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TRANSCRIPT OF PROCEEDINGS

O/N H-861474

THE HONOURABLE K. HAYNE AC QC, Commissioner

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

MELBOURNE

10.00 AM, MONDAY, 12 FEBRUARY 2018

**MS R. ORR QC appears with MS E. DIAS and MR M. COSTELLO as Counsel
Assisting**

COMMISSIONER HAYNE: Just read the Letters Patent, please.

MS E. LOGAN:

5 *Elizabeth the Second, by the Grace of God Queen of Australia and Her other
Realms and Territories, Head of the Commonwealth:*

TO

10 *The Honourable Kenneth Madison Hayne AC QC*

GREETING

15 *Whereas Australia has one of the strongest and most stable banking,
superannuation and financial services industries in the world, which performs
a critical role in underpinning the Australian economy.*

20 *AND Australia's banking system is systemically strong, with internationally
recognised and world's best prudential regulation and oversight.*

25 *AND most Australians are consumers of banking, superannuation and other
financial services. The superannuation system alone in Australia has created
more than a two trillion dollar retirement savings pool, which continues to
grow rapidly and which compels all working Australians to defer income today
for their retirement.*

30 *AND all Australians have the right to be treated honestly and fairly in their
dealings with banking, superannuation and financial services providers. The
highest standards of conduct are critical to the good governance and corporate
culture of those providers.*

35 *AND these standards should continue to be complemented by strong regulatory
and supervisory frameworks that ensure that all Australian consumers,
including business, have confidence and trust in the financial system.*

40 *NOW THEREFORE We do, by Our Letters Patent issued in our name by Our
Governor-General of the Commonwealth of Australia and on the advice of the
Federal Executive Counsel and under the Constitution of the Commonwealth of
Australia, the Royal Commissions Act 1902 and every other enabling power,
appoint you to be a Commission of inquiry, and require and authorise you to
inquire into the following matters:*

45 (i) *whether any conduct by financial services entities (including by
directors, officers or employees of, or by anyone acting on behalf of
those entities) might have amounted to misconduct and, if so, whether*

the question of criminal or other legal proceedings should be referred to the relevant Commonwealth, State or Territory agency;

- 5 (b) *whether any conduct, practices, behaviour or business activities by financial services entities fall below community standards and expectations;*
- 10 (c) *whether the use by financial services entities of superannuation members' retirements savings, for any purpose, does not meet community standards and expectations or is otherwise not in the best interests of those members;*
- 15 (d) *whether any finding in respect of the matters mentioned in paragraphs (a), (b) and (c):*
- 20 (i) *are attributable to the particular culture and governance practices of a financial services entity or broader cultural or governance practices in the relevant industry or relevant subsector; or*
- 25 (ii) *result from other practices, including risk management, recruitment and remuneration practices of a financial services entity or in the relevant industry or relevant subsector;*
- 30 (e) *the effectiveness of mechanisms for redress for consumers of financial services who suffer detriment as a result of misconduct by financial services entities;*
- 35 (f) *the adequacy of:*
- 40 (i) *existing laws and policies of the Commonwealth (taking into account law reforms announced by the Commonwealth Government) relating to the provision of banking, superannuation and financial services; and*
- 45 (ii) *the internal systems of financial services entities; and*
- (iii) *forms of industry self-regulation, including industry codes of conduct, to identify, regulate and address misconduct in the relevant industry, to meet community standards and expectations and to provide appropriate redress to consumers;*
- (g) *the effectiveness and ability of regulators of financial services entities to identify and address misconduct by those entities.*
- (h) *whether any further changes to any of the following are necessary to minimise the likelihood of misconduct by financial services entities in*

future (taking into account any law reforms announced by the Commonwealth Government):

5 (i) *the legal framework;*

(ii) *practices within financial services entities;*

(iii) *the financial regulators;*

10 (i) *any matter that has occurred, or is occurring, overseas to the extent the matter is relevant to a matter mentioned in paragraphs (a) to (h).*

(j) *any matter reasonably incidental to a matter mentioned in paragraphs (a) to (i).*

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AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, for the purpose of your inquiry and recommendations in relation to the matter mentioned in paragraph (f):

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(k) *We direct you to have regard to the implications of any changes to laws, that you propose to recommend, for the economy generally, for access to and the cost of financial services for consumers, for competition in the financial sector and for financial system stability; and*

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(l) *We authorise you to have regard to comparable international experience, practices and reforms.*

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AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

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AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that the matter relates to macro-prudential policy and regulation.

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AND We direct you to give priority to matters that, in your opinion, have greater potential for harm if not addressed expeditiously.

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AND We further declare that you may decide not to inquire into a particular matter falling within the scope of paragraphs (a) to (j), but any such decision is yours alone.

AND We further declare that you may inquire into any matter mentioned in paragraphs (a) to (j), to the extent that the matter relates to or is connected with the peace, order and good government of the Commonwealth and any public purpose or any power of the Commonwealth.

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AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate.

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AND We declare that you are a relevant Commission for the purposes of section 4 and 5 of the Royal Commissions Act 1902.

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AND We declare that, in exercising your powers under part 2 of the Royal Commissions Act 1902, you are to inquire into the matters falling within the scope of paragraphs (a) to (j) only to the extent that Commonwealth constitutional power extends to those subjects of inquiry.

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AND We declare that you are a Royal Commission to which item 5 of the table in subsection 355-70(1) in Schedule 1 to the Taxation Administration Act 1953 applies.

AND We declare that in these Our Letters Patent:

financial services entity means:

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(a) an ADI (authorised deposit-taking institution) within the meaning of the Banking Act 1959; or

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(b) an entity that carries on a business of undertaking liability, by way of insurance (including reinsurance), in respect of any loss or damage, including liability to pay damages or compensation, contingent upon the happening of a specified event, including:

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(i) a general insurer within the meaning of the Insurance Act 1973; and

(ii) an entity that carries on life insurance business (within the meaning of the Life Insurance Act 1995); or

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(c) a person or entity required by section 911A of the Corporations Act 2001 to hold an Australian financial services licence or who is exempt from the requirement to hold such a licence by virtue of being an authorised representative; or

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(d) a person or entity that:

- (i) *is an RSE licensee of a registrable superannuation entity (within the meaning of the Superannuation Industry Supervision Act 1993); or*
- 5 (ii) *has any connection (other than an incidental connection) to such an RSE licensee; or*
- (e) *a person or entity that acts or holds itself out as acting as an intermediary between borrowers and lenders;*
- 10 *but does not include an entity that is a Commonwealth company or Commonwealth entity (both within the meaning of the Public Governance, Performance and Accountability Act 2013).*
- 15 ***macroprudential policy and regulation*** *means policy and regulation, including as to the structure, role and purpose of financial regulators, that is concerned with containing systemic risk, which can have widespread implications for the financial system as a whole.*
- 20 ***misconduct*** *includes conduct that:*
- (a) *constitutes an offence against a Commonwealth, State or Territory law, as in force at the time of the alleged misconduct; or*
- 25 (b) *is misleading, deceptive, or both; or*
- (c) *is a breach of trust, breach of duty or unconscionable conduct; or*
- (d) *breaches a professional standard or a recognised and widely-adopted benchmark for conduct.*
- 30
- AND We:*
- (m) *require you to begin your inquiry as soon as practicable; and*
- 35 (n) *require you to make your inquiry as expeditiously as possible; and*
- (o) *authorise you to submit to Our Governor-General an interim report, that you consider appropriate, not later than 30 September 2018; and*
- 40 (p) *require you to submit to our Governor-General a final report of the results of your inquiry, and your recommendations, not later than 1 February 2019.*
- 45 *IN WITNESS, We have caused these Our Letters to be made Patent.*

*WITNESS General the Honourable Sir Peter Cosgrove AK MC (Ret'd),
Governor-General of the Commonwealth of Australia.*

Dated 14 December 2017

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Signed Sir Peter Cosgrove, Governor-General

By His Excellency's Command

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Signed Malcolm Turnbull, Prime Minister

15 COMMISSIONER HAYNE: Thank you. The Letters Patent which have just been read set out what I'm to do in this Commission. The terms of reference identify the matters into which I am to inquire. The Letters Patent, as you've heard, require me to make my inquiry as expeditiously as possible. They authorise me to submit an interim report not later than 30 September and they require me to submit a final report and my recommendations by 1 February 2019.

20 Important premises from which the inquiry must proceed are stated in the Letters Patent.

25 The first is that Australia has one of the strongest, most stable banking superannuation and financial services industries in the world, which performs a critical role in underpinning the Australian economy.

30 The second is that Australia's banking system is systemically strong with internationally-recognised world's best prudential regulation and oversight. And I'm expressly not required to inquire into matters to the extent that they relate to macroprudential policy and regulation. Since 14 December 2017 when the Letters Patent were issued, counsels assisting, solicitors to the Commission, the Commission staff and I have all been working to execute the tasks given by those Letters Patent. A small part of the work that has been done is now public, but there is much that has been done that has not yet been revealed and will become apparent only as the public work of the Commission proceeds over the months ahead.

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All of the issues which the Commission will have to consider are issues that arise and must be examined in their proper context. For the moment, it is enough to mention three important parts of that context: the nature and size of the Australian financial services industry; past inquiries; and the regulatory framework.

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45 The Commission has had prepared a paper, Background Paper Number 1 which has been published on its website and which sets out some features of the financial services industry. Those features are identified by drawing on data published by sources such as the Reserve Bank, the Australian Bureau of Statistics and regulatory authorities.

The second element of the context for the Commission's work to which I refer this morning is that, as is well known, there are and have been many inquiries into the financial services industry or particular aspects of parts of that industry over the last 10 years.

5

Some of those inquiries are still underway. Those inquiries form an important part of the background to the Commission's work. I therefore expect that the Commission will publish a paper which identifies those inquiries and their subject matter. There are many of them.

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The third part of the context I mention is that the financial services industry is regulated by a number of regulatory bodies. There is much legislation and subordinate legislation which governs the industry, parts of the industry or particular participants in the industry. There are various codes of conduct and similar instruments that bear upon work that is done by or in the industry. There have been changes to the regulatory framework and to applicable codes of conduct, and further changes are being made and are proposed. Again, the Commission intends to publish one or more papers which describe the relevant legislative and regulatory frameworks.

20

The recitals to the Letters Patent record that all Australians have the right to be treated honestly and fairly in their dealings with banking, superannuation and financial service providers. As that recital goes on to say, the highest standards of conduct are critical to the good governance and corporate culture of those providers. The terms of reference refer to both "misconduct" as that term is defined and to conduct, practices, behaviour or business activities that fall below community standards and expectations. One element, perhaps a very important element, of community standards and expectations may be derived from what was said in the Murray Report into the Financial System about the characteristics of an effective financial system.

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That report said that the ultimate purpose of the financial system is "to facilitate sustainable growth in the economy by meeting the financial needs of its users." The Murray Inquiry said that it believed that the financial system will achieve this goal if it operates in a manner that is efficient, resilient and fair. It concluded that fundamental to fair treatment is the concept that financial products and services should perform in the way that consumers expect or are led to believe. Fairness, understood in this way, may lie at, or at least close to, the heart of community standards and expectations about dealings with consumers.

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40

On the day after the Letters Patent issued, I wrote to a number of entities in the financial services industries and bodies representative of the participants in the industry inviting each to make an early written submission to the Commission addressing a number of questions. Those questions used the language of the terms of reference. They were:

45

- 5 (1) Excluding cases of theft from the entity itself or from an associated entity, has the entity, or in the case of a representative body, a member of the representative body, identified any misconduct by the entity, including by its director's offices or employees or by anyone otherwise acting on its behalf which occurred at any time since 1 January 2008? If so, what is the nature, extent and effect of that misconduct?
- 10 (2) Has the entity identified any conduct, practice, behaviour or business activity it has engaged in, including by its director's offices or employees or by anyone otherwise acting on its behalf, since 1 January 2008, which it considers has fallen below community standards and expectations? If so, what is the nature, extent and effect of that conduct, practice, behaviour or activity?
- (3) If yes to either or both of questions 1 and 2:
- 15 (a) Is the identified conduct, practice, behaviour or activity the subject of another inquiry or investigation or a criminal or civil proceeding?
- (b) Does the entity attribute any of the identified conduct, practice, behaviour or activity to the particular culture or governance practices of the entity? If so, describe that culture or governance practice.
- 20 (c) Does the entity attribute any of the identified conduct, practice, behaviour or activity to some broader cultural or governance practices in the industry or sector of the industry in which the entity operates? If so, describe those cultural or governance practices.
- (d) Does the entity consider that the identified conduct, practice, behaviour or activity results from other practices, including risk management, recruitment or remuneration practices? If so, describe those practices.
- 25 (e) What steps has the entity taken to:
- (i) remedy the consequences for consumers or other businesses of the identified conduct, practice, behaviour or activity.
- (ii) prevent recurrence of conduct, practice, behaviour or activity of the kind identified.
- 30 (4) For an entity that is or has a connection other than an incidental connection to an RSE licensee of a registrable superannuation entity as defined in the Superannuation Industry Supervision Act 1993 of the Commonwealth, during each of the past 10 years according to whatever annual reporting periods the entity has employed in the ordinary course of its operations, to what uses and in what amounts has the entity applied members' funds other than the investment of those funds, the administration of the superannuation fund, and the payment of member benefits? In respect of each kind of those other applications of members' funds, why was that application in the best interests of members?
- 35

What are the cost centres that make up costs attributed to administration in each of those years?

5 I asked those to whom I sent these letters to respond by 29 January last and to provide a response that was comprehensive but did not exceed 50 pages. At its request, I allowed one large entity making a consolidated submission on behalf of several entities within its group to provide a single submission of 75 pages rather than four separate 50-page submissions. Some further letters in the same terms were sent to other industry participants in January. Information was also sought from regulators and from some consumer bodies.

10 Responses have been received from those to whom I wrote. Examination of those responses showed that in important respects, some large industry participants had sought to respond by giving examples of misconduct or conduct they identified as falling short of community standards and expectations rather than, as my original request had asked, by specifying the nature, extent and effect of the conduct they had identified. I therefore wrote to some of those large respondents on Friday 2 February asking each to give more specific information about misconduct identified by that entity over the last five years, and in addition, I asked some of them to amplify some of the information provided in their original responses.

20 I asked those to whom I sent these additional letters to provide this further information by 4 o'clock tomorrow afternoon. Some, but not all, of those respondents – none of them a small entity – have said that they cannot comply with the request that was made for details about events of misconduct identified over the last five years within the time fixed. It has been said that the deadline cannot be met because of the amount of material that has to be reviewed and then assembled. It needs to be remembered that misconduct is defined in the terms of reference as including conduct that is an offence against commonwealth, state or territory law, conduct that's misleading or deceptive, conduct that is a breach of trust, breach of duty, or unconscionable conduct, and conduct that breaches a professional standard or a recognised and widely-accepted benchmark for conduct.

35 What is to be drawn from the fact of requests for more time to give more specific information about events of misconduct identified over the last five years may have to be considered in light of the chronology to which I have already referred. The initial request for 10 years of information was made on 15 December last year. Initial responses were delivered six weeks later on 29 January. Further requests limited to events of misconduct identified over the last five years, as opposed to departures from community standards and expectations, were made on 2 February.

40 Answers were sought by 13 February. That a request for details of events of misconduct as defined in the terms of reference identified during the last five years cannot be met within the time sought, even though the initial request for that information was made approximately two months ago, is itself a matter to which further attention may have to be given. Whether it is will be a matter for debate at a later time.

Some weeks ago now the Commission invited public submissions about misconduct and conduct falling short of community expectations. The Commission has published on its website a form which it asks members of the public to complete so that we can help the person making a complaint to identify how the complaint relates to what the Commission is required to inquire into and so that we can use the material that is submitted in ways that will help the Commission do its work. One of the consequences of our adopting the sequence of action of first asking industry participants to identify misconduct and conduct falling short of community standards and expectation and then asking the public to make submissions is that it may help us to identify whether there is a gap between what industry participants now say is relevant conduct and what members of the public see as being relevant.

I understand fully that those affected by what they considered to be misconduct want their complaints recognised and considered and want those responsible held to account. I also recognise the central importance of public disclosure and examination of the issues that the Commission is required to consider. All of the public submissions made and to be made to the Commission are very important to the work of the Commission, but I have to say that the Commission will not have time to publically examine every case of alleged misconduct. We will have to proceed by reference to case studies and examples with a view to identifying the kinds of misconduct that have occurred, why it occurred, what should have been and what was the response to discovering the misconduct, and what follows from those conclusions.

In many cases – perhaps very many cases – the fact that there has been misconduct or conduct falling short of community standards and expectations has been established previously or is now acknowledged or admitted. In those cases, the Commission must focus upon why the conduct occurred; what was the response by the relevant entity and regulators; what should have been the response; what if any recommendations should now be made. More is to be gained by looking at why this happened and at what was and what should have been the response then, reproofing what other processes have shown happened or reproofing what is now admitted to have occurred.

There has been some recent public discussion about the effects on the work of the Commission of contractual provisions about confidentiality. It is said that many arrangements made to settle disputes with participants in the financial services industry have had confidentiality provisions and that as a result the consumer who made the settlement and signed the agreement may be reluctant to approach the Commission. It's also said that employment agreements, settlement agreements, or severance agreements may contain non-disparagement terms. The Commission's terms of reference require me to consider matters relating to the governance and culture of the industry, as well as the effectiveness of redress mechanisms.

That is why the Commission's online form includes questions seeking information about these matters, including whether a settlement agreement has been reached. This Royal Commission, like every Federal Royal Commission, has extensive

compulsory powers. A confidentiality or non-disparagement clause in an agreement will not act as a reasonable excuse against production in answer to a notice to produce or a summons. It would not be a reasonable excuse not to answer a question in a hearing. It seems to me to follow that answering a notice or summons would not amount to a breach of any confidentiality or non-disparagement clause.

Further – and this is very important – under section 6M of the Royal Commissions Act, if a witness gives evidence or produces a document under a notice or summons, no injury can be done to that person. Suing the person would almost certainly fall within that prohibition. In many cases where a dispute had been settled on confidential terms, the most immediate fact for the Commission will be that the dispute was settled, not the particular terms on which it was settled, and the fact of the settlement of the dispute will not be within any confidentiality provision.

But whether or not that is so, any institution which sought any form of legal redress against a member of the public or a whistleblower seeking to volunteer information to the Commission in anticipation of the possible exercise of the Commission’s coercive powers would be taking a step which would very likely provoke two immediate consequences. First, the Commission would be very likely indeed to exercise its compulsory powers to secure the information in question. Second, the very fact that an institution sought to inhibit or prevent the disclosure of the information would excite the closest attention not only to the lawfulness of that conduct by the institution, but also to what were the institution’s motives for seeking to prevent the Commission having that information.

As I’ve said, the recitals to the Letters Patent record that all Australians have the right to be treated honestly and fairly in their dealings with banking, superannuation and financial service providers. I therefore say again: public submissions to the Commission via the web form are very important to our work.

One other point should be made about the work of the Commission. Because a central task for the Commission is to inquire, it is important to this investigative aspect of the work of the Commission that, like any other investigating body, the Commission decides when and to what extent it discloses information it has gathered and that it decides when and to what extent it discloses the particular courses of action that it proposes to take.

Premature disclosure of those matters will not help the Commission find out the truth. It would prejudice the effective performance of the Commission’s task.

Today I will not hear or consider any application for leave to appear. The Commission has published practice guidelines about a number of matters, including how to seek leave to appear. As those guidelines show, questions about leave to appear will for the most part be decided on the papers and they will be decided in relation to particular parts of the work of the Commission.

No final decisions have yet been made about when the Commission will hold hearings in places other than Melbourne. This is a Federal Royal Commission.

5 I am conscious of the fact that people affected by our work live in all the states and territories of the Commonwealth. They live in cities, in towns, and in smaller communities throughout the nation. One of the many challenges that we have is to deal with that reality in ways that will further the utility of what we are required to do.

10 In the course of her opening remarks, senior counsel assisting me, Ms Orr, will give an indication of what we propose to look at in the first round of public hearings. Subject of and times for further rounds of hearings will be announced closer to the times of those hearings, as will the places at which those hearings are to be held. Ms Orr.

15 MS R. ORR QC: Commissioner, I appear today with MS ELOISE DIAS and MR MARK COSTELLO. Each of us has been appointed by the Attorney-General to assist this Royal Commission. The job ahead of the team of counsel assisting the Commission, our instructing solicitors, and the staff of the Commission over this
20 coming year is large. The terms of reference contained in the Letters Patent are broad and the time to report is short. We embrace the challenge involved in assisting you, Commissioner, to complete the task ahead of you. We will work hard to support you in this important work, which has the capacity to affect and improve the lives of many Australians.

25 Since the Letters Patent issued on 14 December last year, the Commission secretariat has been working to establish the necessary infrastructure to facilitate the work of the Commission. Able and qualified staff have been and continue to be recruited. Premises for the Commission are in the process of being established. Arrangements
30 continue to be made to secure a hearing room from which the Commission can conduct public hearings throughout the year. On behalf of the Commission, I wish to thank the Fair Work Commission for the use of this hearing room today. Our instructing solicitors of the Australia Government Solicitor, together with the counsel assisting team and Commission staff, have committed a great deal of time and
35 resources to getting the work of the Commission underway.

The painstaking process of gathering and analysing information relevant to your task has begun. The work to date has included reviewing and considering the work of
40 past inquiries relevant to the work of this Commission; establishing a web-based process for inviting submissions from the public; meeting with a range of individuals and entities; Commissioning and producing a number of research papers and papers from experts; analysing the responses of regulators, peak-industry bodies, and financial services entities to the letters sent by you, Commissioner, following the signing of the Letters Patent last year; issuing notices requiring
45 multiple entities to produce documents to the Commission; and establishing a process by which evidence will be heard throughout the year in a series of public hearings.

In these opening remarks, I will provide some further information about each of these matters in turn. Before doing so, it is important that I emphasise that the public hearings will be but one way in which the Commission conducts its work. These hearings will be designed to enable public examination of aspects of the topics into which the Commission will inquire. They will be an important part of the Commission's work, but will be supplemented by many other forms of information gathering and analysis. In providing more detail about the work done to date, I start with the review of the past inquiries to which you have referred, Commissioner.

10 An early task of the solicitors and counsel assisting has been to review the large number of reports arising from recent inquiries and reviews that are relevant to the Commission's work. 73 inquiries and reviews from parliamentary committees, regulators, independent reviewers, and expert panels have been identified. A number of these inquiries and reviews are continuing. We are conscious that ongoing work of other bodies may be useful to the work of the Commissioner. The solicitors and counsel assisting the Commission will continue to monitor the work of these bodies and, where appropriate, to seek their assistance.

I turn to submissions from the public. Commissioner, you have referred to the process that has been developed to invite and receive submissions from members of the public. You have referred to the online form that was released on the Commission's website on 22 January this year. The form contains 32 questions. It is designed to extract information in a way that will make it immediately useful to the work of the Commission. Since its release, more than 385 submissions have been received through the online form. The number of submissions received per week has increased each week that the online form has been available. We encourage anyone with a concern about the conduct of a financial services entity operating in Australia to contact the Commission by completing the online form.

30 Of the responses received to date, approximately 49 per cent relate to banking, 18 per cent relate to superannuation, six per cent relate to the general insurance market, and six per cent relate to the life insurance and total permanent disability insurance market. The online form contains a request that the person making a submission described the nature of the dealing to which their submission relates. Of the responses received to date, the dealings that the majority of the submissions refer to are as follows: personal finance, approximately 31 per cent of dealings; superannuation, 17 per cent of dealings; small business finance, 13 per cent; mortgage brokers, 12 per cent; and financial advice, nine per cent of dealings.

40 The responses to date have been received from individuals in a number of States and Territories. Approximately 110 submissions have been received from Queensland, 106 from Victoria, 95 from New South Wales, 49 from Western Australia, 17 from South Australia. And less than 10 submissions have been received from each of the Australian Capital Territory, the Northern Territory and Tasmania. The online form also contains a request that the person making the submission nominate the part of the Commission's terms of reference their submission relates to. We have seen

already that many of the submissions relate to more than one part of the terms of reference.

5 To date, approximately 84 per cent of submissions relate to misconduct or conduct of financial services entities that falls below community standards and expectations. 40 per cent relate to culture and governance practices of financial services entities and 35 per cent relate to the effectiveness of redress for consumers. Some themes have already emerged from the public submissions. In relation to misconduct or conduct that falls below community standards and expectations, we have seen a number of
10 submissions about topics such as financial services entities acting on falsified documents, the provisions of inappropriate financial advice, inappropriate lending and delay in processing insurance claims. In relation to culture and governance practices, we have seen a number of submissions that raise the issue of conflicts of interest in connection with the practices of representatives of financial services
15 entities.

These submissions refer to matters such as incentive-based remuneration, which is regarded as encouraging such representatives to secure an outcome that is not necessarily appropriate for the consumer, such as a loan for an amount in excess of
20 the amount sought. They also refer to Commissions payable to a financial advisor by a financial institution for referring its products to the consumer. In relation to the effectiveness of redress, we have seen a large number of submissions that express frustration and concern about the time taken and effort required to navigate the internal and external dispute resolution frameworks that apply to financial services
25 entities.

We anticipate that as the volume of submissions from the public increases, new themes will emerge and different areas of focus will develop. As you have noted, Commissioner, the Commission will continue to review all information received
30 through the online form. And that information will continue to assist in informing and directing its work. I turn to the consultations conducted by the Commission to date. The solicitors and counsel assisting the Commission have commenced meeting with a variety of individuals and representatives of entities. These include regulators as well as organisations who engage directly with Australians who have experienced
35 conduct by financial services entities that has caused them hardship. We will continue to consult with relevant individuals and entities and to learn from their experiences and insights as the year progresses.

I turn to the research and expert papers that the Commission has commenced
40 producing and commissioning. The Commission will produce a series of research papers which will be released over the course of the year. Some of these papers will be factual examinations of sectors or markets within the financial services industry. Others may concern issues of regulatory structure, policy or, perhaps, potential law reform. The content of the published research papers may find reflection in the final
45 report. To the extent that the papers concern matters of potential reform, comment will be called for at the time the paper is released. No comment will be sought in respect of purely factual papers.

As you have noted, Commissioner, the first such paper entitled Background Paper Number 1, was publicly released last week and is available for download from the Commission's website. It provides information about the range of Australian banking industry participants, the relative market share of those participants, the size of the Australian banking industry, the range of products offered and the profitability of the sector. As the paper reveals, within the context of the Australian economy, banking is a very significant industry, comprising the largest part of the Australian financial system. The vast majority of Australians hold at least one bank account.

Five of the 20 listed companies that make up the ASX 20 index are Authorised Deposit-taking Institutions or ADIs. ADIs include banks, building societies and credit unions. ADIs comprise seven of the 100 listed companies that make up the ASX 100. ADIs contribute substantially to the national economy. As at the end of September 2017, they held approximately \$4.6 trillion in assets, a figure around two and a half times the size of Australia's \$1.8 trillion nominal economy, as measured by nominal GDP. In the coming months, further papers will be released on other aspects of the financial services industry. In addition to producing and publishing these research papers, the Commission has engaged and will continue to engage experts to assist it with its work. This expertise will be of considerable assistance to the Commission.

I turn to the work that has been done in considering the responses provided by industry participants, regulators and peak bodies, to the letters sent out last year and early this year. Considerable work has been done in reviewing the information contained in these responses. In total, responses have been received from 48 different entities. Many of those entities are industry participants such as banks, insurers and superannuation funds. But the responses are not limited to those entities. For example, responses were also invited and have been received from the key regulators, ASIC, APRA and the ACCC; consumer advocates such as the Consumer Action Law Centre and Choice; and the key external dispute resolution bodies, the Financial Ombudsman Service and the Credit and Investments Ombudsman.

In combination, the responding entities provide a range of perspectives from across the industry. The information in the responses will continue to be considered as the work of the Commission progresses. Importantly, the differing functions and perspectives of the respondents provides an early cross-check of the accuracy and completeness of the responses. These matters may be tested further in other ways during the course of the year.

As you have noted, Commissioner, you have a number of compulsory powers that can be used as part of the Commission's information gathering processes. These include a power to issue notices to produce documents to individuals and entities. To date, 32 notices to produce documents have been issued. It is likely that notices to produce will be issued on a regular basis, as the solicitors and counsel assisting the Commission continue to identify documents that we believe will assist the work of the Commission.

I turn to the public hearings. Rounds of public hearings will be conducted periodically throughout the year. A document indicating the scope of each round of public hearings will be released on the Commission's website before that round begins. Many of the public hearings will focus on case studies, each of which will be used to explore topics connected with the case study. The case studies will concern particular events involving one or more financial services entities.

Sometimes, the case studies will include evidence from a consumer involved in those events. Frequently, the case studies will include evidence from one or more representatives of the financial services entity or entities involved in the events. As a general rule, it is expected that the Commission will receive the evidence of each witness in the form of a written statement to be supplemented by oral evidence where necessary. The process for seeking leave to appear at a round of public hearings is contained in Practice Guideline 3, which is published on the Commission's website. A person or entity who wishes to appear at a round of public hearings will need to demonstrate a direct or substantial interest in the hearing of a case study or subject of inquiry.

As Practice Guideline 3 indicates, it is unlikely that the Commission will grant any person unconditional leave to appear. Most grants of leave to appear will be confined to the hearing of the particular inquiry or case study in which the person has a direct or substantial interest and subject to conditions such as limiting the particular topics or issues upon which the person may examine or cross-examine a witness. Counsel assisting will support leave to appear being granted to those people and entities who are directly involved in the events that are examined in a particular case study. Applications for leave to appear must be made in writing, using the form that will be available on the Commission's website.

Any such applications will be invited by a specified date prior to each round of public hearings at the same time as the document indicating the scope of the particular round of hearings is published on the Commission's website. At the end of each round of hearings, written submissions will be invited on a series of topics identified by counsel assisting the Commission. It is anticipated that the invitation to make submissions on these issues will not be limited to the entities that directly participated in the particular round of hearings.

The first round of hearings will commence in approximately one month's time. The date on which the hearings will commence will be published on the Commission's website. Commissioner, you have referred to the preamble to the terms of reference which refers to the right of all Australians to be treated honestly and fairly in their dealings with banking and financial services providers.

The first round of hearings will consider whether consumers are enjoying this right when it comes to lending. As I indicated earlier, one of the themes that has emerged from the public submissions through the Commission website is inappropriate or unsuitable lending. The focus for the first round of hearings will be on consumer lending practices. It is likely that this topic will be examined in the context of a

number of credit products such as home loans, car loans and credit cards. The data published in the Commission's first research paper, to which I referred earlier, indicates that home loans are the largest asset on the books of authorised deposit-taking institutions, comprising around 42 per cent of the assets of such institutions as
5 at the September 2017 quarter.

As at November 2017, there was a total of \$1.07 trillion in finance for owner-occupied housing provided by ADIs and a further \$560 billion in investment housing finance provided by ADIs. As at the September 2017 quarter, around 5.8 million
10 households had a home loan with an ADI. These figures reveal the significance of home ownership for the economy, but they do not necessarily reveal the importance of home ownership for the average Australian, for whom the purchase of a property is likely to be the most substantial and perhaps the most stressful financial
15 transaction of their life. The need for honesty and fairness in this context is paramount.

The Commission will hear evidence of events involving certain financial services entities in the context of home lending that suggest that consumers have not always enjoyed the right to be treated honestly and fairly when it comes to home loans.
20 Some of these events may have involved breaches of the law, while others may have involved departures from community standards and expectations. Each of these events give rise to important questions for consideration by the Commission, not least of which are how and why were such events permitted to occur, and what steps, if any, were taken at the time or have since been taken in response to those events,
25 including steps to ensure that they do not recur.

Like their home, the car is also a crucial plank underpinning the day-to-day lives of most Australians. People need their car to get to work, to take care of loved ones, and to enjoy their pastimes. The purchase of a car is also a transaction that must be
30 conducted honestly and fairly, and yet, our inquiries to date have revealed practices in relation to car lending that appear to depart from these standards.

Practices in relation to consumer credit products other than home and car loans are also likely to be explored in the first round of hearings. One such product which has
35 been the focus of recent regulation and inquiries is the credit card. The first published research paper of the Commission includes data on credit cards. As at November 2017, there were around 16.7 million credit and charge card accounts in existence in Australia, with total balances of around \$52.2 billion. Exploration of the practices of credit providers who promote and approve applications for credit cards is
40 therefore important.

Of course, not every issue that arises in consumer lending and upon which the Commission will ultimately report can be the subject of hearings and witness testimony. As I have already said, a great deal of the Commission's work will be
45 conducted through the painstaking task of extracting and reviewing documents and through regular consultation with stakeholders, whether they be members of the public, the regulators, or the institutions themselves.

Another area of early focus for the Commission will be the financial planning and wealth management industry. Australians engage financial advisors to improve their financial position, to achieve their aspirations, and to plan for their future. Clients repose trust and confidence in their financial advisors. It is important that their trust and confidence is well placed.

The 2009 report of the Parliamentary Joint Committee on Corporations and Financial Services, entitled Inquiry into Financial Products and Services in Australia, led to the introduction of the Future of Financial Advice reforms. Those reforms have now been in force for four years, although there have been amendments, some of them significant, since then. This Commission presents an important opportunity to evaluate the success of those reforms and inquire into the practices of the financial advisory industry.

At the time of the 2009 report, there were approximately 18,000 financial advisors in Australia, close to 8000 financial planning practices, and around 160 dealer groups operating in Australia. The largest 20 dealer groups held a market share of around 50 per cent. Approximately 85 per cent of financial advisors, that is, more than 15,000 of the 18,000-odd advisors, were associated with financial product manufacturers in one or both of two ways. First, the adviser worked within a dealer group and utilised services provided by that group, or second, the adviser was directly employed as an authorised representative under the corporate entity's Australian Financial Services Licence.

As these figures reveal, the financial planning and wealth management industry is large and complex. The Commission intends to release a paper in the coming months that will update the figures I have provided and point to other structural features of the financial advice industry. The Commission will, at a later point, indicate the areas of particular inquiry in respect of financial planning and wealth management.

Of course, the matters that I have touched on today relate only to the early work of the Commission. Many other aspects of the financial services industry will be examined by the Commission as the year progresses. Work has already commenced on some of those areas, and more will be said about that work at an appropriate time.

I make the following remarks in conclusion.

- (1) Further information about the Commission can be obtained from its website, financialservices.royalcommission.gov.au. The website includes information concerning how to contact the Commission and various guidelines concerning its processes.
- (2) The transcript of today's proceedings and of all public hearings will be published on the website, as will information about the dates, times and locations of public hearings.

- (3) The Commission is not adversarial litigation. It is an inquiry.
- (4) The counsel assisting this Commission, together with our instructing solicitors, are committed to supporting and assisting the Commission to understand what has happened in the past so that it can also turn its mind to considering the more pressing task, which is whether, and if so what, change is required for the future.
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COMMISSIONER HAYNE: Thank you, Ms Orr. Adjourn the Commission.

MATTER ADJOURNED at 11.06 am ACCORDINGLY