

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

SECOND WITNESS STATEMENT - BRADLEY MARK JAMES

SUPPLEMENTARY RESPONSE TO RUBRIC 4-16

RABOBANK CASE STUDY

I, Bradley Mark James, of 74 Victoria Parade, Rockhampton, QLD 4700, state:

1. I am the Regional Manager for Southern Queensland and Northern New South Wales for Rabobank Australia Limited (**Rabobank**).
2. I have previously made a witness statement dated 15 June 2018 in relation to Rubric 4-16 (**First Statement**).
3. Exhibited to me at the time of making this statement and marked "**BMJ-2**" is a bundle of documents located behind consecutively numbered tabs. Where I refer to a document in **BMJ-2** I do so by identifying the tab number behind which the document is located. The documents in **BMJ-2** have also been marked with Rabobank's document identification numbers beginning with "RAL" (an abbreviation for Rabobank Australia Limited). Where I refer to a document within **BMJ-2** I also provide the RAL identification number.
4. I wish to supplement the matters contained in the First Statement with the further matters that I have set out below. These further matters have arisen as a result of my continuing consideration of the questions asked in the First Statement, my investigation and review of the documents relevant to the matters raised by those questions and my further reflection on the responses that I gave in the First Statement.
5. As a result, I have set out below my further responses to question 32, which is in the following form:

Question 32. Reflecting on the Bank's conduct in respect of the Brauers, does the Bank consider that it has engaged in misconduct or conduct falling below community standards and expectations? Does the Bank consider that it would deal with the situation in the same way under its current policies and procedures?

Loan for acquisition of Jamberoo

6. In response to paragraph 11 of the Outline of Witness Statement of Wendy Brauer (**Outline**) I set out matters relating to the decision of Rabobank to offer a facility to fund Shaytim Pty Ltd as trustee for the Tim Shay Grazing Trust to acquire Jamberoo.
7. I have reviewed all of the documents relating to the credit assessment and approval of the Jamberoo facility. In my view the proposal for the acquisition of Jamberoo which involved the leasing of both the Jamberoo and Kia-Ora properties until the Brauers returned from the USA (possibly in October 2010) and commence livestock purchases in March 2011 was not one which would enable Shaytim Pty Ltd to service interest on the proposed facility. In my assessment, a proposal which involved the leasing of both the Jamberoo and Kia-Ora properties for a substantially similar rent as the then existing leases for the foreseeable future was one which would enable Shaytim Pty Ltd to service interest on the proposed facility.
8. I am aware that in an email on 18 September 2009 from Wendy Brauer to [REDACTED], Wendy Brauer stated that the proceeds from the sale of the USA house could be \$220,000 to \$250,000 which she characterised as "[e]nough to get us started in the cattle market in Australia very comfortably, that they "also have other options that [sic] to fully stock the properties ourselves upon our return to Australia" and "[I]easing and renewal are still a viable option to help us to get up to speed with the full running capacity of the properties." (at **Exhibit BMJ-2, tab 1 ([RAL.0002.0003.3020])**). In my view whilst this could be characterised as containing a proposal that also involved the leasing of both properties, it did not involve the leasing of the properties for the foreseeable future. Instead, it contemplated the leases coming to an end at the point in time when the Brauers were able to build cattle numbers to the full running capacity of the properties. On my calculation even if the Brauers were able to build cattle numbers to the full running capacity of the properties from their own financial resources, the proposed facility could not be serviced.
9. In these circumstances I consider that the conduct of Rabobank in approving the proposed facility without communicating to the Brauers that it could be serviced if both properties were leased for the foreseeable future but could not be serviced if they ran both properties at full capacity fell below community standards and expectations. This is because it was not in accordance with the expectations the Brauers had for servicing the proposed facility by leasing both properties for a short period and then building the cattle numbers to full running capacity following their return from the USA. In that sense it was unfair to them.
10. In these circumstances, I also consider that this conduct by Rabobank could be characterised as misconduct as defined in the Commission's Terms of Reference in that it misled the Brauers and may

have been in breach of the then Australian Bankers Association Code of Banking Practice in place at the time the conduct occurred because it was unfair to them.

Farm Debt Mediation

11. In response to question 24 of Rubric 4-16 and paragraph 18 of the Outline I set out matters relating to the farm debt mediation which was held between Rabobank and the Brauers on 19 May 2015. I am aware that on 4 May 2015 Wendy Brauer sent an email to Greg Brady in which she requested electronic copies of the Statement of Position and cash flow budgets provided to [REDACTED] for the original loan application for the purchase of Jamberoo (at **Exhibit BMJ-2, tab 2** ([RAL.0002.0003.1082])). In that email Wendy Brauer stated "[m]y original computer had crashed shortly after the purchase and application process started and I have been unable to locate the documents." On 7 May 2015 Greg Brady sent an email to Wendy Brauer in which he provided the requested information (at **Exhibit BMJ-2, tab 3** ([RAL.0002.0003.1232], [RAL.0002.0003.1233] and [RAL.0002.0003.1234])). On 13 May 2015 the solicitor from Legal Aid Queensland acting on behalf of the Brauers at the farm debt mediation, Denis McMahon, sent an email to Jacqueline Ogden and Scott Couper, solicitors from Gadens who were acting for Rabobank in relation to the farm debt mediation, requesting documents be provided and questions answered by Rabobank in advance of the farm debt mediation which was due to occur on 19 May 2015 (at **Exhibit BMJ-2, tab 4** ([RAL.0002.0003.0518])). In the response that was provided by email on 18 May 2015 from Scott Couper to Denis McMahon, the documents which had been requested were not provided and the questions which had been posed were not answered (at **Exhibit BMJ-2, tab 4** ([RAL.0002.0003.0518])).
12. In the particular circumstances, where Wendy Brauer had stated to Rabobank that (due to a computer crash) she did not have copies of particular documents that the Bank itself had or may have had in its possession, I consider that the conduct by Rabobank fell below community standards and expectations because it was unfair to the Brauers to have them attend the farm debt mediation on 19 May 2015 when Rabobank was aware that they did not have possession of documents which may have been of assistance to the Brauers during the course of the mediation. In addition, in these circumstances I consider that the conduct by Rabobank could be characterised as misconduct as defined in the Commission's Terms of Reference in that it may have been in breach of the then Australian Bankers Association Code of Banking Practice in place at that time because it was unfair to the Brauers.

13. In my view the fair position was for Rabobank to:
- a. provide the documents requested if they were immediately available; or
 - b. if the documents were not immediately available, undertake to provide them to the Brauers and propose to the Brauers that the farm debt mediation be postponed to a later convenient date that would enable them to have a proper opportunity to receive and consider those documents together with their solicitor and attend the mediation with the benefit of them.

Dated: 22/6/18



~~Bradley Mark James~~