval to release its security.

Westpac's approach to agribusiness customers experiencing financial hardship and enforcement action

- 11 As it is in the interests of both parties, Westpac's preference and practice is to try to assist customers to resolve repayment issues without relying on legal rights under loan agreements that enable it to enforce its security. Westpac recognises that enforcement action can have serious consequences for agribusiness customers. Westpac's preference is to avoid enforcement action where possible.
- 12 As at 30 September 2017, Westpac had approximately 30,000 customers in the agricultural, fisheries and forestry sectors with business loans totaling over \$10.4 billion. The percentage of Westpac's agribusiness portfolio assessed as impaired represented 0.17% of the overall Australian agribusiness portfolio total committed exposure.⁷ In the past two years, Westpac has had no forced evictions in the agribusiness portfolio and has only appointed receivers in a small number of instances. This has been a function of a detailed and considered approach to lending decisions, a commitment to working constructively with agribusiness customers in financial difficulty and avoiding enforcement action where possible.
- 13 There are a variety of factors that may lead an agribusiness customer to experience financial difficulty, including economic downturn, business management capability or internal conflict, change in personal circumstances, fraud, inappropriate hedging strategies, overtrading and specific events such as flood, drought and fire. For example, the evidence given to the Commission is that, in recent times, agribusiness customers in Queensland have been significantly affected by the following external events, which are indicative of the types of events that may lead an agribusiness customer to experience financial difficulty:

⁴ The definition of "small business" in the revised COBP is more expansive than the \$1 million upfront payable price definition contained in the unfair contract terms legislation.

⁵ The average total committed exposure of agribusiness customers is \$570,000.

⁶ As a receiver, or receiver and manager, of property of a corporation is an 'officer' within the meaning of s 9 of the *Corporations Act*, the receiver, or receiver and manager, also owes additional obligations under the *Corporations Act*.

⁷ That is, the maximum amount of credit exposure which Westpac is committed to incur to a customer.

- (a) the decline in property prices for Queensland cattle properties;
 - (b) severe droughts across much of Queensland in 2008-2009 and during the 2013 to 2017 period;
 - (c) widespread cyclone Yasi related flooding across parts of rural Queensland in the summer of 2010 – 2011; and
 - (d) in relation to northern Queensland properties, the ban on live cattle exports to Indonesia announced with immediate effect by the Commonwealth government in June 2011.⁸
- 14 Westpac's focus is on identifying any difficulties with the business at an early stage and ensuring a range of options is available to the customer to manage any such financial difficulty. Westpac's priority, wherever possible, is to work with agribusiness customers to find solutions that will, as far as possible, seek to ensure the customer's business is sustainable and can be returned to good health. Customers confronting financial difficulties are generally dealt with by Westpac on a case-by-case basis to ensure Westpac can respond flexibly to the circumstances of individual customers and a customer-specific strategy can be determined and agreed.
- 15 Westpac employs a variety of mechanisms to assist agribusiness customers to resolve their financial difficulties, including:
- (a) Forbearance/Standstill arrangements, whereby the customer is given 'breathing space' by way of an agreed extended period of time to resolve their financial difficulties, provided performance milestones are met. This may include the extension of loans that have expired or will expire, waiver of fees, waiver of scheduled loan repayments for a period of time or an agreement on a period of time where no principal repayments are made.
 - (b) Renegotiating the loan agreement, which may include renegotiating the loan term, loan pricing, repayment arrangements, resetting of financial covenants and the customer undertaking to sell assets, raise additional equity or security or provide security.
 - (c) Offering two types of hardship assistance to customers pursuant to its Financial Hardship Policy; account restructuring and long term or permanent collection options.
- 16 Westpac also has a comprehensive disaster relief package to assist eligible customers through unforeseen events such as floods, drought and fire.⁹ The package is designed to ensure that viable operators are able to stay on their properties and underpin the long-term sustainability of their farms.
- 17 Consistent with the above, the bank should have strong regard to the interests of the customer in making decisions about agribusiness customers experiencing financial difficulty. In Westpac's experience, working with and seeking to accommodate customer interests where possible is the most effective way to navigate a distressed lending situation and see the loan return to normal operation. In most circumstances, the balance between the bank's and the customer's interests are aligned in seeking to assist the customer navigate any financial difficulty as quickly and conveniently as possible. Where the interests of the customer and the bank begin to diverge, Westpac's primary interest remains seeking to accommodate the customers' interests wherever possible, provided doing so is not inconsistent with the bank recovering any debt owing to it in a reasonable timeframe.

⁸ Witness statement of Alexandra Gartmann, exhibit 4.121, paragraph 57.

⁹ See information about Westpac's disaster relief on its website (<https://www.westpac.com.au/business-banking/industries/agribusiness/disaster-relief/>).

In what circumstances is it both best for the customer and best for the bank to appoint an external administrator?¹⁰

- 18 As mentioned above, Westpac's priority, wherever possible, is to work with its agribusiness customer to find solutions that ensure the customer's business is sustainable over the longer term and can be returned to good health. This generally involves a number of steps of engagement with the customer, including by front-line bankers and the credit team, before external administrators are appointed. Further, it is Westpac's policy only to enforce security after careful consideration and where considered necessary. In some circumstances, the nature of the file or the difficulties experienced by the customer mean that recovery or enforcement action is necessary.
- 19 Recovery or enforcement action occurs when Westpac decides to take action to recover the debt by exercising its rights under the security or facility documents. In circumstances where Westpac decides to enforce its securities to clear the debt, Westpac ensures that its intentions are clearly communicated to the customer and that the process is done with respect and an understanding of the profound impact such action can have on the customer.
- 20 The decision from the bank's perspective usually involves considering, at least:
- (a) if there is no viable workout strategy;
 - (b) if the value of the security is impaired or diminishing as a result of the customer remaining in possession of the property;
 - (c) animal welfare considerations, for example, where the customer does not have working capital to feed livestock;
 - (d) the level of cooperation from the customer and their likely adherence to forbearance/standstill arrangements;
 - (e) whether the customer or any other creditor has taken steps to appoint an external administrator; and
 - (f) any dispute that might exist between the customer and the bank.
- 21 Where possible, Westpac's strong preference is for the customer to remain in possession of the property and to be involved in any steps to realise the value of assets necessary to pay down debt. However, in certain circumstances the appointment of an external administrator is in both parties' interests where, having regard to the above considerations, it will maximise the realisable value of the property such that the bank is repaid and there is a residual for the borrower or, where the indebtedness is unlikely to be cleared by the sale of the secured assets. Westpac notes that even once the procedures for taking possession of an asset have commenced, Westpac continues to remain open to alternative arrangements and, if a mutually satisfactory alternative can be agreed, the enforcement would not proceed.
- 22 In Westpac's experience, the emotional and generational attachment the customer has with the land may prevent the customer from confronting the reality that the business, or the business in its present form, is not viable. Farm Debt Mediation can sometimes assist customers in this process. Some customers will not meaningfully engage with the bank until enforcement action begins. Westpac will continue to engage with the customer to address any issues after the

¹⁰ Transcript 6 July 2018 (Orr QC), T4108:19-20.

enforcement process begins. Appointing an external administrator may assist the customer to have a discussion about the viability of the business and whether the business is sustainable in some form. If the customer has a number of properties, Westpac will discuss the possibility of the customer retaining one of the properties.

- 23 Further, appointing an external administrator may be both best for the customer and Westpac where the customer's business has not generated income for a lengthy period with no end in sight, placing the customer and their family under considerable financial and emotional stress. The external administrator may be able to employ the customer to manage the business pending a sale, placing the customer in receipt of income to relieve some of the financial and emotional stress.

GENERAL QUESTIONS ARISING FROM THE RABOBANK CASE STUDY

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?¹¹

- 24 In the majority of cases, Westpac relies upon external valuations for lending where farms or rural properties form part of the security provided, and does so in accordance with the industry guidelines published by the ABA setting out minimum standards with respect to external valuer used to value farms or rural properties.¹² However, Westpac believes that it is still appropriate for banks to rely on an appraisal conducted by a bank employee of farms and other rural property used as security for lending, if:¹³
- (a) the employee has the necessary skills and experience to perform the appraisal;
 - (b) the employee is accredited to perform appraisals by senior managers of the bank having considered and assessed whether the employee has the necessary qualifications and experience;
 - (c) that accreditation is reconsidered by the senior managers of the bank periodically; and
 - (d) there is suitable oversight of the appraisals by the credit (second line compliance) and audit (third line compliance) functions within the bank.
- 25 Within those parameters, there are considerable advantages to both customers and banks in having bank employees appraise the market value of farms and other rural property used as security for lending. These include the cost and time to obtain valuations from appropriate panel valuers, who will need to visit and inspect the farm or rural property.
- 26 Generally, the cost of external valuation (which would generally be around \$5,000) is passed on to customers, whereas no charge is made for performing an internal appraisal. Usually panel valuers are located in major cities or regional centres, and it can take significant time to book a valuer to attend to inspect the properties and prepare valuations of them. The average time to obtain an external valuation is around six to eight weeks in western Queensland or the Northern Territory (the closest panel valuers are mainly in Townsville) and four to six weeks in rural South Australia. It is therefore often considerably faster to obtain an internal appraisal than

¹¹ Transcript 6 July 2018 (Orr QC), T4114:11-14.

¹² Australian Banking Association, Industry Guideline: Appointing property valuers when lending to small businesses and primary producers, Exh bit 3.29.8.

¹³ Westpac notes that its answer to this question primarily relate to appraisals that are conducted as part of the origination process, as opposed to enforcement.

an external valuation, noting the customer always has the option of requesting Westpac to obtain an external valuation.

- 27 Within Westpac, specialist Agribusiness Managers can obtain authority to carry out appraisals (referred to as Manager's Inspection Assessments) of certain types of farms and rural property with values up to limits set by Westpac's policies. This limit is usually \$1.5 million, unless specific credit approval is provided to go above that limit. Agribusiness Managers are not permitted to carry out appraisals for more complicated valuation tasks such as where comparable sales data is not available or cannot be obtained, the value of improvements is to be included in the appraisal or when security over a water title is to be taken and the value of the property depends on water for production.
- 28 To be accredited, an Agribusiness Manager must complete an accreditation form which sets out their experience, their qualifications and any external studies they have undertaken or are undertaking, any relevant accreditations they hold or other relevant training programmes they have completed. They must also explain the reasons why they consider themselves to be qualified to be accredited. Once this form is completed, it is considered by the relevant heads of distribution and credit and, if so minded, recommended for approval, with final approval provided by the Chief Credit Officer of Westpac's Business Bank. Westpac maintains a central register of employees who are authorised to carry out internal appraisals.
- 29 Once authorised, Westpac's policies require that any authorised manager who is performing an appraisal of a farm or rural property:
- (a) must do so only for a property located within the geographic area for which they are authorised (which would usually be the geographic area they have responsibility for customers within);
 - (b) must visit the property;
 - (c) must complete and sign a standard Westpac inspection worksheet which contains prompts to ensure that a complete and accurate description of the property is obtained, including:
 - (i) the type of farming activity undertaken;
 - (ii) the Valuer General's value of the land;
 - (iii) the soil type, topography and pastures;
 - (iv) the approximate size of the irrigated, arable, grazing and timbered areas on the property and any water resources;
 - (v) the major improvements (including houses, services, shearing sheds, yards and fencing);
 - (vi) environmental considerations (including pests, weeds, salt intrusion, erosion);
 - (vii) the production capability;
 - (viii) an analysis by the manager of the marketability and demand for the property based on its attributes, local conditions and comparable sales;
 - (ix) an analysis by the manager of the general condition of the property;
 - (x) an explanation by the manager for adopting the estimated value;

- (d) must support their appraisal with sales data that has been sourced from local sales, attending auctions, discussions with valuers, stock agents or real estate agents as to the price per acre for comparable land and including at least two comparable sales which have occurred in the past 24 months.
- 30 Once the appraisal is completed, Westpac's policies require that it be reviewed by a credit manager or area lending manager and the estimate of market value confirmed by that person, before the lending is initially drawn down.

Is it appropriate for staff involved in origination of the loan to conduct or otherwise be substantively involved with such appraisals?¹⁴

- 31 Westpac considers that in certain circumstances it can be appropriate for a suitably qualified bank employee involved in the origination of a farm or rural loan to be involved in the preparation of appraisals. This is because local knowledge is very useful – sometimes invaluable – in preparing accurate appraisals. The bank employees with the most complete and accurate knowledge of an area are usually those who service the customers in that area.
- 32 It is for this reason that Westpac's policy requires that accredited Agribusiness Managers only complete appraisals for the geographic area which they are responsible for. While some communities are served by more than one Agribusiness Manager, this is not always the case. Westpac considers that a more, or at least equally, effective control to guard against inappropriate appraisals is to have the appraisal reviewed and confirmed by a credit or area lending manager which, as set out above, is the current process in place within Westpac.

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?¹⁵

- 33 It is essential that bank employees who are accredited to conduct appraisals have the skills and experience necessary to perform that role. However, Westpac's view is that it is not possible or appropriate to have prescriptive minimum standards in this area. For example, a bank employee with 20 years' experience serving customers in a particular rural community but with no formal qualifications may be equally or more qualified to perform appraisals as a newer bank employee who has tertiary qualifications relating to property valuation. Suitability requires a case by case assessment, and the exercise of judgement by the senior managers who provide accreditation.
- 34 Westpac considers that its process of requiring managers who wish to be accredited to conduct appraisals apply to senior product and risk managers within the bank and set out their qualifications, skills and experience, so that an assessment can be made of whether their particular combination of qualifications, skills and experience is sufficient, represents an appropriate and acceptable approach to accreditation and ensuring the appropriate minimum levels are met before accreditation is provided.

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?¹⁶

¹⁴ Transcript 6 July 2018 (Orr QC), T4114:14-16.

¹⁵ Transcript 6 July 2018 (Orr QC), T4114:16-18.

¹⁶ Transcript 6 July 2018 (Orr QC), T4114:18-21.

- 35 Westpac's experience has been that there have not been significant issues with respect to internal appraisals, and therefore it is not in favour of developing a code or other guidelines to deal with them. As noted in paragraph 24 above, in the majority of cases, Westpac relies upon external valuations for lending where farms or rural properties form part of the security provided. If a code or other guidelines were considered by the Commission to be necessary based on the evidence it has received, then Westpac considers that augmenting the ABA's existing industry guidelines so that they also cover internal appraisals would be the most effective method to achieve that outcome.

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 practice¹⁷

- 36 For the reasons set out above, Westpac's view is that the use of internal appraisals is not inappropriate in certain circumstances and subject to appropriate internal oversight and controls. Accordingly, Westpac does not believe the use of internal appraisals should cease or be discouraged. As noted already, internal appraisals can reduce the cost of origination for a customer and speed up the provision of credit. Ceasing internal appraisals would remove flexibility in the origination process, which is often to the benefit of the customer. For instance, if a farmer owns a property which is financed by Westpac, and wishes to purchase an adjoining property, then an appropriately conducted internal appraisal of the adjoining property may be conducted based on the value of the existing property (provided the valuation of the existing property was sufficiently recent). Obtaining an external valuation to carry out this exercise may unnecessarily add to the customer's costs in obtaining finance.
- 37 If internal appraisals were banned, there is presently no alternative to carrying out a full external valuation, with the cost and delay consequences discussed above. Westpac is currently exploring a pilot program where an external valuer would carry out a 'desktop' valuation (that is, one using readily available information and without an inspection of the property) for farms and rural properties worth less than \$5 million. This would provide a low-cost alternative to both internal appraisals and external valuations. However, it is not yet known whether this pilot program will be acceptable to external valuers or provide sufficient valuation information to satisfy credit quality requirements, including those set by APRA. One of the challenges it faces is whether sufficient information is available to perform such valuations (such as an accurate central repository of comparable sales).

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?¹⁸

- 38 Westpac recognises that the exchange of documents and information can be an important step in some farm debt mediations, including if the customer cannot locate their own copies of relevant documents, such as loan agreements and other terms and conditions of the facility. However, it is important that any legislative obligations are clear about what is required in relation to document and information production and ensures this exchange is not onerous and costly for either side. This will avoid unnecessary disputes about document and information production, and allow the parties to focus on the real issues in dispute.

¹⁷ Transcript 6 July 2018 (Orr QC), T4114:23-25.

¹⁸ Transcript 6 July 2018 (Orr QC), T4114:23-25.

- 39 Section 21 of the *Farm Business Debt Mediation Act 2017* (Qld) addresses requests for production of documents related to the farm business debt and the farm mortgage and sets out the specific documents (in subsection 21(4)) that the bank is to produce to comply fully with that request. It does not deal with the production of information. That is appropriate. The Queensland legislation takes a prescriptive approach to the documents required to be produced. However, it is neither possible nor appropriate to take the same approach with information. This is because in the abstract, it is difficult to conceive of precisely what information additional to that contained in the specific documents identified in subsection 21(4) would be necessary for a mediation.
- 40 In Westpac's view, section 18D of the *Farm Debt Mediation Amendment Act 2018* (NSW), which will amend the *Farm Debt Mediation Act 1994* (NSW) on proclamation, provides a more effective and efficient means to deal with the exchange of information. This section provides that a mediator may facilitate the exchange of information "for the purpose of assisting the parties to resolve the issues between them", a party must give any request for information to the mediator before giving it to the other party and then, when the mediator prepares a report on the mediation, the mediator is to have regard to whether any request was reasonable and whether the information provided in relation to the request was given in a reasonable period. However, it does not specifically compel the production of the information requested. This is left to the mediator to manage in the context of a specific mediation, and to comment on in the report prepared of the mediation. Nevertheless, Westpac considers that banks would generally be required to respond to any reasonable request for necessary information made pursuant to section 18D, as part of their general obligation to take part in the mediation in good faith

GENERAL QUESTIONS ARISING FROM THE BANKWEST CASE STUDY

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?¹⁹

- 41 As Westpac has noted in its previous submissions to the Commission, remuneration and incentive policies that reward bankers based on the volume of loans sold in a given period can affect a bank's culture and the performance of its bankers, and thereby potentially affect customer outcomes. For this reason, Westpac recognises that care must be taken by banks when developing and implementing remuneration and incentive policies to ensure this issue is adequately managed within the design of the policies.
- 42 Westpac considers that the appropriate remuneration model for business bankers, including its bankers involved in agribusiness, is a balanced scorecard approach in which a banker must meet behavioural, risk and compliance requirements to be eligible for variable reward, regardless of financial performance. If those requirements are met, the scorecard must be balanced so that variable reward is determined having regard to both financial and non-financial measures.
- 43 When used within a balanced scorecard approach, financial-based performance measurements have a role in encouraging business bankers to provide timely and effective service which meets the customers' needs and expectations. Variable reward of this nature, when combined

¹⁹ Transcript 6 July 2018 (Orr QC), T4118:24-32.

with other appropriate controls, rewards bankers for identifying products that meet customers' financial needs and contribute to the development of a customer-focused service culture.

- 44 Westpac also seeks to ensure that it provides services efficiently, fairly and honestly to the agriculture sector by actively seeking to recruit and retain bankers with strong connections to the areas in which they work and who have a personal or family history of agriculture. The majority of Westpac's bankers in the agriculture sector either have families which have worked or continue to work on the land, or they service communities within 300 kilometres of where they grew up. In that manner, Westpac seeks to ensure that its bankers have a solid understanding of the specific needs of and challenges faced by customers who live on the land and work in the agriculture sector and that they understand the history and aspirations of the communities they work in.
- 45 Westpac's bankers in the agriculture sector have the same scorecards and variable reward model as Relationship Managers. As evidence already provided to the Commissioner shows, this variable reward model comprises:²⁰
- (a) **Gate Openers.** To be eligible for any variable reward, bankers must meet behavioural and compliance 'gate openers', which requires appropriate conduct and are not contingent on a business banker's financial performance.
 - (b) **Scorecard performance.** Bankers' scorecards include financial measures (weighted 50%) and customer-focussed measures (weighted 50%) including customer feedback.
 - (c) **Manager discretion.** If a banker satisfies the gate openers, the amount of variable reward is subject to the discretion of the relevant manager. Manager discretion is exercised having regard to, though not bound by, the scorecard measures described above, together with the following additional factors:
 - (i) **Risk Obligations.** Managers are provided with a range of risk-based metrics for each banker that must be considered in determining the banker's reward;
 - (ii) **Behaviours.** Managers are required to consider the banker's adherence to Westpac's Group Values; and
 - (iii) **Individualised goals.** Business bankers may agree personalised goals with their managers, the outcome of which may be considered in the calculation of that banker's variable reward.
- 46 Westpac considers that this model is consistent with the recommendations of Stephen Sedgwick AO in his report of 19 April 2017. It represents an appropriate approach to remuneration, including by discouraging bankers from achieving financial key performance indicators at the expense of customers' interests, or by breaching risk and compliance requirements. By moving away from a formulaic approach to determining variable reward, there is manager discretion to reward positive behaviours (specifically, positive risk behaviours), which helps to reinforce a strong culture focussed on customers and managing the risk to them and the bank.
- 47 The remuneration framework is supported by a consequence management framework which makes it clear that misconduct (including breaches of law, or breaches of internal policies or the code of conduct) will be disciplined (including the potential termination of employment).

²⁰ Ex 3.28.9 CS4-9 [WBC.107.003.1047 at .1064].

- 48 Westpac has made substantial changes to its variable reward approach and the way variable reward is calculated for business bankers to strengthen its service culture and respond to the Sedgwick recommendations. It has removed all financial-based gate openers, moved from a formulaic to a discretionary approach in determining variable reward, and has progressively reduced the weighting of financial measures in role-based scorecards. It intends to further reduce the weighting of financial measures to meet or exceed the requirements of the Sedgwick recommendations by 2020.

GENERAL QUESTIONS ARISING FROM THE NAB CASE STUDY

To what extent does default interest reflect the cost to financial services entities of carrying impaired loans?²¹

- 49 Westpac considers that in certain circumstances, charging additional interest on loans that are in default is an appropriate measure to at least partially assist in recovering some of the additional administration and capital costs associated with loans that fall into arrears. While it is difficult to accurately identify the precise costs that are incurred by a bank when a loan falls into arrears and requires more particular management, significant additional costs are incurred which include:
- (a) costs associated with the additional capital required to be applied against a loan in default;
 - (b) administrative and personnel costs associated with the management of files in arrears;
 - (c) additional legal costs associated with forbearance measures, mediations and disputes.
- 50 While default interest reflects (at least in part) the increased costs that it incurs as a result of carrying impaired loans, as noted in the RFI7 Response, working with customers to restore their financial position is also in Westpac's commercial interests. Westpac's original credit assessment is based on a number of factors, which includes (most relevantly) the customer's ability to service the loan, not the enforcement of security or the payment of default interest. A customer who is able to recover their financial position is more likely to be able to repay their principal loan amount. It also reduces costs to the customer and the bank (for example, by avoiding the costs associated with insolvency) and maintains value in the business.
- 51 Westpac's priority, wherever possible, is to work with its agribusiness customer to find solutions that ensure the customer's business is sustainable and can be returned to good health. This, in turn, ensures that customers are able to pay down the principal loan amount, rather than default interest on an impaired loan, which is generally Westpac's preference.

²¹ Transcript 6 July 2018 (Orr QC), T4122:2-3.

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? In what circumstances should the moratorium come into effect? In what circumstances should the moratorium be lifted?²²

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?²³

- 52 Westpac understands that natural disasters can (and often do) have a significant impact on farmers, their property and their operations. Westpac is also sympathetic to borrowers who face difficulties meeting their financial obligations as a result of a natural disaster. While Westpac is of the view that, as a matter of practice a significant amount of caution and sympathy should be shown to borrowers who face financial difficulty as a result of external factors such as natural disaster, there are complexities that may make formal moratoriums on the application of default interest difficult and which may have unintended consequences such as the unavailability of finance or increased costs of finance arising from the corresponding increased risk to a bank exposed to widespread defaults caused by particular natural disasters.
- 53 The matters that would need to be taken into account in considering whether there was merit in a formalised or statutorily imposed moratorium on default interest and/or enforcement action in respect of borrowers affected by natural disaster include the following:
- (a) Arriving at a satisfactory definition of natural disaster, and whether natural disasters are limited only to transient natural events such as flood, earthquake or hurricane, as opposed to other longer lasting weather patterns such as drought and unseasonably high rain, or events which might have been maliciously caused or started, such as bush fires. In this regard, Westpac notes that much of the evidence heard by the Commission in the agribusiness case studies involved periods of significant drought. Drought, of course, can affect particularly large numbers of farmers at any given time and can subsist for extended periods of time. Banks exposed to areas so affected would also be exposed to significant losses and costs associated with managing loans affected in that manner.
 - (b) Given the risks to banks exposed to either large loans or large numbers of loans affected by natural disaster, a logical and potentially prudent response would be for banks to take greater care when considering the extension of finance to borrowers in areas potentially affected by those risks and to consider applying higher interest rates for finance given the greater risk of default and the lower ability to defray the costs associated with default.
 - (c) The impact reduced risk ratings on loans have on the relevant cost of capital, and how those costs might be further increased by moratoriums.
 - (d) Whether banks already have adequate and effective measures to protect customer interests in natural disaster situations (whether as informal business practices, or formal policies, procedures or guidelines) or deferring enforcement action during or soon after natural disasters.
- 54 Westpac already has in place a number of measures to deal with the effects of natural disasters. These include: Westpac's comprehensive disaster relief package to assist customers

²² Transcript 6 July 2018 (Orr QC), T4122:3-9.

²³ Transcript 6 July 2018 (Orr QC), T4122:11-15.

through unforeseen events such as floods, drought and fire²⁴; natural disaster protocols which are invoked by Westpac during natural disasters, and can be varied to suit the specific circumstances; and Westpac having appropriately skilled bankers with significant expertise in agribusiness operations and lending, who can make informed decisions to voluntarily and informally impose moratoriums on the charging of default interest and taking enforcement action during or following natural disasters.

- 55 As noted above in these submissions and in Westpac's other submissions to the Commission (including the RFI7 Response), Westpac's priority, wherever possible, is to work with its agribusiness customer to find solutions that ensure the customer's business is sustainable and can be returned to good health. This includes during and soon after a natural disaster, and does not necessarily involve charging default interest in respect of farm debts secured by farm debt mortgages during periods when the farm property is affected by natural disaster; nor does it necessarily involve enforcement action in respect of farm property while that property is, or soon after that property has been, affected by natural disaster. In this sense, Westpac already engages in a practice of informally imposing moratoriums on taking such action if circumstances permit and it is in the best interests of both the bank and the customer.

Should provision be made in the farm debt mediation Acts or another legislative instrument 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?²⁵

- 56 Westpac is of the view that early and frequent conversations between the borrower and lender in circumstances where a loan is at risk of or has fallen into arrears is essential as a means of seeking to identify a way forward that is in the customers interests and sees any short term financial issues addressed as soon as possible. In Westpac's experience, early engagement materially increases the likelihood of a successful outcome and materially reduces anxiety for the customer.
- 57 Westpac often finds that the addition of financial counsellors and other advisers to the borrower significantly assists and improves the quality of those conversations. Westpac would have no objection to early conversations with the borrower forming part of the legislative regime, but would not regard it as essential given it already forms part of Westpac's standard practices and is so obviously in both the lenders and borrowers interests.

Should there be a uniform Farm Debt Mediation Act? If so, is any of the current Acts in a suitable form for uniform adoption?²⁶

- 58 Westpac considers there should be a uniform Farm Debt Mediation Act, and that the New South Wales scheme under the *Farm Debt Mediation Act 1994* (NSW) is in a suitable form for uniform adoption. Westpac is of the view that a nationally consistent Farm Debt Mediation scheme would:
- (a) ensure that customers in all States and Territories have access to a mandated scheme, which is not presently the case;
 - (b) enhance consistency for customers experiencing financial difficulty;

²⁴ See footnote 10 above.

²⁵ Transcript 6 July 2018 (Orr QC), T4122:15-18.

²⁶ Transcript 6 July 2018 (Orr QC), T4122:18-20.

- (c) create more procedurally efficient processes for both borrowers and lenders, particularly where a customer has multiple properties across different States and Territories; and
- (d) ensure better outcomes for both lenders and borrowers.

GENERAL QUESTIONS ARISING FROM THE RURAL BANK CASE STUDY

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?

- 59 As noted in paragraph 16 above, Westpac has a comprehensive disaster relief policy to assist customers through unforeseen events such as floods, drought and fire.²⁷ The package of potential relief is designed to ensure that viable operators are able to stay on their properties and underpin the long-term sustainability of their farms during or after a natural disaster.
- 60 Additionally, Westpac has a Financial Hardship Policy, which applies to all situations involving financial hardship.²⁸ As noted in paragraph 15(c) above, pursuant to the Financial Hardship Policy, Westpac offers two types of hardship assistance to customers: (1) account restructuring; and (2) long term or permanent collection options. In summary terms, an account restructure involves a variation to the customer's credit contract to reduce or defer the customer's debt obligations in the short term. An account restructure involves a variation to the customer's credit contract, which may take many forms. In cases of extreme hardship, where it is doubtful that the customer will be able to move out of a position of financial hardship and therefore meet their ongoing debt obligations with Westpac, the customer may be eligible for long term or permanent collection options.
- 61 These procedures may be appropriate in circumstances arising from severe or terminal illness, disablement, long term unemployment, or long term loss of contract or supplier. Westpac considers that these policies are appropriate to deal with external events (whatever their nature) that may impact an agribusiness loan portfolio and lead to a customer being in financial difficulty.

And should banks be required to contact individual customers when they become aware of misconduct in relation to their accounts?²⁹

- 62 Westpac's view is that banks should contact individual customers at an appropriate time after they become aware of misconduct in relation to their accounts. Westpac's current practice, where misconduct concerning a customer's loan is identified, is to conduct a review of the customer's loan account, including to determine the relevant circumstances and any potential adverse effect on the customer. If the outcome of the review is that the customer has been adversely affected, Westpac will further contact the customer to commence a process to rectify any issue.

²⁷ See information about Westpac's disaster relief on its website (<https://www.westpac.com.au/business-banking/industries/agribusiness/disaster-relief/>).

²⁸ Although the *National Consumer Credit Protection Act 2009* (Cth) does not apply to business lending, Westpac gives the same consideration to 'Small Business' customers experiencing hardship. Small Business is defined in the Hardship Policy to include all businesses with borrowings up to \$1 million, as well as businesses that satisfy the definition of small business in the Code of Banking Practice.

²⁹ Transcript 6 July 2018 (Orr QC), T4126:23-26.

C. INTERACTIONS BETWEEN ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE AND FINANCIAL SERVICES ENTITIES

ADDRESS BARRIERS TO FINANCIAL INCLUSION

- 63 Westpac agrees with and accepts many of the propositions put by Counsel Assisting in closing submissions about the risks of financial exclusion for Aboriginal and Torres Strait Islander peoples. Australians living in remote and regional Australia are at greater risk of severe financial exclusion than those living in metro areas and major cities. The difficulties faced around participation in financial services are magnified when this geographical disadvantage is coupled with the significant cultural and linguistic barriers, as noted by Counsel Assisting,³⁰ and the entrenched social disadvantage faced by many Indigenous Australians.
- 64 Westpac acknowledges the challenges many Aboriginal and Torres Strait Islander peoples face when accessing financial services. A number of reforms and initiatives have been implemented, but addressing the challenges remains an ongoing process. Westpac's approach is to seek to work alongside Aboriginal and Torres Strait Islander peoples as far as possible, to identify and create opportunities for financial inclusion.
- 65 Westpac is committed to meeting its obligations under Clause 8 of the Code of Banking Practice 2013. In particular, Westpac is consulting with customers in remote Indigenous communities to address their financial services needs and investing in various programs and partnerships, as outlined below. Westpac accepts that more work, resources and critical thinking will be required on its part in order to successfully break down existing barriers.
- 66 Westpac has had Reconciliation Action Plans (**RAP**) in place since 2010 as part of attempts to structure a sustained and benchmarked response to these challenges. The RAP serves to both identify areas of improvement needed in Westpac's policies and service delivery, and set out a roadmap for those enhancements. Westpac's current RAP is focused on four key objectives; meaningful careers, better banking experiences, backing Indigenous businesses and prospering communities.
- 67 Westpac's Indigenous Advisory Committee (**WIAC**) acts as a guiding body and provides internal advice on the implementation of Westpac's RAP.³¹ The current Chair of WIAC is Robynne Quiggin, a member of the Wiradjuri nation of central western New South Wales, a Professor at UTS and a former Deputy Aboriginal and Torres Strait Islander Social Justice Commissioner.

Do banks take sufficient steps to promote the availability of fee-free accounts to eligible customers?³²

- 68 Counsel Assisting observed in the opening to this round of hearings that a Reserve Bank survey in 2016 of 16 Australian banks found a \$5 million reduction in fee income from deposit accounts from the previous year.³³ As was noted, technological developments are a key reason for that decline, with features such as contactless payment technology and mobile banking applications reducing the historical reliance on processes involving fees. However, it remains the case that vulnerable or financially excluded members of the community may not, for a variety of reasons including geography, language or financial means, be assisted by or receive the full benefits of such developments.

³⁰ Transcript 6 July 2018 (Orr QC and Commissioner), T4147:6-9, 22-30.

³¹ Partnering for Prosperity – Australia's First Bank and Australia's First Peoples (**RAP 2018-2020**) [WBC.301.004.0094].

³² Transcript 6 July 2018 (Orr QC), T4147:47-T4148:1.

³³ Transcript 2 July 2018 (Orr QC), T3700:18-20.

- 69 Westpac also accepts that there is a further tension that banks must address, in that those customers in particular need of a basic or fee-free account may have the greatest difficulty in communicating those needs or limited awareness as to the availability of such products. Westpac supports the principle that banks must take sufficient and practical steps to promote the availability of fee-free accounts to eligible customers.
- 70 Westpac has sought to meet the needs of recipients of government support payments with its core fee-free financial product made available to eligible customers, the Westpac Choice – Concession Holders account (**Choice Concession Account**).³⁴ The features of this account include:
- (a) no monthly service fees;
 - (b) no account overdrawn fees;
 - (c) no minimum deposit amounts;
 - (d) no fees are charged for withdrawals made by telephone banking (whether automated or staff assisted) or through a Westpac, St George, BankSA or Bank of Melbourne ATM;
 - (e) no fee is charged by Westpac where the withdrawal is made through a non-aligned ATM, however the owner of the ATM may charge an operator fee;
 - (f) no fee is charged for establishing or cancelling direct debits from the account, or for any direct debits that are dishonoured on the account as a result of insufficient funds;
 - (g) the only standard fee that applies is a \$5 fee when a periodical payment is not made;³⁵
 - (h) a six monthly statement (by default), however customers can request monthly statements for free;
 - (i) a debit card provided at no cost to assist with account access; and
 - (j) fee free balance enquiries at Westpac Group ATMs.³⁶
- 71 Some progress has been made towards greater awareness of this product through a practice that Westpac has developed with ASIC in relation to basic account access, involving licensing and disclosure relief for authorised representatives in remote communities. In 2005, after consultation with Westpac, ASIC issued Class Order 05/844, which “exempts Chief Executive Officers of local councils (and their delegates) in certain remote Northern Territory and Queensland communities, from the need to hold an Australian financial service licence, where they arrange for the issue of, and/or provide financial product advice in relation to certain basic deposit products issued by Westpac Bank”.³⁷
- 72 The intent and effect of the Class Order is to increase accessibility and awareness of basic account products in remote communities by allowing authorised community representatives to provide information and advice to members of the community about the availability of such products. The community representatives are authorised to arrange for the basic account to be set up, as well as provide advice about the nature of the account. Part of the advice given

³⁴ The Westpac Group offers similar products for St. George, Bank of Melbourne and BankSA.

³⁵ Product information can be accessed online at <https://www.westpac.com.au/personal-banking/bank-accounts/transaction/choice/basic/>.

³⁶ This applies to all Westpac transaction accounts.

³⁷ CO 05/844: *Licensing and disclosure relief for certain community representatives in remote communities* – issued 11/8/2005 [WBC.104.001.9866].

involves the community representative taking the customer through the Banking Story booklet and explaining those processes. Under the Class Order, Westpac is required, and continues, to provide appropriate training materials to the community representatives about how to provide those services.

- 73 The imperative behind the 'Banking Story'³⁸ is recognition that English is not the first language for many Indigenous customers in remote communities. The Westpac and Davidson Institute teams worked together to consult with people in remote communities, including Indigenous customers, about what would make it easier for them to understand their banking. In response, 'Banking Story' was developed; a printed brochure that uses iconography and storytelling to explain banking and how to use a bank account. It includes information on how to get money into and out of the account, passwords, fees and using ATM cards.
- 74 To implement the reform under the Class Order, Westpac also devised simplified procedures for identifying the appropriate account needs of customers in remote communities. The procedure is a decision-tree worksheet that guides the authorised representative through a series of questions concerning the customers' needs, including whether they hold a Pensioner Concession or Health Care card and what accounts, including the Choice Concession Account, would be appropriate. A checklist is to be completed to ensure the customer has been fully informed about all relevant information.
- 75 The procedure is designed to simplify and bring consistency to Aboriginal and Torres Strait Islander customers applying for basic accounts through authorised community representatives.

Are banks' identification requirements appropriate for Aboriginal and Torres Strait Islanders customers? If so, are those identification requirements sufficiently understood and implemented by staff on the ground?³⁹

- 76 An important and evolving aspect of providing accessible financial services to Aboriginal and Torres Strait Islander customers is balancing the formal or statutory requirements for customer identification against the need to accommodate the constraints of language, geography and lack of official documentation.⁴⁰
- 77 The RAP acknowledges the further work that must be done by Westpac to address this issue, and specifies what is required in "examining how we can improve our phone-based customer contact support and the customer identification and verification process, which can be a pain point due to lost information and the cultural norms around sharing money and wealth".⁴¹ The point is emphasised by the example given by the Commission concerning older generations of Aboriginal and Torres Strait Islander customers whose births were not recorded in official registers at the time and so do not possess a birth certificate.⁴²
- 78 The adverse effects of that type of exclusion are clear.⁴³ While this must remain part of a continuing process of improvement and review, Westpac has been revising policies and procedures and devising alternative and less formal methods for customers to satisfy relevant identification requirements in order for them to access appropriate financial products. Of course, that process has a degree of complexity associated with it given the higher levels of

³⁸ The 'Banking Story' Presentation, February 2017 [WBC.301.002.0484].

³⁹ Transcript 6 July 2018 (Orr QC), T4148:1-4.

⁴⁰ An example would be the requirements under the *Anti-Money Laundering and Counter Terrorism Financing Act (2006)* (Cth).

⁴¹ RAP 2018-2020 [WBC.301.004.0094], at 17.

⁴² Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Background Paper 19: Aboriginal and Torres Strait Islander consumers of financial products, at p 13.

⁴³ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Background Paper 19: Aboriginal and Torres Strait Islander consumers of financial products, at p 13.

insufficient identification information in some Indigenous communities, and the need to continue to maintain appropriate anti-fraud measures and act in compliance with relevant anti-money laundering and counter-terrorism legislation.

- 79 In July 2017, Westpac launched a SMS customer ID initiative that addresses a general customer need around easier identification validation.⁴⁴ The functionality is planned to be extended to St.George, Bank of Melbourne and BankSA customers later this year. A direct phone call mechanism from the Westpac Live online service to Customer Contact Centre has also been created.
- 80 The Westpac Remote Account Opening Policies and Procedures provide flexibility and a number of options to the manner in which the identity of Aboriginal and Torres Strait Islander customers living in remote areas can be verified. The options include:
- (a) Verification by community leaders or elders: the identity of a customer can be verified by two recognised leaders or elders of the relevant community signing an approved form; and
 - (b) Verification through Indigenous Community ID Cards: Identification cards issued by the Larrakia Nation Aboriginal Corporation, Tangentyere Council, the East Arnhem Shire Council, Gundjehmi Aboriginal Corporation and Gundjehmi Aboriginal Corporation are accepted as proof of identification.
- 81 These procedures are comprehensively set out in the Customer Servicing Manual and relevant staff are trained in their application and delivery.

Do financial services entities have in place appropriate policies and procedures to assist Aboriginal and Torres Strait Islander peoples 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 those people? If appropriate policies and procedures are not in place, what changes should be made to those policies and procedures to deal with those matters? Should more banks have a telephone service staffed by employees with specific training in assisting Indigenous consumers (e.g. CBA's ICAL line)?⁴⁵

GEOGRAPHICAL REMOTENESS

- 82 Westpac has long-term commitments, outlined in Westpac's current RAP,⁴⁶ to address identified deficiencies in accessibility and experience for remote and regional Indigenous customers. As the evolution of the RAP since 2010 indicates, the development and review of policies and procedure to assist Aboriginal and Torres Strait Islander peoples has seen some progress, but much remains to be done. Westpac is particularly focused on addressing the currently unmet needs of customers in relation to means of communication, accessibility of services and product availability.
- 83 Some of the commitments have been partially realised through procedures, training and supporting material that is specifically tailored to servicing Indigenous customers in remote communities, and work in this area is continuing in terms of the ultimate aims of the RAP. Some of the steps taken include:

⁴⁴ This also helps to achieve a goal under the Reconciliation Action Plan 2018-2020 to "design inclusive identification and verification processes to improve access bility and experience for remote and regional Indigenous customers": RAP 2018-2020 [WBC.301.004.0094], at 17.

⁴⁵ Transcript 6 July 2018 (Orr QC and Commissioner), T4148:6-15.

⁴⁶ RAP 2018-2020 [WBC.301.004.0094].

- (a) Remote Indigenous Community Customers procedures encompassing account opening, customer servicing, licensing and disclosure relief and verification;
- (b) a Community Representative Program and Pack for Remote Indigenous Communities in the Northern Territory;
- (c) an Information Kit for branches dealing with Remote Indigenous Communities;
- (d) a specific email address for Indigenous business customers: indigenousbusiness@westpac.com.au; and
- (e) participation in the ABA-led ATM Fee Proposal, providing fee-free access for customers to ATMs in selected, very remote Indigenous communities.

84 Westpac's Indigenous Business Banking team, established in 2014, comprises specialists who are able to provide culturally appropriate service for Indigenous businesses, including in remote communities. Services such as these underpin Westpac's commitment, outlined in Westpac's RAP, to Indigenous business banking including strengthening financial capabilities of Indigenous customers and communities. Given the diversity of Indigenous customers and communities, Westpac recognises that a one size fits all approach is not always appropriate. Westpac researches and invests in initiatives to better understand and provide access to services for Indigenous customers, including in remote communities. Examples of these initiatives and partnerships include the following:

- (a) 'The Travelling Roadshow', which took place in 2017, where Westpac hosted pop-up branches in 4 offices of the Ngaanyatjarra Council Aboriginal Corporation. Westpac provided 1:1 branch service to approximately 75 people in each location and identified a range of solutions to common issues;
- (b) Westpac has developed a partnership with Many Rivers Microfinance Limited to provide appropriate micro-finance and support in setting up a micro-business, with a specific focus on Indigenous customers. Over 700 Indigenous Australian businesses have been established or expanded with access to small loans through Many Rivers; and⁴⁷
- (c) Westpac's partnership with the Murdi Paaki Regional Assembly facilitates a series of needs-based 'beyond banking initiatives' including connectivity to microenterprise opportunities.

85 Westpac's Indigenous Advisory Committee (WIAC) led research and viability studies for the establishment of enhanced phone support for Indigenous customers, with a prototype now under development. The aim of this initiative will be to alleviate some of the challenges many Indigenous customers in geographically remote communities face when accessing banking services, providing Indigenous customers in those communities with, among other services, an easier way to access information about their accounts and talk with specially trained staff to discuss their banking needs.

CULTURAL AND LINGUISTIC BARRIERS TO ENGAGEMENT

86 Westpac recognises that financial exclusion can be compounded by cultural differences and language barriers. Westpac also understands that to continue to build cultural understanding requires listening to and learning from Indigenous customers, communities and leaders and working together on solutions.

⁴⁷ RAP 2018-2020 [WBC.301.004.0094].

- 87 In recognition of the advances that are needed in this field, a focus area of the 2018-2020 RAP is cultural intelligence. In this RAP, Westpac has committed to and has commenced working with Indigenous advisors to assist with:
- (a) improving the understanding of Indigenous customers' needs through inclusive customer research;⁴⁸ and
 - (b) designing the execution of new product and service initiatives within digital and major transformation programs taking into account the needs of Indigenous peoples.⁴⁹
- 88 Cultural awareness training is available for all Westpac staff.⁵⁰ Specific Indigenous culture training and materials include:
- (a) Your Westpac Bank Account⁵¹ and 'Banking Story' presentation.⁵² These materials have been specifically designed for Indigenous customers;
 - (b) Indigenous Cultural Awareness Multiple Choice Survey; and
 - (c) Online Cultural Awareness Training.
- 89 The Online Cultural Awareness Training provides Westpac employees with knowledge, skills and behaviours to develop an awareness of Australian Indigenous Culture, and to help build competency around cultural and language barriers. It provides a link between Westpac values and the Australian Banking Association Code of Banking Practice S[8] Remote Indigenous Communities Obligation. The online system, which was launched in April 2014, is structured around three modules; 'Our Culture',⁵³ 'Our History',⁵⁴ and 'Our Future'.⁵⁵
- 90 Westpac was a partner in the creation of Jawun Indigenous Corporate Partnerships in 2001.⁵⁶ Jawun is a community engagement model where Westpac staff are seconded to Indigenous organisations, including in remote and regional communities, for a period of time to share their skills and help to build the sustainability of that organisation. Since 2001, more than 850 Westpac employees have participated in Jawun Indigenous Community Secondments.⁵⁷ During 2017, 49 Westpac employees were placed on secondments with Indigenous organisations through the Jawun program and Jawun launched its Corporate Leadership Program (usually referred to as a 'reverse secondment program'. Since 2012, 69 Senior Leaders have attended executive visits to indigenous communities (being 11 community visits from Westpac executive leaders and 58 from Westpac senior leaders). Westpac was a founding supporter in 2017 and continued support in 2018, in which Indigenous community leaders undertake 12-month secondments with host corporate partner organisations to gain new skills and develop their own careers and community organisations.
- 91 Westpac recognises the importance of its senior leaders spending time on country listening to, and learning from, Aboriginal and Torres Strait Islander customers and communities to continue to increase the cultural competency of the organisation.⁵⁸ Westpac's business leaders also

⁴⁸ RAP 2018-2020 [WBC.301.004.0094].

⁴⁹ RAP 2018-2020 [WBC.301.004.0094].

⁵⁰ RAP 2018-2020 [WBC.301.004.0094].

⁵¹ 'Your Westpac Bank Account' Brochure [WBC.301.002.0470].

⁵² 'The Banking Story' Presentation, February 2017 [WBC.301.002.0484].

⁵³ Transcript – Our Culture [WBC.301.004.0088].

⁵⁴ Transcript – Our History [WBC.301.004.0081].

⁵⁵ Transcript – Our Future [WBC.301.004.0083].

⁵⁶ <https://www.westpac.com.au/about-westpac/sustainability/initiatives-for-you/social-enterprises-jawun/>

⁵⁷ RAP 2018-2020 [WBC.301.004.0094].

⁵⁸ Transcript 3 July 2018 (Boyle), P-3757:15-40.

participate in the Garma leadership program as part of the Garma Festival, organised annually by the Yothu Yindi foundation in Arnhem Land.

ORGANISATIONAL CULTURAL COMPETENCY THROUGH EMPLOYMENT

- 92 As the Commission noted in Background Paper 19, unemployment rates are significantly higher for Indigenous Australians than for non-Indigenous Australians. As part of the movement to address this issue, Westpac supports parity of employment for Indigenous Australians through its goal of 4% or more Indigenous Australians as part of its total Australian workforce.⁵⁹
- 93 Westpac is also committed to continuing to support and expand its current and future Indigenous staff through six Indigenous employment streams:
- (a) Graduate;
 - (b) CareerTrackers – Interns;
 - (c) CareerTrackers – High School Transition Program;
 - (d) Full Time Traineeship;
 - (e) School Based Traineeship; and
 - (f) Direct/Permanent/ Contingent.
- 94 The CareerTrackers Internship program commenced in November 2015 and under this program, 96 new interns were hired between 2015-17.⁶⁰ Westpac was also one of the first companies to participate in the CareerTrackers Year 12 High School Transition Program commencing in January-February 2016. The objective of this program is to ‘increase the rate of Indigenous students transitioning from High School to University and to expose those students to a professional work environment with the support of a workplace mentor who can assist with their development.’
- 95 Westpac also offers an ongoing Indigenous mentoring program that strengthens support for career progression. Westpac’s ECHO Indigenous Mentoring program pairs Aboriginal and Torres Strait Islander employees with leaders in the business to help provide guidance about the next steps in their careers. The program was designed in partnership with Winangali, a Supply Nation-certified Indigenous mentoring consultancy.⁶¹

FINANCIAL LITERACY

- 96 Westpac recognises that customers with lower levels of financial literacy are more vulnerable to financial exclusion and we know that low levels of financial literacy remain a key factor in the financial exclusion of some Indigenous customers. Westpac has therefore invested in a number of initiatives, in addition to those already mentioned, to improve financial literacy for many customer segments, including for Indigenous customers. Examples of these initiatives include:
- (a) financial wellbeing training through Westpac’s Davidson Institute. The Institute offers a range of money management topics for individuals, businesses, not for profit organisations and community groups. In 2015, almost 250 Indigenous Australians received financial literacy training through the Davidson Institute; and

⁵⁹ RAP 2018-2020 [WBC.301.004.0094].

⁶⁰ RAP 2018-2020 [WBC.301.004.0094].

⁶¹ RAP 2018-2020 [WBC.301.004.0094].

- (b) in the first quarter of 2018, the Indigenous Business Banking team visited 6 communities in Ngaanyatjarra Homelands, Alice Springs and Dhariwaa (NSW), delivering Davidson Institute workshops to 92 people. An additional 300 people received 1:1 financial education.
- 97 Westpac is also helping to build financial literacy capacity with partner organisations. For example Westpac has delivered a financial literacy program to Rio Tinto's Indigenous employees.
- 98 Overall, it remains clear that many Aboriginal and Torres Strait Islander customers continue to face a number of geographical, cultural and linguistic obstacles to their meaningful participation in the financial services system. While Westpac has made changes to alleviate some aspects of these difficulties through appropriate policies and procedures, many remain unresolved. The specific priority given to market research for Indigenous customers, co-designed programs and improving customers' access through available technologies, as detailed in the RAP, is intended to lead to further and sustained reform of Westpac's policies.

Is it lawful for informal overdrafts to be offered on an opt-out rather than 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? Is that lawful and is it appropriate?⁶²

- 99 The Commission was concerned during the course of the hearing with "issues associated with informal overdraft facilities and high dishonour and overdrawn fees".⁶³ Westpac adopts the Commission's characterisation of such informal facilities as they relate to deposit accounts, being when "a person makes a payment but there are insufficient funds in the person's bank account to cover it".⁶⁴
- 100 There is no statutory provision that specifically prohibits a bank from arranging an informal overdraft on an account held by a recipient of a government benefit on an opt-out basis. The practice, where it exists, is lawful. It is also relevant that the *National Consumer Credit Protection Act 2009* specifically excludes the application of the Act to "the provision of credit if, before the credit was provided, there was no express agreement between the credit provider and the debtor for the provision of credit".⁶⁵ The specific examples contained in the section include "when a savings account falls into debit".
- 101 ASIC has previously made reference to the practice generally in a report on fee disclosure for transaction or "everyday" accounts,⁶⁶ noting that in relation to direct debit dishonour fees:
- "we believe that as a matter of good practice institutions should clearly set out when the fees will be charged, and also whether the institution may alternatively choose to honour the direct debit and overdraw the account. In the latter case, the consumer may incur an overdrawn account fee, which should also be clearly disclosed".*⁶⁷
- 102 While opt-out informal overdrafts on basic accounts are not unlawful, the question as to whether they are inappropriate is one of degree. The standard policy and default position in relation to Westpac's Choice Concession Account (the basic, fee free account for recipients of government benefits) is that informal overdrafts are not permitted. A customer is not able to

⁶² Transcript 6 July 2018 (Orr QC), T4151:28-32.

⁶³ Transcript 2 July 2018 (Orr QC), T3695:36-37.

⁶⁴ Transcript 2 July 2018 (Orr QC), T3702:40-41.

⁶⁵ Schedule 1 – National Credit Code, section 6(4).

⁶⁶ ASIC Report 53: *Good transaction fee disclosure* (September 2005).

⁶⁷ ASIC Report 53: *Good transaction fee disclosure* (September 2005) at page 8.

withdraw funds that are unavailable and, in the ordinary course, a direct debit will be dishonoured if there are insufficient funds in the account to cover it.⁶⁸ Importantly, given this position, Westpac does not charge a fee for dishonouring a direct debit for insufficient funds on a Choice Concession Account.⁶⁹

- 103 That position is a default setting in the internal automated banking system of Westpac. Westpac will also decline an authorised debit card transaction if there are insufficient funds available in the Choice Concession Account. In exceptional circumstances, Westpac balances the customer interests and risk, and allows certain card transactions. An overdrawn account fee on the Choice Concession Account is not charged in these circumstances. In most instances, customers will have money in their account to pay for this transaction and there may be customer disadvantage if Westpac declines the payment.⁷⁰
- 104 Westpac recognises that a number of adverse, and sometimes significant, consequences may flow from a dishonoured direct debit, including penalties incurred from third parties or the disruption of an essential service.
- 105 The general question of inappropriateness posed by Counsel Assisting rests on two qualifiers; that the costs of the informal overdraft to a recipient of government benefits are high and there has been inadequate disclosure. Westpac agrees that an informal overdraft extended on those terms is inappropriate.
- 106 However, the number of variables inherent in the circumstances in which opt-out informal overdrafts arise, and the conditions that might be attached, limits the utility of a broader statement of principle. In the circumstances relevant to eligible customers of Westpac with Choice Concession Accounts, the standard practice is that no such informal overdrafts will be extended. But it is also submitted that where the fact of the potential for an informal overdraft arrangement is disclosed, as well as the fact that no fees will be charged irrespective of whether the account is overdrawn or a direct debit is dishonoured, then such an arrangement is appropriate to balance the competing needs and interests of the customer and avoid an unduly detrimental impact upon them.⁷¹

Do ADIs presently have adequate policies in place for the implementation of the Code of Operation?⁷²

- 107 It was observed by Counsel Assisting in her opening that “the practices of financial services entities in respect of transaction accounts, including the handling of informal overdrafts and fees, are also self-regulated by codes to which these entities are signatories”.⁷³ The cited example that relates to recipients of government benefits is the Code of Operation (**the Code**) endorsed by various government agencies including the Department of Human Services.⁷⁴
- 108 The purpose of the Code is to ensure that ADI customers have sufficient funds retained from government benefits to meet their basic food and accommodation expenses, even if the account into which these benefits are paid is overdrawn.

⁶⁸ The Westpac Group follows the same operational decision for similar products for St. George, Bank of Melbourne and BankSA.

⁶⁹ Described in the Product Disclosure Statement for Westpac Choice Concession Accounts.

⁷⁰ Interest will be payable on the overdrawn amount on the basis disclosed in the Product Disclosure Statement.

⁷¹ These details are contained in the Product Disclosure Statement for Westpac Choice Concession Accounts.

⁷² Transcript 6 July 2018 (Orr QC), T4151:33-35.

⁷³ Transcript 2 July 2018 (Orr QC), T3700:43-45.

⁷⁴ Transcript 2 July 2018 (Orr QC), T3703:5-6.

- 109 Westpac supports the operation of the Code and has implemented internal policies and controls to ensure it is applied. The effect of the procedures implemented is that where an eligible customer's account in credit is to be combined with an overdrawn account then only 10% of any government benefit or support payments will be transferred to the overdrawn account. Where an eligible customer's account has been blocked or frozen due to being overdrawn, the customer can contact a Westpac branch and arrange to withdraw 90% of any government benefit or support payments deposited into the account.