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TRANSCRIPT OF PROCEEDINGS

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O/N H-871450

**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, TUESDAY, 13 MARCH 2018**

**Continued from 12.2.18**

**DAY 2**

**MS R. ORR QC appears with MR A. DINELLI and MS E. DIAS as Counsel Assisting  
with MS S. ZELEZNIKOW**

**DR M. COLLINS QC appears with MR M. RUSH, MR N. DE YOUNG and MS K.  
BRAZENOR for ANZ**

**MR R. DICK SC appears with MR J. WATSON and MS E. BEECHEY for APRA**

**MS L. NICHOLS SC appears with MS C. VAN PROCTOR for ASIC**

**MR C. SCERRI QC appears with MR P. KULEVSKI for CBA**

**MS D. HOGAN-DORAN SC appears for Aussie Home Loans**

**MR P. ANASTASSIOU QC appears with MR B. JELLIS for Commonwealth**

**MS K. REES SC appears with MR D. HEALEY for Citigroup**

**MR A. SLEVIN appears for Finance Sector Union of Australia**

**MR D. MACKAY appears for ING Bank**

**MS W. HARRIS QC appears with MR R. CRAIG, MS K. FOLEY and MS P.  
THIAGARAJAN for NAB**

**MS R. DOYLE SC appears with MR D. FAHEY for Smartline Home Loans**

**MR J. SHEAHAN QC appears with MS P. NESKOVCIN QC and MR J. ARNOTT  
for Westpac**

THE COMMISSIONER: Do sit down. Those who have been granted leave to appear in this round of hearings have been notified of that fact and they, in turn, have told the Commission of who is representing them and I will take, therefore, appearances as read. And there will be no need for counsel to announce their  
5 appearances.

A number of people who applied for leave to appear were refused that leave, and I want to say something shortly about that, because some of those who sought leave thereafter wrote to the solicitors for the Commission seeking further consideration of  
10 that application and, in effect, expressing surprise or complaint that they had not been granted leave. I have looked again at what they said in support of their applications. I want to just say a little more about them, that is the applications. At the initial public hearing of the Commission I said that I fully recognised that those affected by what they considered to be misconduct want their complaints recognised  
15 and considered, and they want those responsible held to account.

But I also said at the opening sitting that the Commission will not have time to publicly examine every case of alleged misconduct. Instead, as I see it, we will have to proceed by reference to case studies and examples, with a view to identifying the  
20 kinds of misconduct that have occurred, why it has occurred, what should have been and what was the response to discovering the misconduct, and then what follows from those conclusions and observations.

In this set of hearings we will look at several case studies. The persons who have  
25 been refused leave to appear all have complaints that are different from the issues we will be looking at in these case studies. None of the complaints they make is the subject of any of the case studies. None of those refused leave will give evidence during these hearings, none of the complaints they make will be decided during these hearings or in consequence of them. And that's why I said in refusing them leave to  
30 appear that they do not have any direct or substantial interest in the evidence that will be called during these hearings. That's why I said that they show no interest in the evidence to be given at these hearings that is greater than or different from any other member of the public or any other person who alleges that he or she has been  
35 affected by conduct amounting to misconduct or conduct falling short of community standards and expectations.

I emphasise again, as I did at the opening sittings, that those refused leave to appear, and any other person who wants to say that a financial institution engaged in conduct of a kind with which the Royal Commission is to be concerned, should make their  
40 submissions to the Commission through the Commission's website. The submissions made by the public are very important to the work of the Commission. All of the submissions that are made through the website are being read and assessed and considered. All of the submissions that are being made through the website will form an important part of the material on which the Commission will base its work.  
45 Ms Orr.

MS R. ORR QC: Commissioner, this is the first round of public hearings for this Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. This round of hearings will inquire into aspects of consumer lending. From early on in the Commission's inquiries it was apparent that there were  
5 issues in relation to the conduct of financial services entities in consumer lending which required very careful consideration and scrutiny. Almost all Australians are consumers of credit products. This round of hearings will focus on four different types of credit products: home loans, car loans, credit cards, and overdraft facilities. A further area of focus will be insurance sold in connection with a credit product.

10 These hearings will explore some of the issues that arise for Australians in their dealings with financial services entities in respect of these credit products. We will be unable to explore all the types of issues that arise in this context. However, as we noted at the first public hearing, a great deal of the Commission's work is being  
15 conducted outside of the public hearings through the task of extracting and reviewing documents and through consultation with stakeholders. Much work in relation to consumer lending has already been done; more will continue to be done beyond these hearings.

20 In this opening address we will traverse a number of topics which we hope will assist the Commission, the public and those who have been granted leave to appear to better understand the case studies that will be explored over the coming two weeks and the purposes for that exploration. The structure of this opening address will be as follows. First, we will begin by explaining why each of the consumer lending  
25 products to be explored are of significance to consumers and to financial services entities. Second, we will explain some of the key features of the legal framework in which consumer lending occurs, which is a complex and ever-evolving one. Within that framework, we will look at the particular roles that credit providers and intermediaries play in the provision of consumer credit.

30 Third, we will summarise what consumers have told the Commission about their consumer lending experiences. Many stories have come to us through public submissions submitted via the Commission's online portal. But stories have also come to us from consumer bodies and advocates. After this opening address you will  
35 hear directly from Ms Karen Cox of the Financial Rights Legal Centre, a body working at the grassroots level with consumers who have experienced difficulties with consumer lending.

40 Fourth, we will touch on what the two external dispute resolution bodies who deal with consumer lending disputes, the Financial Ombudsman Service and the Credit and Investments Ombudsman, have told the Commission. These external bodies are being replaced later this year with a unified body, but they have provided information to the Commission about a body of complaints from consumers going  
45 back almost 10 years.

Fifth, we will summarise the work that regulators, such as the Australian Securities Investments Commission, or ASIC, and the Australian Prudential Regulation

Authority, or APRA, have done in relation to consumer lending. We will also identify some of the work that those entities are doing that remains ongoing, to which the Commission will pay close regard throughout the course of the year. We will also highlight some of the ongoing consideration of consumer lending issues by other  
5 inquiries.

Sixth, we will summarise what financial services entities and intermediaries have acknowledged to the Commission as their own misconduct and conduct that has fallen below community standards and expectations in relation to consumer lending.  
10 Early in its work you, Commissioner, sought information from financial services entities for the Commission about misconduct and conduct falling below community standards, and we will refer to some of the information provided in response to that request.

15 Finally, we will briefly address the nature of the evidence that will be heard over the next two weeks, giving an overview of the case studies that the Commission will be considering and why these case studies have been chosen. We will highlight the key themes and questions that we see running through these case studies, upon which we will invite written submissions at the end of these hearings.

20 To begin, I turn to the consumer lending products through which the conduct of financial services entities will be addressed in this round of hearings. The first week of hearings will focus predominantly on the conduct of financial services entities in connection with applications for home loans. Many Australians have home loans  
25 with one of the major lenders. Housing loans are the largest asset held by ADIs or authorised deposit-taking institutions. In 2017 authorised deposit-taking institutions provided about 1.6 trillion in housing finance. Much of this was for owner-occupied housing. In the September quarter of 2017, housing finance made up around 42 per cent of ADI assets. As at November 2017, the average balance of residential term  
30 loans to households was \$264,000. The average balance was higher for interest-only loans, \$347,000, and loans with offset facilities, \$314,000.

Residential home loans represent a substantial part of lending for many of the entities that are to be the subject of case studies in these hearings. For example, residential  
35 mortgage lending constituted approximately 60 per cent of NABs total lending for the period from October 2016 to September 2017. For CBA, as at 31 December 2017 its total lending was \$586 billion, of which \$374 billion or 64 per cent was attributable to lending by its retail banking services unit.

40 The proportion of ANZs total lending as at September 2017 in relation to residential mortgages was approximately 45 per cent of the ANZ Group's total lending, based on the group cash profits basis, and approximately 64 per cent of the total lending for Australia, based on gross loans and advances in group cash profit basis. As noted in  
45 ASICs report number 516, Review of Mortgage Broker Remuneration, as at 2015, the majority of borrowers who secured a home loan engaged the services of a mortgage broker to apply for a home loan. In the four quarters to March 2017, the

value of the loans placed by brokers was equivalent to around 11 per cent of nominal GDP.

5 According to the Mortgage and Finance Association of Australia, in the September quarter of 2017 mortgage brokers settled \$51.77 billion or 55.7 per cent of all residential home loans. In 2017 NAB approved over 89,000 home loans submitted by brokers, resulting in a total lending of \$30.23 billion. For CBA, as at the end of 2017, 41 per cent of its home loan portfolio was comprised of loans that were offered through mortgage brokers. For ANZ, 58 per cent of home loans were approved via  
10 brokers during the year prior to 30 September 2017.

In recent years, banks have acknowledged that aspects of their conduct in connection with home loans have been unacceptable and have caused detriment to consumers. As a result, a number of banks have provided refunds to customers as part of  
15 significant remediation programs, which are generally overseen by ASIC, the key regulator in the consumer credit industry. Information provided to the Commission by ASIC indicates that since 1 July 2010 almost \$250 million in remediation has been paid to almost 540,000 consumers by financial services entities as a result of three particular forms of conduct in connection with home loans. The three forms of  
20 conduct were reliance on fraudulent documentation, processing or administration errors and breaches of responsible lending obligations.

Since 1 July 2010, ASIC has banned and suspended from providing credit services or placed conditions on the licences of 51 individuals or companies for engaging in  
25 home loan application fraud. Through the Commonwealth Director of Public Prosecutions, ASIC has brought criminal prosecutions against 13 credit providers for conduct in relation to home loan applications, 12 of whom have been convicted of fraud or dishonesty offences. ASIC has also banned one person from providing credit services and cancelled the credit licence of two entities on the basis of  
30 breaches of responsible lending laws in connection with home loan applications.

The second credit product that we will deal with in this round of hearings is car loans, being personal loans obtained with the specific purpose of buying a new or used motor vehicle. In the month of December 2017, finance commitments for  
35 motor vehicles in Australia, including commercial and lease finance, totalled around \$2.8 billion. In 2017, finance commitments for motor vehicles totalled around \$35.7 billion. As at March 2017, ASIC estimated that 90 per cent of all car sales were arranged through finance. Of these sales, around 39 per cent were financed through a dealership and 61 per cent were financed from other sources. Stratton Finance, an  
40 Australian finance broker specialising in car financing, has produced research that indicates that in 2017 the average car loan size across Australia was \$39,445. The median car loan size across Australia was \$31,003. And the most popular car loan size across Australia was \$20,000.

45 Since 1 July 2010, almost \$90 million in remediation has been paid to almost 17,000 consumers by financial services entities as a result of two forms of conduct in connection with car loans, being reliance on fraudulent documentation and breaches

of responsible lending obligations. Since 1 July 2010, ASIC has banned or cancelled or suspended or placed conditions on the licences of 19 individuals or companies in the car financing industry. Through the Commonwealth Director of Public Prosecutions, four car loan credit service providers have been convicted of criminal offences. As a result of action taken by ASIC in the car financing industry, over \$5.7 million has also been paid in civil penalties.

The third credit product that we will deal with in this round of hearings is credit cards. As at November 2017 there were around 16.7 million credit and charge card accounts in Australia. These accounts had total balances of around \$52.2 billion. The average balance per account was around \$3128. As at the September quarter of 2017, credit card debt made up around one per cent or \$51.4 billion of the assets held by ADIs. As at 31 December 2017, CBAs net credit card balances for CBA-branded personal credit cards and business credit cards with individual liability was approximately \$10.75 billion. This equated to approximately 1.8 per cent of CBAs total CBA-branded lending as at that date. As at January 2018, Westpac's total balances for all credit card products, comprising products that remain for sale and those which were no longer sold, was \$9.41 billion. As at 28 February 2018, the credit cards presently on issue by Citigroup had balances totalling approximately \$5 billion.

Since 1 July 2010, over \$11 million in remediation has been paid to over 34,000 consumers by financial services entities in response to breaches of responsible lending obligations in connection with credit cards. Since that time, ASIC has also obtained four outcomes against three credit card providers for breaches of responsible lending obligations in connection with credit cards. And, as a result, \$1.5 million has also been paid in civil penalties.

The fourth credit product that we will deal with in this round of hearings is add-on insurance. Consumer credit insurance is a common form of add-on insurance which is sold with a number of credit card products, including credit cards, personal loans, home loans and car loans. It is designed to protect consumers if something happens to them that affects their ability to meet their credit repayments. In 2011, ASIC published a report which analysed data from 2009, provided by 15 ADIs that sold consumer credit insurance. The report found that in 2009 661,902 consumer credit insurance policies were sold and 19.4 per cent of consumers who purchased home loans, personal loads or credit cards from ADIs also purchased consumer credit insurance.

Since 1 July 2010, over \$128 million has been paid in remediation to consumers by financial services entities as a result of particular conduct in connection with add-on insurance. Approximately \$900,000 of this sum related to home loan, add-on insurance remediation programs affecting over 10,500 consumers. Approximately 117 million related to car loan add-on insurance remediation programs, affecting over 212,000 consumers. Approximately 10 million related to credit card add-on insurance, affecting approximately 65,000 consumers.

The fifth product that we will deal with in this round of hearings is personal overdrafts. Overdrafts are credit facilities connected to a bank, building society or credit account which allow a customer to overdrew up to an agreed amount of money that is more than the customer has in their account. Much like credit cards, 5 overdrafts attract interest and very often fees and charges in certain events. As will be explored through these hearings, the issues surrounding overdrafts have a number of similarities to the issues surrounding credit cards.

10 The final topic that we will deal with in this round of hearings is not a credit product, but a set of problems that has occurred in connection with credit products, such as home loans. Those problems concern account administration and processing errors by financial services entities when providing consumer credit products. This issue is of substantial financial and practical significance to both consumers and financial 15 services entities. This can be demonstrated by the fact that as a result of work done by ASIC since 1 July 2010, approximately \$239 million has been repaid to almost 540,000 consumers who have been affected by account administration and processing errors in connection with home loans, such as failures to link offset accounts and failures to apply the correct interest rate. This remediation has been 20 paid by financial services entities such as ANZ, CBA, Bankwest, NAB, Westpac and the Bank of Queensland.

We turn to the legal and regulatory framework for consumer lending. This is important, because the Commission's terms of reference require it to give 25 consideration to the adequacy of existing laws and policies and forms of industry self-regulation which are intended to identify, regulate and address misconduct in consumer lending and to meet community standards. The Commission's terms of reference also require it to give consideration to whether any further changes to the legal framework are necessary to minimise the likelihood of misconduct by financial 30 services entities in the future.

As an initial matter, we observe that the legal framework governing consumer lending in Australia is multi-layered and complex. It has recently been augmented and further reform is in the pipeline. Prior to 1998, lending to consumers, sometimes referred to as consumer credit, was regulated under the Trade Practices Act, which 35 governed most aspects of consumer protection law. In 1998, financial services products, including consumer credit, were removed from the purview of that Act and mirror provisions were inserted into what became the Australian Securities and Investments Commission Act, which I will refer to as the ASIC Act. The catalyst for this was the landmark Wallace Report of 1997 which recommended, among other 40 things, the introduction of specialist regulatory arrangements for consumer protection.

Since that time, financial products and services have continued to be treated 45 differently from other goods and services. The regulator for financial and credit services is ASIC, whereas the key regulator for consumer goods and services is the Australian Competition and Consumer Commission. In 2008, amidst the fallout of the Global Financial Crisis, the Council of Australian Governments agreed that a

new national regime was required to ensure that consumers were better protected in their dealing with credit products and credit providers, and to ensure consistency between state and territory regimes. In 2009, the National Consumer Credit Protection Act came into effect. I will refer to this as the National Credit Act. It is  
5 now the central consumer protection legislation applying to consumer credit. It includes the National Credit Code, which is schedule 1 to the Act.

Relevantly, some of the key aims of the National Credit Act are to regulate credit industry participants, in addition to credit contracts and transactions, including by  
10 way of a comprehensive licensing regime; to establish industry-wide responsible lending conduct requirements for licensees; and to enhance consumer protection through dispute resolution mechanisms, court arrangements and remedies. The regime created by the National Credit Act is an important anchor for many of the case studies that will be considered over the next two weeks. For now, we highlight  
15 four key aspects to the legislative regime created by that Act.

The first is that the regime requires many entities that engage in consumer credit transactions, including banks and mortgage brokers, to hold an Australian credit licence for their particular credit activities or to be appointed as a credit  
20 representative by another licensee. Those who are required to hold a licence fall into two categories: credit providers, such as banks; and credit assistance providers, such as brokers.

Not all entities who engage in consumer credit transactions are required to be  
25 licensed under the National Credit Act or to comply with the responsible lending obligations to which I will come. In particular, the National Credit Regulations provide an exemption for persons assisting consumers to apply for credit at the point of sale, including at car dealerships and retail stores. When the National Credit Act and National Credit Regulations were enacted, members of Parliament foreshadowed  
30 that this exemption may be reviewed. However, the point of sale exemption remains, approximately eight years later.

The second key aspect of the regime created by the National Credit Act is that it  
35 imposes certain prohibitions on the holders of Australian credit licences which are designed to ensure that lending provided by or assisted by these entities is responsible. The prohibitions are similar for both credit providers and credit assistance providers. Credit providers such as banks are prohibited from entering into a credit contract with a consumer unless they have assessed whether the credit contract will be unsuitable for the consumer. Credit assistance providers such as  
40 mortgage brokers are prohibited from suggesting that a consumer apply for a particular credit contract with a particular credit provider unless they have assessed whether that credit contract will be unsuitable for the consumer.

The National Credit Act provides limited guidance on when a credit contract, such as  
45 a home loan, will be unsuitable for a consumer. It tells us that a credit contract will be unsuitable if it is likely that the consumer will either be unlikely to comply with the financial obligations under the contract or could only do so with substantial

hardship or if the contract will not meet the consumer's requirements or objectives. The National Credit Act also tells us that substantial hardship is to be presumed where the consumer could only comply with their financial obligations under the contract by selling their home.

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For credit cards, issues have arisen with assessing whether a credit card is unsuitable for a customer, because only minimum payments are required to be made to the entity issuing the credit card, not the full credit limit. This has set a somewhat low threshold for the consumer's ability to meet their financial obligations under the credit contract. However, very recent amendments to the National Credit Act will change this, so that if a consumer would be unable to repay an amount equal to their full credit limit within a specified period, they will be taken to be able to comply with the contract obligations only with substantial hardship. These changes will come into effect on 1 January 2019.

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The National Credit Act contains further relevant prohibitions. A credit provider or a credit assistance provider must not enter into a credit contract or suggest that a consumer do so unless they have undertaken certain inquiries and verified certain matters before making their assessment of unsuitability. They are each required to make reasonable inquiries about the consumer's financial situation and their requirements and objectives in relation to the credit contract and to take reasonable steps to verify the consumer's financial situation.

20

Various practices have been adopted in an attempt to ensure compliance with the National Credit Act. In particular, banks and brokers have lending policies and tools to help assess whether a loan or credit card is not unsuitable. Some of these processes are automated, and some also entail the use of proxies or benchmarks to assess a consumer's financial situation.

25

The third key aspect of the regime created by the National Credit Act is that it sets out what are called general conduct obligations for licensees. These obligations will also be referred to in these hearings. The obligations are set out in section 47 of the Act, and include an important obligation, an obligation to do all things necessary to ensure that the credit activities authorised by the licence are engaged in efficiently, honestly, and fairly.

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Another important obligation is the obligation to ensure that there are adequate arrangements in place to ensure that the clients of the licensee are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to the credit activities engaged in by the licensee or its representatives.

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The final key aspect of the region created by the National Credit Act to which we will refer today is the enactment of the National Credit Code, which forms part of the Act. One of the things that the National Credit Code does is to prescribe a process whereby a customer can give a hardship notice to the credit provider and request a change to their credit contract. As the Commission has been told in submissions from the public and will hear in the coming weeks, credit contracts have been a cause

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of hardship for many consumers, whether by themselves, or in confluence with other factors in the life of the consumer. The manner in which credit providers deal with situations of hardship is important and must meet the expectations and standards of the community.

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In addition to the National Credit Act, the ASIC Act also applies to suppliers of credit products and services, including suppliers of business credit and investment credit. The ASIC Act contains largely equivalent provisions to those found in Australian consumer legislation that was previously known as the Trade Practices Act. These include prohibitions against misleading or deceptive conduct, unconscionable conduct and unfair contract terms.

10

Some of the legislation to which we have just referred will be the subject of reform over the coming year, and this is a matter that the Commission will have regard to. A ban on unsolicited offers of credit limit increases will take effect from 1 July this year, and credit providers will also be required to give consumers online options to cancel credit cards or to reduce credit card limits from 1 January next year. Comprehensive credit reporting for the major banks will also be required from 1 July this year, and is aimed at improving lending practices, customer outcomes, and competition. This will involve further amendments to the National Credit Act.

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In addition to the laws made by Parliament, lending transactions are also governed by the common law, handed down by the courts. Some of this judge-made law involves the application of the legislation we have just described to a particular set of facts. Other cases involve other bodies of legal principle, such as contract law and tort law, which operate more generally in respect of consumers' dealings with financial services entities.

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All of the law to which we have just referred is complemented by a suite of secondary material, including guides produced by ASIC, industry codes of conduct and the practices adopted by external dispute resolution bodies. The key guides published by ASIC to which reference will be made in these hearings are Regulatory Guide 209 and Regulatory Guide 205.

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The first, which was published in 2014, provides guidance on entities' responsible lending obligations under the National Credit Act. The second, which was published in June 2010, elaborates on the general conduct obligations of licensees under the National Credit Act. Both documents provide guidance on a regime which is at once both complicated and non-prescriptive. The guides do not have the force of law, but adherence to them is generally accepted within the industry as good practice.

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A further relevant regulatory guide is Regulatory Guide 78, which was published in 2014 and relates to the obligation of Australian financial services licensees to report breaches of certain statutory obligations to ASIC. The Code of Banking Practice is another relevant document. Like the ASIC regulatory guides, it does not have the force of law but contains guidance around industry standards. It is a voluntary code published by the Australian Banking Association that has been adopted by most

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banks offering retail products in Australia, including credit products. The banking code therefore applies to most banks when they provide home loans, car loans, and credit cards as well as other credit products.

5 Among other things the banking code includes obligations about disclosure, financial  
difficulty and responsible lending. A key provision is clause 27 by which a bank  
promises to exercise the care and skill of a diligent and prudent banker in selecting  
and applying credit assessment methods and informing an opinion about the  
10 customer's ability to repay the credit facility before giving or increasing such a  
facility. Noncompliance with the banking code can be examined by the banking  
code compliance monitoring committee. Banks who have adopted the banking code  
are required to report to this committee about their compliance on an annual basis.  
The current version of the banking code was published in 2013. It was  
15 independently reviewed in 2016 and 2017. The Australian Banking Association has  
announced that a revised code has been provided to ASIC for approval, however, this  
revised code has not yet been approved or made public.

During the first public hearing, one month ago, we noted that the Commission had  
20 begun the process of commissioning a series of reports from experts to assist it with  
its work. One such report has been prepared by Dr Jeannie Paterson of the  
Melbourne Law School, and Ms Nicola Howell of the Queensland University of  
Technology [erratum: Melbourne Law School]. The report is entitled Everyday  
Consumer Credit: An Overview of the Australian Law Regulating Consumer Home  
Loans, Credit Card and Car Loans. It provides a great deal of detail on the  
25 legislative and regulatory regimes which we have summarised today. And it will be  
made available on the Commission's website in coming days. The Commission  
welcomes comments on that paper which may be provided to the office of the  
solicitor assisting the Commission.

30 Before leaving the legal and regulatory framework to turn to the matters that  
members of the public have raised with the Commission, we make some  
observations about the role of intermediaries in the provision of consumer credit.  
Intermediaries play an important role in the distribution of two of the consumer  
credit products upon which we will focus, being home loans and car loans. These  
35 intermediaries often provide the link between the consumer and the financial services  
entity providing the credit product. We make some observations about the role of  
intermediaries in relation to each of these two credit products. First, as noted in the  
Commission's second background paper – which has been published on the  
Commission's website – mortgage brokers act as an intermediary in the home loan  
40 market by matching borrowers to lenders and their loan products. Mortgage brokers  
assist and advise borrowers on the home loan application process and in relation to  
negotiating interest rates on home loans.

45 As mortgage brokers engage in credit activities they are regulated by ASIC under the  
National Credit Act. As we have already noted, they must hold an Australian credit  
licence or be an authorised representative of a mortgage aggregator or any other  
entity that holds such a licence. Mortgage brokers are now the central channel for

residential mortgage financing. As we mentioned earlier, mortgage brokers settled \$51.77 billion or 55.7 per cent of all residential home loans in the September quarter of 2017. The other key intermediary in the home loan market is the mortgage aggregator. As also set out in the Commission's second background paper, mortgage  
5 aggregators act as a further intermediary between mortgage brokers and lenders by providing mortgage brokers with access to the lenders on the aggregator's panel. Mortgage aggregators have contractual arrangements with lenders which in general terms allow brokers operating under the aggregator to arrange loans from those  
10 lenders. Although brokers may still need to be separately accredited with those

The aggregator system can provide mortgage brokers with access to a wide of range of lenders than may otherwise be possible as mortgage aggregators can achieve greater economy of scale by aggregating greater volumes of mortgages across  
15 different brokers. Aggregators can also provide mortgage brokers with support services such as technology, infrastructure, marketing, and professional training. As mortgage aggregators also engage in credit activities by acting as an intermediary, they must also – intermediary, they must also hold an Australian credit licence. If a mortgage broker operates under the licence of a mortgage aggregator then the  
20 mortgage aggregator is responsible for the conduct of that broker..

We turn to intermediaries in the car finance market. There are two key intermediaries in this market and both undertake the function of matching borrowers and lenders for car loan products. The first key intermediary is the finance broker.  
25 A finance broker provides broking services for personal loans, including those for car purchases. As finance brokers engage in credit activities they are also regulated by ASIC under the National Credit Act. Unless an exemption applies, a finance broker must also hold an Australian credit licence or be an authorised credit representative of an entity that holds such a licence. The second key intermediary is the car dealer,  
30 which is the business that sells the new or used car to the consumer. Car dealers may have a direct contractual and commercial relationship with car financing companies to allow consumers who purchase a vehicle from their dealership to access car financing from a financing entity.

In this situation, the car dealer effectively acts as a distributor of the financing entity's car loan products, and may be potentially eligible to be exempted from the consumer credit licensing requirement. Car dealers may also serve as a distribution  
35 channel for a range of add-on insurance products which provides another avenue by which car dealers can greatly influence consumer outcomes. As we have already  
40 noted, car dealer intermediaries are exempt from the licensing and responsible lending provisions of the National Credit Act. We turn to the information we have received from members of the public in relation to consumer lending. As at 5 pm on  
45 9 March 2018 the Commission had received 1,894 submissions from Australians through the Commission website. A figure that is up significantly from the approximately 385 submissions that had been received at the time of the first public hearing in February.

Approximately 43 per cent of the public submissions received to date relate to personal financial dealings, totalling 806 of the 1894 submissions received. Of those submissions, 228 or 28 per cent have come from New South Wales. 204 or 25 per cent have come from Victoria and 175 or 22 per cent have come from Queensland.

5 Of the 806 submissions relating to personal financial dealings, 88 per cent described conduct that was considered to be misconduct or conduct falling below community standards and expectations. 29 per cent of the submissions related to the culture or governance practices of organisations, and 38 per cent related to the effectiveness of redress for consumers. Within those 806 submissions the most frequently raised

10 issues concerned consumer lending matters such as home loans and mortgage broking, credit cards, consumer banking, personal loans, and car loans. We make some observations about the public submissions in relation to home loans and credit cards in particular.

15 In relation to home loans, some Australians have expressed concerns about both financial services entities and brokers falsifying documents to obscure the true circumstances of consumers in order to obtain larger loans for the consumer. Their submissions relay concerns that the consumer is then left in a precarious position of

20 paying off a loan that should not have been approved for that consumer in the first place. Some Australians have expressed concerns that financial services entities and brokers intentionally neglect to ask for all relevant documents relating to a consumer's income, so that they avoid proper verification processes. Some Australians have expressed concerns about financial services entities unilaterally changing the terms of home loan contracts without consulting the consumer.

25 Concerns have been expressed that at times the consumer may be expected to make increased repayments at short notice as a result of these changes.

In relation to credit cards, a number of themes have emerged. One commonly identified issue is the dangers of granting credit card pre-approvals to consumers

30 without verifying their financial situation. Some Australians express concerns that consumers who are already struggling to make credit card repayments are offered credit card limit increases without the means of making repayments. Australians have also raised issues about credit card providers failing to act in the best interests of the consumer. One specific example identified is the situation in which those

35 entities offer consumers a credit card where a personal loan would have been more appropriate to their circumstances.

Australians have also referred to concerns about the fees associated with credit cards, including international transaction fees. Many of the themes identified by consumers

40 in their submissions to the Commission website are consistent with those raised by peak consumer bodies in their submissions to the Commission. The Consumer Action Law Centre, based in Melbourne, identified a number of trends through its work directly with consumers. In relation to home lending, Consumer Action observed a lack of appropriate inquiries being made by financial services entities as

45 to the suitability of loans. They observed the use of benchmarking when undertaking affordability assessments, such as the Henderson Poverty Index or the household

expenditure measure. They also observed systemic issues with brokers failing to recommend the most appropriate loans.

5 In relation to credit cards, Consumer Action observed financial services entities  
failing to properly assess the ability of an individual to make credit card repayments.  
They observed offers of increases or balance transfers without assessing individuals'  
financial situations, hiding of the true cost of credit cards through teasers such as low  
annual fees, interest-free periods, balance transfers and rewards schemes, and  
10 providing unsolicited offers of credit via loopholes. Consumer Action noted that in  
December last year 31 per cent of callers to its financial counselling service had  
issues with credit card debt.

15 In relation to car finance, Consumer Action told us that car problems accounted for  
20.7 per cent of all calls made to its legal practice and nearly 30 per cent of these  
related to car loans and repossessions. Consumer Action identified what it  
considered to be systemic, irresponsible lending in the car finance industry,  
particularly to low income and disadvantaged consumers. Consumer Action also  
observed financial services entities having little or no contact with customers as a  
result of broker intermediaries. Consumer Action also told us about the prevalence  
20 of low value, unsuitable, add-on insurance sold in car dealerships.

25 The themes identified by the Financial Rights Legal Centre, based in Sydney, were  
similar. We will shortly hear evidence from the coordinator of the Financial Rights  
Legal Centre, Ms Karen Cox, in relation to the issues that consumers report to it  
in relation to consumer lending. The submission to the Commission from Choice  
largely focused upon misconduct and conduct falling short of community standards  
and expectations in relation to home lending. Choice's submission identified a  
number of key themes. In relation to brokers, Choice raised concerns about the lack  
of disclosure of broker commissions, the incentive structure of broker commissions,  
30 and brokers potentially providing unlicensed financial advice.

35 More generally, Choice referred to concerns about interest-only loans and add-on  
insurance products, and particularly in the home loan setting, the lenders mortgage  
insurance product. In relation to credit cards, Choice identified issues associated  
with unsolicited offers of credit and issues associated with what it termed unfair or  
improperly disclosed credit card fees, including fees on overseas transactions.  
Choice also raised concerns about consumers being denied low cost personal loans  
and instead being offered higher cost credit cards.

40 In relation to car finance, Choice expressed concerns about breaches of responsible  
lending obligations, particularly to young people on low incomes. Choice also  
referred to concerns about an overreliance on benchmarking to assess capacity to  
repay. And concerns about excessive fees. In the case studies that will be presented  
over the next two weeks a number of these themes will be observed. We turn to the  
45 submissions provided to the Commission by the two principal external dispute  
resolution bodies currently operating in the consumer lending area. These are the

Financial Ombudsman Service and the Credit Industry Ombudsman [erratum: Credit and Investments Ombudsman].

5 We start with the Financial Ombudsman Service or FOS as it is known, whose members include each of the ADIs which are the subject of the case studies to be explored in these hearings. FOS told the Commission that in 2016 to 2017 it received 18,525 disputes in relation to credit. It noted that most of these disputes related to consumer credit products such as home loans, credit cards and personal loans. FOS also reported that it had seen increases in disputes about responsible  
10 lending over the years, and that responsible lending continued to be one of the key issues in disputes about financial service providers' decisions.

The Credit Industry Ombudsman [erratum: Credit and Investments Ombudsman], whose members include non-bank lenders and mortgage brokers, also made  
15 submissions to the Commission concerning misconduct in consumer lending. The Credit Industry Ombudsman [erratum: Credit and Investments Ombudsman] noted that since January 2008 it had made 12 systemic issues findings and 15 serious misconduct findings in relation to mortgage brokers. The most common issues identified by the Credit Industry Ombudsman [erratum: Credit and Investments  
20 Ombudsman] related to responsible lending, issues relating to fees, and collection processes and poor complaint-handling processes.

We turn to some more detail about the work of Australian regulators, particularly the work of ASIC in connection with consumer lending. As we have already noted,  
25 ASIC is the key consumer regulator providing oversight and enforcement in relation to credit providers and credit service providers. An understanding of ASICs work in this area and where that work has been concentrated provides some insight into the types of misconduct engaged in by those entities in the past, and how prevalent those practices may be. Since the global financial crisis ASIC has undertaken work  
30 focused on ensuring better compliance from lenders and brokers with their responsible lending obligations as well as reducing the extent to which consumers are sold consumer credit products that do not meet their needs.

ASICs recent work in enforcing compliance with the National Credit Act has  
35 included obtaining enforceable undertakings from consumer credit providers and finance brokers, exercising its administrative powers to cancel licences or ban persons from providing services in the industry, and taking court action. ASIC has commenced civil penalty proceedings alleging breaches of responsible lending obligations in relation to home loans and car loans, and has worked with the  
40 Commonwealth Director of Public Prosecutions to institute criminal prosecutions for fraud committed by mortgage brokers.

A recent example of a relevant civil penalty proceeding commenced by ASIC is the proceeding it has commenced in the Federal Court last year against Westpac,  
45 concerning Westpac's use of benchmarks in assessing a potential borrower's expenditure as part of a suitability assessment in a home loan application. This proceeding is important to the Commission's work, because it will consider whether

the use of a benchmark called the Household Expenditure Measure, instead of the actual living expenses declared by a potential borrower, is permissible under the National Credit Act. Use of this benchmark will be examined in some of the case studies in these hearings, and requires careful consideration.

5

Other examples of relevant litigation brought by ASIC are the Cash Store and Channic cases, which led to two of the only judgments to consider the responsible lending obligations in the National Credit Act. As well as the litigation that ASIC has recently concluded against ANZ in relation to its car finance arm, Esanda. The Esanda proceeding resulted in a penalty of \$5 million being paid by ANZ for contraventions of the responsible lending provisions of the National Credit Act, in respect of 12 car loans which were approved without reasonable steps being taken to verify the borrower's income. A recent example of a relevant criminal proceeding is the criminal prosecutions commenced in response to the large-scale fraud in respect of home loans arranged by Mira Home Loans.

ASIC has also been involved in monitoring and surveillance activities. One example of this work is the home loan shadow shopping exercise that ASIC is conducting this year which seeks a better understanding of the process experienced by a consumer when using a broker or through a lender. ASIC has also made recommendations to financial services entities in respect of the verification of borrowers' financial information, and the assessment of borrowers' suitability for home loans. Recommendations such as these often follow reviews by ASIC into what is happening in the market. ASIC has undertaken a number of recent reviews of interest to the Commission, into mortgage broker remuneration, consumer experiences with credit insurance policies, and the practices of the largest credit providers and brokers in respect of interest-only home loans.

ASIC is continuing to conduct reviews into home lending practices. The second stage of ASICs review into interest-only home lending will also be published later this year. ASICs findings in these reviews may be published before the completion of the Commission's inquiries and will be of relevance to the work of the Commission. Less common than these streams of work are ASICs acts of regulatory intervention in the consumer lending market. A recent example of this is the legislative instrument issued by ASIC to formally ban flex commissions in the car finance market, after it found that flex commissions were leading consumers to pay excessive interest rates on car loans.

ASIC also exercises its administrative powers to impose conditions on ADIs who are licensees. As a result of recent legislative amendments ASIC will soon also be able to take direct action to intervene in the sale of products, including credit products where it identifies a risk of significant consumer detriment. ASIC works cooperatively with APRA in relation to consumer lending regulation. As the prudential regulator of the Australian financial services industry, APRA's work on consumer lending is conducted through its focus on the prudential safety and soundness of ADIs, and the stability of the Australian financial system. Although the Commission's terms of reference do not require the Commission to consider macro

prudential policy and regulation, APRA's research and learnings in this area provide insight into the lending practices of ADIs, and whether these might depart from expected standards.

5 APRA has been particularly concerned to ensure sound residential mortgage lending practices and has been monitoring trends in this area for some time. In 2014 APRA wrote to all ADIs outlining a range of measures to reinforce sound residential mortgage lending practices. This was followed up with a letter in March 2017 which identified specific risks. APRA has recently made recommendations that ADIs adopt  
10 measures such as limiting investor lending growth, and limiting new interest-only lending. APRA is also conducting a targeted review in respect of residential mortgage lending and serviceability assessments by ADIs, which is of interest to the Commission.

15 In August 2017, APRA announced a prudential inquiry to examine the frameworks and practices in relation to the governance, culture and accountability within the CBA Group. APRA released the inquiry's progress report on 1 February this year, which indicated that the panel's substantive findings and recommendations for  
20 inclusion in the final report will be provided to APRA by 30 April this year. The findings in the final report will also be of interest to the Commission. The ACCC, the Australian Competition and Consumer Commissioner, is another regulator that has also undertaken work in respect of credit providers and intermediaries. As the regulator of competition across all industries, the ACCC has commenced  
25 proceedings against financial services entities for misleading or deceptive conduct, including in respect of the marketing of home loans and credit cards. The ACCC will soon also report on the pricing of residential mortgage products by the five banks affected by the major bank levy.

30 We turn to the information provided to us by financial services entities about whether their own conduct has constituted misconduct or conduct falling below community standards and expectations. On the day after the Letters Patent issued, you, Commissioner, wrote to a number of entities in the financial services industry and related representative bodies and asked them to address a number of questions. You invited each of these entities to identify any misconduct they had engaged in or any  
35 conduct falling below community standards and expectations since 1 January 2008. You drew attention to the definition of misconduct in the Commission's terms of reference, which includes conduct that constitutes an offence against a Commonwealth, state or territory law as in force at the time of the alleged  
40 misconduct, conduct that is misleading or deceptive or both, conduct that is a breach of trust, a breach of duty, or unconscionable conduct, or conduct that breaches a professional standard or a recognised and widely adopted benchmark for conduct.

45 After receiving responses to these letters in January, you, Commissioner, wrote to a number of the entities again and asked them to provide more specific information about instances of misconduct in the last five years. The approaches taken by the entities to responding to your questions differed. Some entities made significant efforts to provide considered and thorough responses to your questions. Other

entities took a less comprehensive approach. It is worthwhile to impart some of the detail of the responses from the six entities which are the subject of case studies in the first round of hearings. In doing so we will refer to many events of actual misconduct or conduct falling below community standards and expectations that have been acknowledged by these six entities. It should be noted that many of these acknowledged events of misconduct or conduct falling below community standards and expectations, affected very large numbers of consumers, in some cases thousands or hundreds of thousands of consumers. And the event may have extended over the course of a number of years.

We will deal with the responses from the six entities in alphabetical order. We start with ANZ. ANZ provided two submissions to the Commission in which it acknowledged that it had engaged in misconduct and conduct falling short of community standards expectations relating to home loans, credit cards, processing errors and car finance. ANZ acknowledged that in the last five years there were at least 20 events of misconduct or conduct falling below community standards and expectations in relation to home lending and residential mortgages. It acknowledged at least nine events of misconduct or conduct falling below community standards and expectations in relation to credit cards, including the lack of disclosure of overseas transaction fees in the terms and conditions of consumer credit card products.

It acknowledged at least seven events of misconduct or conduct falling below community standards and expectations in relation to car loans and car finance, including failures to take reasonable steps to verify income stated in car finance applications. It acknowledged at least 22 events of more generalised misconduct and conduct falling below community standards and expectations in connection with consumer lending, including customers being charged incorrect fees or interest amounts, customers accessing inflated redraw balances and redrawing amounts in excess of the amount of principal they paid in advance, and failures to send hardship notices to applicable customers within the 21 day period required by the National Credit Code.

We provide some further details of a few of the examples of conduct acknowledged by ANZ. First, in the 2015 to 2016 industry-wide review into interest-only home loans, ASIC, after calling for a sample of 25 customer files from ANZ, queried whether ANZ had made genuine inquiries into customers' living expenses. ANZ recognised that there were instances where it lacked evidence to show that genuine inquiries had been made, but it did not accept that it had not made those inquiries. Second, between 2003 and July 2013, some ANZ home loan customers were charged a higher interest rate than they should have been according to the terms and conditions of their loan contracts. In addition, some offset accounts were not properly linked to home loans, resulting in customers being charged excess interest. This affected approximately 400,000 customer accounts, and ANZ ultimately refunded customers approximately \$69.3 million.

ANZ has also identified other home loan processing or administration errors. These issues will be examined further in one of the case studies in these hearings. Third,

ANZ acknowledged that between 2009 and February 2016 there were inconsistencies between interest rates contained in customers' original letters of offer for certain commercial credit cards and those charged by ANZ systems to some customers. This affected 52,135 customer accounts, and customers were ultimately refunded approximately \$10.4 million last year.

Fourth, ANZ identified a number of issues relating to the Esanda dealer finance portfolio which was owned by ANZ until April 2016. Between 2011 and 2014 a car finance broker had arranged loans for customers which did not meet Esanda's lending criteria by writing the application in the name of an individual who did not own or have possession of the vehicle, but who agreed to guarantee the loan. ANZ accepted that the systems that Esanda had in place at the time were ineffective to detect this and therefore failed to meet community standards and expectations. ANZ has also accepted, in the recent litigation brought by ASIC to which we have referred, that it failed to take reasonable steps to verify the income figures in relation to 12 car finance applications introduced to Esanda by third party intermediaries. We will return to this later in this opening address.

Fifth, between November 2014 and January 2015 ANZ issued a series of mail-outs to a group of existing customers offering them an overdraft facility with limits of \$500, or \$1000, in circumstances where ANZ had failed to make inquiries about the maximum credit limit required by the customer. In February 2016 ASIC issued five infringement notices totalling \$212,500 for these alleged failures. Again, we will return to this later in this opening address. Finally, ANZ acknowledged that in the last seven years approximately 120 cases had been brought against it in FOS that related to consumer and small business responsible lending issues. Approximately 50 of these cases were decided against ANZ.

We turn to Aussie Home Loans. Aussie Home Loans is a wholly owned subsidiary of CBA, however, Commissioner, you chose to write to Aussie Home Loans separately from CBA and to provide Aussie Home Loans with a 50-page limit to explain any misconduct or conduct that fell below community standards and expectations that it had engaged in over the last 10 years. Aussie Home Loans chose not to provide its own separate response to your letter. Instead, Aussie Home Loans chose to include its response within the response of CBA. The portion of CBAs submission that contained the response from Aussie Home Loans was brief. It consisted of eight paragraphs, each of which was in the part of CBAs submission that was directed not to misconduct, but to conduct that had fallen below community standards and expectations. Aussie Home Loans acknowledged no misconduct in the last 10 years.

Could the Commission be shown document ID RCD.001.0003.0004. Commissioner, this is CBAs response dated 29 January 2018 to your first letter. Could we turn to .0034 in that document. Commissioner, you will see there the paragraphs of the CBAs submission that related to Aussie Home Loans commencing at 3.6. Is it possible to expand that part of the document? Thank you. As can be seen, CBA told you, Commissioner, in paragraph 172 that Aussie Home Loans had not identified any

systemic misconduct or any systemic practice, behaviour or business activity falling below community standards and expectations engaged in by Aussie or on its behalf during the relevant period but it provides the following information about issues it has identified.

5

The relevant period, I pause to say, is the 10-year period. CBA advised that Aussie Home Loans had identified a number of so-called issues, which included at 173 isolated and unauthorised incidents of conduct issues and some technical breaches of the law in relation to the credit assistance services provided by Aussie Brokers and in  
10 interactions between employees and Aussie Brokers. CBA also said that there had been isolated issues which required customer remediation in relation to Aussie's white label products. White label products will be discussed in the course of these hearings. A white label loan is a loan offered by a particular lender such as CBA, which is sold to the consumer under a different brand, such as the Aussie Home  
15 Loans brand.

If we could turn to the next page in that document at paragraph 174. Commissioner, you will see at 174 CBA provided examples of the nature of isolated and unauthorised conduct issues that Aussie had identified, including former brokers  
20 using customer information and seeking to contact Aussie customers in contravention of their contractual and privacy obligations; provision or facilitation by brokers of false or misleading information and false declarations from customers in the process of applying for loans; behavioural conduct, such as offensive or otherwise unprofessional behaviour directed towards or amongst employees and/or  
25 brokers. And Aussie had also identified some minor system or process errors resulting in incorrect calculation of interest, fees or charges by the credit providers on Aussie White Label products and a small number of self-identified contraventions of the National Credit Act.

30 In response to a second letter from you, Commissioner – and we can take that document down now, thank you – CBA provided a spreadsheet outlining instances of misconduct identified by Aussie Home Loans over the last five years. This spreadsheet referred to at least seven events in relation to breaches of responsible lending obligations, two further events in relation to brokers failing to provide credit  
35 products in line with a customer's requirements or requests, and eight further events in relation to other types of misconduct in respect of home loan applications, including falsification of documents.

40 We turn to Citibank. Citibank acknowledged that the complaints it received from customers predominantly related to product features including rewards points, the timeliness of its processing of applications for products and approved credit limits. Citibank acknowledge six events of misconduct or conduct falling below community standards and expectations in relation to credit cards and loan accounts. Citibank did not distinguish between these two categories in its submission.

45

The conduct acknowledged by Citibank was, in summary, as follows. First, Citibank did not consistently apply all the requirements of ASICs ePayment code relating to

certain transactions on customers' accounts that were disputed by customers, which led to improper treatment of some of those transactions. Second, in 2016 ASIC identified that Citibank needed to improve its disclosures to customers so as to convey more clearly why purchases from particular retailers, which may not have an obvious foreign connection, were subject to international transaction fees. We will return to this event later in this opening address.

Third, in 2017 Citibank recognised that it had not been actively refunding credit balances on closed credit card and loan accounts to all customers, contrary to the account terms and conditions. Fourth, Citibank acknowledged that customer contact for the purpose of debt collections was a category in which misconduct or conduct falling short of community expectations may have arisen over the years.

Fifth, Citibank acknowledged that in the course of assisting customers experiencing financial hardship, when the subject of debt collections, their conduct may have involved misconduct or conduct falling short of community expectations, including because of excessive time taken to assess customer applications for hardship review. Sixth, Citibank acknowledged that in 2015 it had listed a number of customers who had entered into hardship arrangements or had complaints in progress as being in default, incorrectly and inappropriately.

We turn to CBA. CBA provided two submissions to the Commission. CBAs first submission adopted a high level and general approach, which meant that it did not disclose the totality of the conduct that it has engaged in in relation to consumer lending over the last 10 years that constitutes misconduct or conduct that falls below community standards or expectations, as a number of other entities have done.

In its first submission, CBA acknowledged that it had engaged in misconduct in limited respects. First, CBA acknowledged that it had been involved in legal proceedings in which an adverse comment or finding had been made against one or more of the entities of the group. Second, CBA acknowledged that ASIC had issued infringement notices and penalties to CBA entities. These included four infringement notices, totalling \$180,000 in 2016, in relation to breaches of responsible lending laws when providing personal overdraft facilities. Further detail on this event was provided in CBAs second submission, dated 13 February 2018. We will return to this event later in this opening address.

Third, CBA acknowledged that it had engaged in misconduct in late 2011 or early 2012 in its approach to seeking consent from credit card customers to receive credit limit increases, which resulted in CBA giving an enforceable undertaking to ASIC. Fourth, CBA acknowledged that it had remediated customers in respect of product administration and disclosure, credit decisions and responsible lending, systems controls and processes failures, sales practices and fraud or misconduct. CBAs submission does not allow us to determine whether the remediation programs in relation to some of these categories of conduct pertain to consumer credit products.

5 CBAs first submission also acknowledged that it had engaged in conduct falling below communicate standards and expectations in relation to add-on insurance, responsible lending and offers of credit. In relation to add-on insurance, CBA acknowledged that approximately 65,000 of its customers had purchased CreditCard Plus insurance in circumstances where they may not have met the employment eligibility criteria in the product terms and therefore may not have been able to claim certain benefits under the policy. CBA acknowledged that refunds of approximately \$10 million, including interest, had been made to those customers as at the date of the 29 January 2018 submission. This was described by CBA not as misconduct, but as conduct falling below community standards and expectations.

15 CBA also acknowledged that a further 20,000 consumers had purchased their loan protection product, another insurance product sold in connection with a home or personal loan, in circumstances where they may also not have met the employment eligibility criteria to claim benefits under the policy. CBA indicated that its investigation into this conduct was at an early stage, but that it estimated that approximately \$3.4 million of refunds would need to be made to consumers. Again, this conduct was not described by CBA as misconduct, but as conduct falling below community standards and expectations. We will return to CBAs conduct in connection with CreditCard Plus insurance and loan protection product insurance later in this opening address.

25 In relation to responsible lending, CBA also described what it referred to as operational incidents that it said had impacted upon its responsible lending practices, including in relation to inaccuracies in calculations, insufficient documentation and verification, failure to correctly follow scripting, employee and third party misconduct and deficiencies in controls around manual loan approval processing. Again, these events were not categorised by CBA as misconduct, but, rather, as conduct that had fallen below community standards and expectations.

30 In relation to unsolicited offers of credit, CBA referred to a further event in 2014 relating to a failure to correctly follow scripts when processing credit limit increases. Further detail was provided on this issue in CBAs second submission of 13 February 2018.

35 Much of the information provided by CBA in its second submission was not in a form which made it possible to easily understand the type and the scale of CBAs misconduct events over the past five years. CBAs principal contribution in this regard was to produce a large volume of spreadsheets, containing “all details of compliance incidents” that had been logged since 1 January 2013 in circumstances where compliance incidents were defined to include an actual, suspected, potential, likely, or imminent contravention or breach of a compliance obligation. The volume of material provided made it difficult to assess in meaningful way the type and scale of CBAs misconduct.

45 We turn to National Australia Bank or NAB. NAB provided two submissions to the Commission in which it acknowledged it had engaged in misconduct and conduct

falling below community standards and expectations in relation to home lending, credit cards, personal loans and processing or administration errors. In relation to home lending, NAB acknowledged the following misconduct: first, misconduct in connection with NABs introducer program, which we will return to later in this opening address. NAB has identified approximately 2480 customers to date who may have been impacted by this misconduct. And investigations were said to be ongoing.

Second, NAB acknowledged misconduct in the advertising of variable interest rates in October 2014, when NAB incorrectly advertised that it was offering the lowest standard variable rate for more than five years, a statement which should have been qualified to make clear that it was only correct insofar as it applied to rates offered by the four major banks.

Third, NAB acknowledged offset account failures, whereby it overcharged interest on certain home loans in the period between 2010 and 2017, because it had not linked some offset accounts to broker-originated home loans. This resulted in approximately 178,000 customers overpaying interest on their home loans.

Fourth, NAB provided examples of conduct that it considered to fall below community standards and expectation in relation to home lending. These included an acknowledgment that prior to June 2013 NAB may not have been carrying out further inquiries into the declared living expenses of home loan applicants when the declared expenses were below the relevant benchmark used by NAB to assess home applications. The examples also included an acknowledgment that NAB had identified an issue in relation to UBank, a division of NABs, UBank's offer of a \$2014 EFTPOS gift card to customers who took out a home loan with UBank in a four month period between December 2013 and March 2014. ASIC had raised concerns that some details of UBank's offer were not disclosed in some of the advertisements or were not disclosed in a clear and ..... manner.

In relation to credit cards and for personal loans, NAB acknowledged that it had engaged in misconduct between 2008 and 2013, arising from the erroneous recording of 16,288 credit defaults against customers with NAB credit cards or personal loan accounts. NAB noted that some of this conduct also involved contraventions of the Privacy Act.

In relation to credit cards, NAB acknowledged that it had engaged in conduct that fell below community standards and expectations. I provide two examples. First, NAB employees had deviated from NABs policies and processes by failing to contact credit card customers to confirm their needs and objectives, or to make it clear that they were not obliged to accept a NAB credit card. The number of customers potentially impacted was 215, and the number confirmed to have been impacted by NAB was 18.

Second, between February and May 2009, NAB migrated customers with NAB Gold Reward accounts to NAB Qantas Gold accounts and sent these customers an

American Express credit card without being requested by the customers. The number of customers affected by this conduct was not disclosed by NAB.

5 In addition, NAB acknowledged processing or administration errors in relation to consumer lending during the relevant period. For example, NAB acknowledged that on 24 November 2010 and 15 April 2011 two separate failures of the customer account processing systems occurred, with the 2011 incident resulting in approximately 70,000 customers not receiving expected payments into their accounts. NAB also acknowledged that between 2007 and 2010 customers with  
10 NAB Visa debit cards were being incorrectly charged reference or overdraft fees, resulting in approximately \$1.8 million in fees being refunded.

NABs second submission elaborated on a number of aspects of its first submission mission and provided some further detail. However, the submission did not grapple  
15 with the task set by you, Commissioner, to provide comprehensive information about instances of misconduct, including instances of possible misconduct still under investigation of which the bank had become aware at any time since 1 January 2013.

Finally, we turn to Westpac. Westpac made two submissions to the Commission and  
20 late last week Westpac informed the Commission that the information it had provided did not take account of some categories of data and that further acknowledgments may be provided. Last night, Westpac confirmed that it had additional material that it will be producing.

25 Westpac acknowledged that it has a number of brands, including St George Bank, Bank of Melbourne and RAMS that cater to consumers. In the submissions that have currently been provided to the Commission, Westpac has acknowledged that across these brands it has engaged in actual or potential misconduct and conduct falling below community standards and expectations relating to home lending, credit cards,  
30 car loans, add-on insurance, processing or administration errors and unsolicited offers of credit.

In relation to home lending, Westpac acknowledged that it is currently the subject of  
35 ASIC enforcement action in relation to alleged breaches of responsible lending obligations. ASIC alleges that Westpac failed to properly assess whether borrower could meet their repayment obligations before entering into home loan contracts. Westpac is defending the proceedings.

Westpac also acknowledged that in 2016 it identified that some of its authorised  
40 home lending bankers were not correctly completing customer income and expense verification activities at the point of sale. Westpac also acknowledged that over a seven-year period customers with Westpac, St George, Bank of South Australia and Bank of Melbourne did not receive benefits for which they were eligible in relation to a home loan package they held. Approximately 175,000 Westpac customers were  
45 affected. The number of affected customers with St George, Bank of South Australia and Bank of Melbourne is still to be determined.

In the context of credit cards, Westpac acknowledged that approximately 6600 accounts may have been affected between 2012 and 2014 by an automated approval process that did not adequately take income and employment factors into account. Westpac also acknowledged that it had applied higher interest rates to credit cards than required by an enforceable undertaking Westpac had given to ASIC. This issue affected 67,000 customers between 2012 and 2015.

In relation to car loans, Westpac identified issues relating to the unsuitable sale of insurance and the use of flex commissions, which, as Westpac noted, ASIC considered could operate unfairly by providing an incentive for intermediaries to increase the price of a credit contract to a consumer. Westpac acknowledged that processing failures resulted in approximately 69,000 home loan customers being required to pay more interest over the life of their loan, because their interest-only loan was not switched to principal interest and fees, at the conclusion of the agreed interest only term. Remediation to customers is expected to cost Westpac \$11 million.

Westpac also acknowledged that 133,000 accounts held by customers under the age of 21 did not have the correct fee waivers applied to their accounts, and a further 28,000 St George accounts were also affected. A total of \$9.2 million has been remediated to customers.

More broadly, Westpac acknowledged a number of events of misconduct in relation to home lending. In one instance Westpac approved a loan referral from a third party broker for a home loan of over \$529,000 to an 80 year old man who spoke poor English. A credit card debt approved at the same time was later written off. Westpac acknowledged at least 16 events of misconduct or conduct falling below community standards and expectations in relation to processing or administration errors for home loans and credit cards. It acknowledged at least 12 events of misconduct or conduct falling below community standards and expectations in relation to credit cards, including a practice of proactively selling credit cards with limits exceeding the levels advised under lending policy rules to clients over the phone.

Westpac acknowledged at least four events of misconduct or conduct falling below community standards and expectations in relation to car loans, primarily comprising breaches of the responsible lending obligations. It acknowledged at least three events of misconduct or conduct falling short of community standards and expectations in relation to add-on insurance products.

It acknowledged at least two events of misconduct or conduct falling short of community standards in relation to unsolicited offers of credit, including a message sent by Westpac to at least 3700 customers that was deemed by ASIC to be misleading, creating the impression that a customer had to consent to receive invitations for credit limit increases in order to receive the full benefits of their credit card. We will return to Westpac's practices in relation to car loans and in relation to credit card limit increases later in this opening address.

The types of misconduct and conduct falling below community standards and expectations that have been acknowledged by these six entities are not unique to these entities. The Commission received acknowledgments of similar misconduct and conduct falling below community standards and expectations from a number of  
5 other banks and broking entities which provided submissions in response to the Commissioner's invitations. The consumer lending conduct that will be examined in these hearings, therefore, represents only a part of the consumer lending misconduct and conduct falling below community standards and expectations that has been acknowledged to the Commission.

10 We turn, finally, to the case studies which are to be explored in this first round of hearings. A list of the case studies was published on the Commission's website approximately two weeks ago. The order of the case studies listed on the Commission website was indicative only and further timing will be published on the  
15 Commission's website throughout the week.

The first case study concerns NAB and its discovery in late 2015 of misconduct by a number of bankers who had arranged home loans through the NAB Introducer Program. Introducers are persons who introduce potential home loan applicants to a  
20 bank in exchange for a commission. Unlike brokers, they are not required to be licensed or regulated by the National Credit Act. The Introducer Program was extremely profitable for NAB during the period when the misconduct occurred, bringing in over \$24 billion in home loans from 2013 to 2016.

25 The misconduct of the bankers was varied. NAB discovered falsified loan documents, dishonest application of customers' signatures on forms approving introducers' commissions and provision of unsuitable loans. 60 bankers, including branch managers, were involved. Over 20 were dismissed or left NAB. The breadth of the misconduct, both in the number of bankers and loans and the number of years  
30 over which the misconduct occurred, warranted further exploration in these hearings.

The second case study concerns CBAs accreditation of and relationships with mortgage brokers. Last year, CBA revoked the accreditation of numerous mortgage  
35 brokers who were previously accredited to submit home loan applications to CBA. This case study ties in with the next one, which concerns Aussie Home Loans. Aussie is a well-known mortgage broking entity, with over 1000 brokers operating throughout Australia. Aussie, as we have noted, is a wholly owned subsidiary of CBA and comes within CBAs governance framework.

40 This case study will look at Aussie's structures and processes, in particular, in the context of misconduct by four former Aussie mortgage brokers found to have engaged in fraudulent conduct in submitting home loan applications. The number of complaints received by the Commission about mortgage brokers, both from  
45 consumers and consumer bodies, as well as the recent work of ASIC in relation to broker remuneration, make this case study appropriate for examination in these hearings.

We will also examine a case study that concerns the sale by CBA of two types of consumer credit insurance to which we have already referred. As we have said, the first type of insurance, CreditCard Plus insurance, was sold to approximately 64,000 people, who were unable to make claims under all parts of the insurance policies that they had been sold, because they did not meet the necessary employment criteria to do so.

The second type of insurance, lone protection product, home and personal loan insurance, involved a similar defect. We will hear evidence from a purchaser of one of these add-on insurance products. CBAs practices in respect of these products warranted further examination in these hearings, particularly given the large number of customers affected and the significant period over which the issues with these two products occurred.

We will then turn to case studies associated with administrative errors, including in respect of credit products. Two of these relate to account administration errors, one by CBA and one by ANZ. The CBA case study concerns a programming error in the automated serviceability calculator used by CBA to assess applications for personal overdrafts. As a result of the error, between 2011 and 2015 CBA failed to take into consideration the declared housing and living expenses of some consumers, instead substituting a zero figure of a low benchmark for those expenses.

CBA paid four infringement notices, totalling \$180,000, in relation to this conduct, and also informed ASIC that it would write off a total of around \$2.5 million in overdraft balances. The ANZ case study concerns ANZs assured overdraft facility, and breaches of the National Credit Act in connection with that facility. Between November 2014 and January 2015, ANZ issued a series of mail-outs to a group of existing customers offering those customers a pre-approved overdraft facility with pre-selected limits. ASIC issued five infringement notices to ANZ, in respect of this conduct, totalling \$212,000. Both these case studies raise important questions about responsible lending.

These types of processing errors are further explored through an additional case study examining ANZs large-scale remediation programs for five distinct processing errors. The errors related to various home loan accounts, including the Breakfree home loan product, failures to link offset and home loan accounts, errors with interest rate margin accounts, margin discounts not being applied to home loan accounts, and failures to link offset accounts to eligible retail home loans.

ANZ has undertaken a number of customer remediation programs in respect of inadvertent system process and human failures in its Australian division, including those the subject of this case study. These customer remediation programs have totalled more than \$74 million.

The Commission will also examine two case studies that concern the practices of car finance companies which are also associated entities of two of the major of banks, Westpac and ANZ . Given the point of sale exemption and the complaints of

customers in respect of car finance, the need for further explanation of car finance intermediaries and credit providers made these case studies a logical choice.

5 Westpac provides car finance under the brand names of St George and Bank of  
Melbourne and those loans are typically received via dealer intermediaries. We will  
hear evidence of a borrower and her experience of obtaining finance through an  
intermediary. The second case study in relation to car loans concerns Esanda  
Finance, which was owned by ANZ. As we have noted, ASIC has recently secured  
10 penalties in respect of breaches of the National Credit Act for lack of verification of  
borrowers' payslips. And this case study will look more broadly at the practices of  
Esanda in assessing and verifying loans through intermediaries.

We will also explore case studies dealing with credit cards and offers for increases to  
15 credit card limits. We will hear evidence about Westpac's approval of credit card  
limit increases in breach of the National Credit Act. Westpac recently completed a  
remediation program in respect of 3400 customer accounts, with a total of \$11.3  
million being refunded to consumers. We will also explore the incentive and  
remuneration programs of Westpac and CBA in respect of employees at those banks  
who are involved in the sale and marketing of credit card products.

20 The final case study involves Citibank's failure to properly disclose international  
transaction fees in respect of Australian Dollar transactions on credit cards. Those  
fees arose where the merchant used afternoon overseas-based bank or entity to  
process its transactions. In 2017, Citibank refunded approximately \$5 million to  
25 around 223,000 credit card consumers. As with many case studies we have spoken  
of, this case study will be a useful example from which to consider the adequacy of  
entities' responses to consumer harm and whether internal processes and practices  
are in keeping with communicate standards and expectations.

30 The case studies we will examine in these hearings raise a number of common  
themes and questions for consideration. These include the following: first, was the  
misconduct in question attributable to a particular culture, system, or practice within  
the entity, including, in particular, in relation to remuneration, incentive or  
commission arrangements? Second, why did the misconduct go undetected and in  
35 some instances for a long period of time? Third, were the entities' processes  
adequate to prevent and detect the misconduct? And, fourth, did the entity respond  
in a timely and sufficient way to the misconduct?

40 Some case studies will present an opportunity to consider each of these questions,  
while others may present only a few. Over the course of the next two weeks,  
evidence will also be presented from a number of members of the public who will  
share their consumer lending experiences. The individuals who will give evidence  
include a home loan customer who has experienced financial hardship, a purchaser of  
unsuitable add-on credit card insurance, a car loan customer who experienced  
45 hardship after taking on a car loan, and a consumer with various credit cards and  
debts.

Each of these individuals has a complaint about the conduct of a particular financial services entity. Their stories will give practical insight into the significant impact that misconduct and conduct departing from community standards and expectations can have on the lives of consumers. Commissioner, that concludes the opening address.

THE COMMISSIONER: Thank you very much, Ms Orr. We might adjourn until 12 noon to allow counsel to reorder their papers. 12 noon.

10 **ADJOURNED** [11.19 am]

15 **RESUMED** [12.01 pm]

THE COMMISSIONER: Do sit down. Ms Orr.

MS ORR: If the Commission pleases, I call Ms Karen Cox.

20 THE COMMISSIONER: Ms Cox, will you go into the witness box, thank you.

25 <**KAREN COX, AFFIRMED** [12.02 pm]

<**EXAMINATION-IN-CHIEF BY MS ORR**

30 THE COMMISSIONER: Thank you very much, Ms Cox. Do sit down. Yes, Ms Orr.

MS ORR: Ms Cox, Could you please state your full name?---Karen Margaret Cox.

35 Could you please state your occupation?---I am the coordinator of the Financial Rights Legal Centre.

And your address?---Level 1, 72-80 Cooper Street Surrey Hills, Sydney.

40 Ms Cox, have you received a summons to attend and give evidence at this Commission?---Yes, I have.

Do you have that summons there with you?---Yes, I do.

45 I tender that document, Commissioner.

THE COMMISSIONER: Thank you. Exhibit 1.1, summons to Karen Margaret Cox.

5 **EXHIBIT #1.1 SUMMONS TO KAREN MARGARET COX**

THE COMMISSIONER: Yes.

10 MS ORR: Have you made a statement to this Royal Commission dated 10 March 2018?---Yes, I have.

Do you have the original of that statement there with you?---Yes, I do.

15 Are the contents of that statement true and correct?---Yes, but I would like to make one small correction.

Yes. Could you please tell us about the correction that you wish to make?---Yes. In the section in relation to credit cards – sorry, I’m just having trouble finding the exact place.

20 Credit cards commence at paragraph 44 of the statement, Ms Cox?---Thank you. Yes, it’s paragraph 46 (b) and it’s talking about new legislation that might address this problem. But I have said in the statement there is a real risk that the period over which the capacity to pay must be assessed is too low, and, in fact, what I meant to say it is too high.

30 So the word “low”, as it appears in the second-last line of paragraph 46 (b) should be replaced with the word “high”?---That’s correct.

Do you have a pen there, Ms Cox?---Yes, I do.

Could I ask that you make amendment to the statement, please.

35 THE COMMISSIONER: Would you mind initialling it, Ms Cox?---Yes, I have.

Old habits die very hard, I’m afraid.

40 MS ORR: If the Commission pleases, I tender Ms Cox’s statement dated - - -

THE COMMISSIONER: Exhibit 1.2, statement of Karen Margaret Cox.

45 **EXHIBIT #1.2 STATEMENT OF KAREN MARGARET COX**

THE COMMISSIONER: Yes.

MS ORR: Ms Cox, you are the coordinator of the Financial Rights Legal Centre?---Yes, I am.

Where is the Financial Rights Legal Centre based?---It's in Sydney.

5

How long have you been the coordinator of the Financial Rights Legal Centre?---Since 2002. So approximately 16 years

10 Could you explain your professional background, please?---Yes. I am a solicitor by training. I have worked in community legal centres since 1991. I – at the Consumer Credit Legal Centre, I – as the Financial Rights Legal Centre it used to be called, I was initially a solicitor and educator and then I took over as the coordinator in 2002. My current role involves giving guidance and advice to our current financial counselling solicitor staff about the calls they receive on the phone and the case work  
15 they undertake. I'm also involved in settling or writing submissions to government and industry in relation to issues that we identify. I am involved on many committees and working groups in relation to reform and industry initiatives. I give comment in the media, commission a small amount of research and help to draft and supervise resources produced by the centre for financial councillors.

20

Ms Cox, I might ask you just to raise your voice a little if you can. Could you explain just a little bit about the history of the Financial Rights Legal Centre?---Yes. The Financial Rights Legal Centre, which began as the Consumer Credit Legal Centre, commenced in about 1987 through a need identified by general legal centres  
25 like Redfern Legal Centre for specific advice in relation to consumer credit because of a lot of cases that they were seeing. Over the years, the centre has grown and taken on other roles. We now employ solicitors and financial councillors because we recognise a lot of people have both legal and non-legal needs in relation to their finances. We also now advise in relation to a broad range of issues, like banking  
30 problems, other debts like electricity, debt management firms, early access to superannuation and, importantly, insurance. In 2014 we changed our name to the Financial Rights Legal Centre to reflect that broader remit.

35 Could you explain to the Commission the sorts of services that the Financial Rights Legal Centre provides to consumers?---Our key services are our advice lines. So we run three advice lines, the biggest and busiest advice line is the New South Wales answer point for the national debt helpline. The national debt helpline operates across the country, it is staffed by financial counsellors in every state and territory but in New South Wales, Victoria and the ACT they are also solicitor available to  
40 give legal advice to those callers. People call that line when they are struggling with their finances, and specifically when they have received some sort of default notice from a lender or from a utility provider. We also operate an insurance law service which is a national helpline for consumers who are in dispute with an insurance company. 75 per cent of callers to that line are struggling with a claim on their  
45 insurance, and the rest are being pursued by insurance companies for debts. Our third and most recently started line is the Aboriginal Advice Service, and that

operates across Australia as well and gives advice to Indigenous people, in relation to credit debt, banking and insurance.

5 What can you tell this Commission about the demographic of people who call the  
national debt helpline?---Certainly. We get callers from across, you know, all  
demographics and all age groups. The biggest number of callers come in the 35 to  
54 age group, but we also get a significant number of callers both older and younger  
than that. Our case work, which is chosen from callers on the basis of need basically,  
because we have a very strict intake criteria, tends to be an older cohort. So the 45 to  
10 65 present the largest number and there is a significant number of people over 65  
now in our clientele as well. The background of those people, they are  
predominantly low and middle income people, for callers ..... notes about 33 per cent  
are on Centrelink, so the case work that we take on about 56 per cent of people are in  
receipt of Centrelink benefits. The Indigenous callers represent around three per cent  
15 of callers, but close to 30 per cent of case work now, and we also have probably  
about 10 per cent of case work are people from non-English speaking backgrounds.

Approximately how many calls for assistance did the Financial Rights Legal Centre  
take in the 2016 to '17 financial year?---Just under 25,000 and around 17 to 17,500  
20 of those were to the national debt helpline.

Are they related to credit issues?---Largely to credit issues.

25 Yes. And do you get repeat callers to the national debt helpline?---We certainly do.  
We encourage people to call us back. Predominately callers are single one-off calls,  
but there is a small minority who will call us two, three, even up to 20 times. We  
can't obviously take on everybody to provide case work assistance, so what we try to  
do is that those people who we think are able to self advocate we give them advice  
on the next step, which might be to contact the hardship division of the credit  
30 provider and have a talk to them and then to call us back and to do that repeatedly  
throughout the process while they try to settle their dispute.

And of the individuals who call for advice or assistance, what proportion of those do  
you take on a case work basis?---Only two to three per cent.  
35

And what is the nature of the case work assistance that you provide to that two to  
three per cent?---That can vary enormously. For some people we might assist them  
to do one thing, like lodge a complaint with the Financial Ombudsman Service if  
we're talking to someone over the phone and they have an urgent problem that needs  
40 to be lodged with the Ombudsman and we feel that they don't have the capacity to do  
that, either because of their literacy levels or their levels of stress at the time they call  
us, then we may simply help them to do that over the phone and then leave them to  
deal with the matter with the credit provider and the Ombudsman. In other cases we  
will do more, we might negotiate with a whole range of creditors for a person, we  
45 may end up lodging a number of disputes in both the Financial Ombudsman and the  
Credit Industry Ombudsman and Investments Ombudsman. Or in very rare cases we  
might actually run a matter through the courts.

And the staff of the Financial Rights Legal Centre are solicitors and financial councillors primarily; is that right?---That's correct.

5 And how many solicitors do you have?---Somewhere between 10 and 12 solicitors.

And how many financial councillors?---Eight or nine.

10 Thank you. And Does the Financial Rights Legal Centre work with or consult with other consumer organisations?---We certainly do. We work very closely with the Consumer Action Law Centre here in Victoria, who run the Victorian branch of the national debt helpline, and also do a lot of similar work. We work very closely with Financial Counselling Australia, the peak body for financial counsellors across the country. We also work with the Legal Aid Commissions, particularly in our case New South Wales and Queensland, and we work with Choice and other independent  
15 community legal centres across the country.

20 In your statement you have referred to issues that the financial rights legal centre has identified relating to consumer credit issues. Can I ask you to explain firstly something about the experiences that consumers report to the financial rights legal centre in relation to home loans?---Certainly. We speak to well in excess of a thousand people every year about their home loan. Most people call us in the first instance because they are struggling to pay and we will only find out more about the actual loan and how it was initiated if we agree to take those people on and give them further help. When we do take cases on, and give people further help, we have  
25 identified a number of troubling issues. The first issue I think that's worth mentioning this across home loans, all home loans, no matter how – what channel they have been initiated through, it's a lack of questions and verification about expenditure. Whereas the income side of things is often done quite well, the expenditure side not so well. We tend to find very broad questions about expenditure that aren't broken down a lot, and the impression we get from talking to people and  
30 to looking at the very little information we get from credit providers, when we ask for copies of their assessment, is that it looks much more likely that a benchmark has been used than they looked at the consumer's actual expenditure. Which can vary considerably from a benchmark figure. There is also very little evidence that  
35 expenditure has actually been verified in any way. We find consumers are actually very poor at even assessing their own expenditure, and unless we take them to documents, like their bills and their bank statements to look at what the actual amounts are.

40 Can you explain to the Commission why it is important that a customer's expenditure be accurately recorded in a home loan application?---Certainly. I mean, in order to tell whether someone can afford a loan you need to look at both sides of the equation, just looking at their income won't tell you the full story at all. You really need to see what a person's expenses are to determine to what extent they are able to afford to  
45 keep up with that loan without substantial hardship.

That was the first issue I think that you wanted to raise in connection to - - -?---That was the first issue. The other issue that come up, across the board, is people who have been granted interest only loans. So we noticed this just from calls, not even from the case work that we've done. So in the last two to three years an increasing  
5 number of people who have called us about hardship happen to be on interest only loans. When we inquire as to why they are on an interest only loan, there's often no obvious explanation, it's not an investment property, it's just a standard home loan that someone has used to purchase a home or to refinance. And the reason they are calling us is often because they have been seeking a hardship variation because of  
10 some temporary glitch, like a loss of a job or temporary illness, and they want their lender to vary their payments and the lender is reluctant to do so because they are already only just covering the interest on the loan, which means that if they drop their payments they will move into a negative equity situation very quickly.

15 What does that mean, "a negative equity situation"?---It basically means that their house will be worth less than their loan.

So you've referred to issues in connection with the use of benchmarks, particularly in relation to customers expenditure issues in connection with the granting of interest  
20 only home loans, are there any other issues that you observe when you look at the cases that are reported to you in relation to home loans?---To home loans specifically, a little concerned about the size of buffers that are being applied if at all. People seem to have quite tight circumstances for borrowing, which is a worry in a very benign interest rate environment where we all know that sooner or later interest  
25 rates will go up. So we're very concerned that bigger problems are going to emerge down the track. We've also seen isolated cases of just really inappropriate lending not necessarily involving brokers, because I will move to brokers in a minute and they are some very strange anomalies. Like a woman who would go in who is, say, 72, looking for a \$30,000 loan to do repairs to her home, the loan is rejected in the  
30 first instance because she has got no way of paying it back. Quite a legitimate decision. And then inexplicably the loan is granted and it is for \$70,000 and it's a bridging loan, and when we inquire with the bank as to why that has occurred, no satisfactory explanation can be provided. So we do see some isolated incidents of that sort of thing, but it's not terribly common except for with broker initiated loans.

35 And what do you see in relation to broker initiated loans?---We see a range of problems in relation to broker initiated loans. Those problems involve people being upsold. So people going in with a fairly conservative idea of what they think they can borrow, and being assured that they can borrow more than that, and then either  
40 purchasing a property or refinancing into a situation where they have a larger loan than we would have thought was necessary, which generates a higher commission for the broker but can cause hardship for the borrower. The other situation we see is people who are steered into either more expensive loans or loans with more expensive features than they actually require, and sometimes those features are  
45 things that we think are actually harmful for the person. So a line of credit loan, for instance, is a dangerous and risky product. We see people sold loans where we don't see any reason for why it should have been granted as a line of credit as opposed to a

principle interest loan. We see situations where brokers choose the lender according to their perceived laxity of their credit assessment processes because they think they can push it through that particular lender, we see consumers pushed into loans where they are under the impression it was meant to be the best loan available but it was really only one of a very narrow range of lenders that the broker dealt with. At the worst end of the spectrum we see consumers details being massaged or even completely falsified by brokers. We have also seen isolated cases of out-and-out abuse where a – often a member of an elderly person’s family will deal with the broker to obtain a loan that is secured over an elderly parents’ home and the broker may meet the elderly person once briefly, or not at all. And yet they are the main – you know, their home is at risk.

Are there any other issues that you would like to refer to in connection with mortgage brokers? I seen that in your statement you have listed a number of issues in connection with mortgage brokers in paragraph 32. I will just ask to you look at that and see if you have covered the issues?---I think I have covered most of that. I mean, in relation to co-borrowers, it’s an increasing problem. As I said we see it in relation to elderly borrows, being signed up as co-borrowers for children, sometimes that’s done in a very straightforward way in which it’s parents who are knowingly – assisting a child to buy a home, but in other cases it’s just outright exploitative and there are situations where the elderly person has been left in dire circumstances as a result of a loan for which they have seen absolutely no benefit.

Are you able to say what proportion of the people who come to you with issues about home loans are reporting issues in connection with mortgage brokers?---Look, it’s really hard for me to estimate that, but I would say that the larger proportion of problematic home loans we see have been initiated through brokers, and that we see people much more likely to be in trouble on broker initiated loans.

All right. Could I move on then to issues that are reported to you by consumers in connection with car loans. Could you explain to the Commission what the Financial Rights Legal Centre sees in that area?---Absolutely. We see a lot of problems in the car loan market. People buying cars through car dealerships, and sometimes even through brokers who advertise online or through other media and then connect them with the car dealership. Those problems are endemic. I think we’re picking up one every couple of weeks at the moment. When we talk to our colleagues around the country, and financial counselling and credit legal services they are all seeing very similar types of problems in the car loan market. Now, those problems don’t always involve the banks or their subsidiaries, but sometimes they do. The problems are – there’s some very similar themes. So responsible lending, we see more failures of responsible lending in the car loan market than in just about any other segment that we see. We see more instances of outright falsified loan applications in the car loan market. We see – in the very low income bracket we see people who are going in to purchase a car who are sold a car worth 5000 or \$6000 who may then be sold add-on products that literally double the size of that loan. So that they will walk out of there with, you know, a \$5000 car but a 10, 11, \$12,000 loan because of all the add-ones and will be paying somewhere between 38 and 48 per cent of on the whole thing.

You are referring there to the interest rate?---I'm referring to the interest rate, yeah, which will apply to both, obviously, the size of the car purchase and the add-on products that are financed into the loan. For – in other cases where it's slightly less egregious, then you have got, still, consistently, the sale of add-on products that we  
5 don't think are particularly useful to the consumer and that inflate the size of loans. So a recent one we saw is \$25,000 car, with \$9000 worth of add-on.

I'm sorry, how many thousand dollars worth of - - -?---9,000 - - -

10 A twenty-five?--- - - - worth of add on products on a \$25,000 car. So the add-on products do apply across the board, even to the more expensive cars. We are seeing a lot of people who are going in with their – the intention of buying a 15 to \$20,000 car who are then very effectively upsold, so that they walk out with a 40 or \$60,000 car that they can't really afford to buy, after some fairly heavy sales tactics, possibly  
15 hours spent in the dealership, often with add-on products, as well. We are also seeing what looks like churn or upselling of people who are wanting ..... that still has finance on it and that loan is refinanced into a new and bigger loan, and then the customer walks away with a car loan that is significantly larger than the value of the car, which is a depreciating asset in the first place.

20 Are you aware of the point of sale exemption in the National Credit Regulations?---I am very aware of the point of sale exemption. We – we find the point of sale exemption a serious concern. The cars that are sold through the dealerships, there is a clear incentive, for the people selling those cars, both to get a sale and to upsell  
25 people to increase the size of the commission and to, obviously, earn commissions on the add-on products, as well. And they don't seem to take any responsibility for the sustainability of that loan for the consumer. It is really about the sale on the day. The point of sale exemption also comes up in cases we're seeing through department stores. So a lot of store credit is leading to people with unsustainable credit card  
30 debt, because a lot of those cards now just operate as credit card – like any other credit card, where you can it across a wide range of goods and services after the initial purchase. And, commonly, people go in and purchase a fairly modest item. It could be like a bed for \$1200, and then they walk out of there with a \$16,000 credit card – credit card limit. They probably bought the bed on a generous interest-free  
35 deal, 24 to 50 months interest free, but the two interest rate on the card that they will revert to if they don't pay it off within that time or if they make other purchases, can be 20 something per cent or higher. A lot of customers who have come to us in trouble have actually started out with a fairly modest purchase that has ballooned into a very big debt. And the marketing by those companies to encourage people to take  
40 up that additional credit once they have been granted it is quite effective.

Are there any other issues that you would like to refer to that you see from people who contact the Financial Rights Legal Centre in connection with car loans? If it assists, Ms Cox, you deal with this at paragraphs 39 through to 43 of your  
45 statement?---I think I have covered most of that. I think the only other point I would make is that the oversight of the dealerships by lenders has historically seen to be very poor.

Could we move, then, to the issues that are - - -?---Sorry – actually - - -

I'm sorry. Yes. Go on?---I did just remember one thing. And that's I just wanted to emphasise it is not just the dealer finance that's the problem. Often there is a broker  
5 either located at the caryard or nearby ..... deals with the consumer directly online  
involved and those cases can be equally problematic. It's that type of case where we  
will see something like a person will go online, put in their genuine details, such as  
that they are a Centrelink recipient, sole parent and be approved. And then when  
10 they turn up to the dealership accompanied by the broker there will be a whole fake  
identity in terms of a job that they don't have, don't know anything about, fake  
payslips that are generated by the broker and that they are reassured that this is the  
way it is done and it's all fine.

Can I move on, then, to the issues - - -?---Yes.  
15

- - - that the Financial Rights Legal Centre sees in relation to credit cards. What can  
you tell us about what consumers report to you there?---Credit cards is the number  
one cause of calls to the National Debt Helpline. In the whole time I have worked at  
Financial Rights Legal Centre, credit cards has been the number one issue, with the  
20 exception of about three years around the Global Financial Crisis when home loans  
became the biggest concern for a short time. In most of those cases those people also  
had credit card debt, but their home loan had become their main concern. We talk to  
consumers every day of the week who are carrying unsustainable credit card debt.  
It's quite frightening how much credit card debt is out there and how many peoples'  
25 lives are currently affected by it. In terms of how people got into that position, we  
have seen a number of systemic issues over the years. The first issue with credit  
cards is that people have routinely been given additional credit in circumstances  
where they couldn't necessarily pay the credit they already had. The way that was  
done is that peoples' eligibility for a credit limit increase was often assessed on the  
30 basis of their repayments to the existing card. So if I was a good payer on my \$5000  
card, I would be offered an increased to 8000 or 10,000 or 12,000 and that could  
happen numerous times. Sometimes I might apply for that increase, but more often  
than not those increases were actually offered as almost a reward to say you're a  
great payer. Have a little bit more credit. Don't feel you need it now. You may as  
35 well take it just in case. So that has the effect of putting people into the situation  
where they have credit limits that are way beyond what then can easily repay.  
Because of the fact I'm a good payer on \$5000 does not mean I can pay \$20,000.  
And it was for a long time the common practice not to actually update peoples'  
income details to find out whether they actually had the income capacity to service  
40 that larger debt, let alone look at their expenses. And we certainly saw cases over the  
years where the declared income on the initial credit card application was clearly  
insufficient to service the high amounts of credit that were granted. Those problems  
have become less in very recent years, due to the responsible lending laws and ASIC.  
So it has become less common not to actually ask for updated income details. But it  
45 was routine for a very long time. And I think some providers were slower than  
others to take it up, to introduce new steps. And some of the early steps they  
introduced included things like tick a box saying you can actually afford this, which

achieves absolutely nothing. It certainly didn't comply with responsible lending obligations. The other problem we see in relation to credit cards is, even when a credit assessment is done, it's commonly done on the person's ability to meet the minimum repayment on the credit card, and not to pay off the credit over what we  
5 would call a reasonable time. If I go and purchase a pair of jeans after this hearing today, I don't want to be paying interest on them for the next 10 years and yet we are seeing people carrying credit card debt for 10 years or more, simply because they can't get on top of the debt. If you assess people at only being able to make the minimum payment or not much above that, then that is all they will be able to make.  
10 And if people miss payments, then there will be significant fees added in terms of late fees and over limit fees, to the point where sometimes the majority of the payment that the person is making is going towards interest and fees and they're making very little inroad into the actual debt that they owe. Third problem that we see in that area is related to that. And that is that when someone applies for a  
15 subsequent card or a subsequent credit account of any sort, then the lender may only look at their minimum payment obligations on their existing card and treat all of the other income as available to meet the new contract, which would mean, even if the first one had been assessed in a different way, they would potentially be in trouble once they had granted – additional credit granted. Another problem is that people  
20 just accumulate multiple cards, which can be attributable to a number of things, from a failure to declare the existing cards through to the failure to ask sufficient questions about them. Another huge problem that we're seeing is in relation to people accepting balance transfer offers. So there are very attractive balance transfer offers out there, certainly have been over recent years, where people can pay zero per cent or something – you know, very, very low rates – on their card debt if they transfer it  
25 to another provider. And that offer will last for, say, 12 months or 18 months and then it reverts to a more standard credit interest rate. I mean, one of the problems with those is we think that lenders actually compete on the teaser rates, as opposed to the underlying rate, in a lot of circumstances, but the really big problem for the  
30 clients that we see is they accept those offer, they transfer their debt, because they see it as a lifeline to try to get on top of a debt they're not managing, but they're not required to close the original card. Now, they may sit on that card with the best of intentions for a year or two, or even more, but sooner or later something will happen in their life to create financial stress and then they will use the original card, which  
35 will mean that they run up another debt and they just accumulate debts, so that what was meant to be a refinance to get them out of trouble just gets them deeper and deeper into trouble.

In your statement, Ms Cox, you refer to the interaction between credit card debt and  
40 home lending. Can you explain that to the Commission?---Yes, certainly. We have seen many, many cases where consumers have refinanced their credit card debts into their home loan as a way of saving money. In the short term it's a good theory. Certainly people can reduce the interest payable on that amount. In the long term they pay it off over a much longer period, if they stretch it on to their entire home  
45 loan. But the biggest problem is that people don't address the underlying issues, and they may then run up further credit card debt. And that can be a refinanced again to the point where the home loan itself is unsustainable. We spoke to a fellow just in

the last month who had refinanced \$100,000 in credit card debt on to his home loan, the home loan had been moved to a second tier lender, basically, at a higher interest rate. So the result of that transaction is that what was a \$1700 repayments is now \$2,800 repayments. And that family is very likely to lose their home, because they simply can't afford it. And there are questions there about the responsible lending of that later transaction, about how someone accumulated \$100,000 in credit card debts in the first place. But it's the sort of interaction between the two types of credit that we see fairly regularly. We assisted a couple a few years ago who had actually been granted a credit card by the same lender as they had their home loan with, which is not uncommon. They got into trouble on the credit card and it was refinanced into the home loan. And then they were granted additional credit by the same lender. And I think that may have happened a couple of times before we got involved and said, No, this just isn't working. We need to unpick all of this and try to get these people back to a sustainable position.

Are there any other issues that you would like to raise that you see from consumers in connection with credit cards?---The amount of debt that people are carrying means that they are repaying their purchases many, many times over. So people will incur a – you know, a credit – they will take out a credit card, they will run it slowly over time up to the limit and then they will just sit at that limit making relatively small payments for many, many, many years. We spoke to an elderly woman recently who maintains she has been paying the same \$1000 off since the 90s. We have certainly assisted people where they are now being sued by a debt collector for a credit card debt and they're claiming, you know, 10 or 20,000 now. And we look at what they initially borrowed, what they got the benefit of and how much they have paid back. Having used \$21,000 worth of credit, paid back \$26000, and now being sued for yet another 10 or \$12,000 is not uncommon. It is just very, very expensive credit when you look at it over time. It also leaves people extremely vulnerable. If I take out a personal loan and I pay it back within four to five years, then the chances that I will fall ill or lose my job in that time are a lot less than if I carry credit card debt for decades. Sooner or later something is going to go wrong.

You refer in your statement to the use of automated systems in connection with credit cards. Can you tell us about what you see there?---Yes. Certainly. I mean, I think a huge amount of lending now is done – the decision-making is done through automated systems. And quite often when we will get someone's paperwork from a bank or another credit provider to look at what has happened in terms of the credit decision, there will be stuff on the face of the application that is clearly inconsistent where a human, if they looked at it, would have raised queries and, yet, these things are not picked up by the automated system. I mean, an obvious example, but I know there are others, someone who has correctly stated they're on a Centrelink income, they have correctly stated the amount, but they've ticked the wrong box as to the frequency at which they receive that income, so it looks like it's much higher. But if you were, you know, to look at it and ..... Centrelink, that's way too high. It's not the correct amount. So I think there are problems using solely automated systems.

Could we move on to what consumers report to the Financial Rights Legal Centre in connection with insurance add-ons. You've already made observations about what you've seen in the car loan area. What else can you tell us about what consumers report with add-on insurance issues?---Probably the biggest thing consumers report is that it's kind of the opposite. They don't report it at all. They don't even know they have a product. So we will talk to a lot of consumers where the first they know about the add-on product is where we look into their circumstances, because they're in hardship looking for options for them and go, "What's this premium? Oh, look, you have got consumer credit insurance. Is that something you can claim on? So we're seeing a lot of people who actually don't even realise they have an add-on product which is a concern in itself. Then we see people who know they have got it but felt they had no option but to purchase it. So where there were high pressure sales tactics involved in getting them to sign up for a product that they weren't particularly looking for or interested in at the time. The next lot of issues we come across and that's often with that first group who didn't even know they had it is when we look into it and look to see if they can make a claim. More often than not they are not eligible to claim on the product. So the reasons for that would be because they were unemployed when they got the loan in the first place, because they worked less than the number of hours per week that the product required them to be working in order to be able to make a successful claim. A common one these days is that people are actually employed on contract rather than as full-time employees. And the product will say that unless you are – if you are a contract worker then you can't claim for unemployment at the end of that contract. People are simply unaware of all those limitations. The four – and pre-existing injuries will be the other one. The fourth area of concern is even for those people who can claim, we often find the benefits of the product are very limited. Occasionally there is a product that actually pays out the loan. That's a great result for that person but more often than not they only pay a fairly limited amount, the minimum repayment for a certain period of time. So we basically refer to it as junk insurance because the amount that is received on claims is fairly small compared to the amount that is paid in premiums by consumers across the board.

In your statement and also in the evidence you have given you have referred to high pressure sales tactics in connection with the sale of add-on insurance. Could you explain what sorts of high pressure sales tactics you see?---It's a range. It can be anything from just repeated phone calls, trying to suggest that people need a consumer credit insurance product, that it would be responsible of them to take a consumer credit insurance product; to the types of scenarios we see in car yards where people are literally held for a long period of time in the place where they are signing up for the loan and placed under a lot of pressure; to situations where it's implied people won't get the loan if they don't agree to the product. We have even seen situations where there is a higher charge or a different criteria applied where someone doesn't actually agree to purchase the product. Or more subtle but very effective things where they use something like a voucher that says "If you buy a couple of consumer credit products today you will get \$500 off the premium". And when people say they don't want to buy, then there is a big show of saying, "Well you are going to void your \$500 voucher." People go, "It's \$500, I should use my

\$500 voucher” when in fact it’s elusory. It is not an amount they were intending to spend and we would say it is not an amount that is worth spending.

5 Do you see the add-on product costs built into the loan itself?---The add-on cost is always financed into the loan. So one of the biggest problems we are finding, particularly in the car yard market, is that personal loans – it is also a problem – is that someone will go in and take out a loan and they probably could afford the loan itself for just the product they want to buy. They are then sold a whole lot of supposedly risk management products which then ironically take the loan to the point  
10 where they can’t afford the repayments. So they fall over on the loan because of the risk management products.

15 Is there anything further that you would like to tell the Commission about what’s reported to you in connection with the sale of add-on insurance – and I will just note for your assistance that you deal with this in paragraphs 55 to 69 of your statement?---Look, I guess the only thing to add is that the problems with responsible lending then flow on into the add-on sales portion of the sales particularly in the car yard markets. So that the person’s ability to afford those products is not properly  
20 assessed.

20 You’ve told us, Ms Cox, about what consumers report to your centre in relation to home loans, car loans, credit cards and add-on insurance products. What can you tell the Commission about the impact on consumers of those issues that are reported to you?---Look, in terms of the add-on products then clearly consumers are spending a  
25 lot of money on products that are of very limited value to them and that is a worry in itself. But as I have stated, often the add-on product may be the straw that broke the camel’s back and so that the people are unable to retain the car because they couldn’t afford all the add-on insurance that been financed into the loan with interest added to it. The result of that coupled with problems with responsible lending in the car loan  
30 market is simply that people who purchase a car often need that car. They need it to go to work, they need it to take kids around. Sometimes they have disabled kids or other dependents that they need to transport around and buying a car that they can’t actually afford and retain means that they then lose that car and they are back into the same position they were of being stuck without transport but with an enormous cost  
35 because quite often where cars are repossessed there they are sold and there is a significant residual debt which just adds stress. In the home loan market, obviously, a poor choice of home loan can cost people tens of thousands of dollars over the life of the loan. Now, that is money that could otherwise be spent on a better lifestyle, on better savings, on investment for the future, and pursuing other goals. In  
40 circumstances where people end up with home loans that they really can’t afford in the long term or particularly where they refinance or consolidate debts into their home loan and they ultimately lose the house, that is not only financially costly but heartbreaking for the people involved. Some people are single and can actually you know, look on it as simply money and maybe they can pick up the pieces and start  
45 again but for a lot of the people that we talk to, the loss of their home is very closely tied to family memories and aspirations and to their total sense of self-worth. So they see that as a major personal failure. And it’s very, very disruptive to family life,

often can mean moving to different suburbs or even out of town. Some people who have had home loans for a very long time who then get into trouble, particularly after some sort of debt consolidation will find they can't even rent for the same price as they were paying under the mortgage. So they may become homeless or forced to relocate into other regional locations. In the credit card market, is where we see I think the most insidious effects because it is a very long-term drain on people's finances. The credit card may initially allow people to consume consumer goods but in the long run it has precisely the opposite affect because people end up with all their money going towards interest and fees. They have very little left for essential living expense, for savings it's out of the question. Certainly building resilience to be able to meet unexpected expenses in the future becomes more difficult because of that debt that they are carrying. In some cases people end up bankrupt, which for some people is not an enormous thing, for others it is huge. And when you lose your home and all the equity that you have accumulated in it through bankruptcy over a credit card that may have begun as a very small purchase, it's a very sad situation to observe. The financial impacts are huge, but the non-financial impacts are possibly even worse. So that people who are in long term unsustainable debt experience stress. That stress then causes them to have physical ailments, to get sick. It causes strain on relationships. It causes family breakdown. It causes loss of productivity. It actually causes people to have deteriorating ability to make complex decisions because their thinking capacity is literally absorbed by dealing with the day-to-day stress of the debt. In some cases we see that people either are quite – or exacerbate mental illness as a result of dealing with debt, and suicide is threatened and occasionally people actually do commit suicide over their debts. So the non-financial impacts are absolutely enormous.

Thank you, Ms Cox. Those are the questions we have for Ms Cox, Commissioner.

THE COMMISSIONER: Before I adjourn, does any party having leave to appear seek leave to cross-examine Ms Cox? Then thank you, Ms Cox, for your evidence. It has been very helpful. You are excused further attendance.

<THE WITNESS WITHDREW [12.48 pm]

THE COMMISSIONER: I will adjourn until 2 o'clock and we will begin then with the witness from NAB; is that right, Ms Orr?

MS ORR: Yes, that is, Commissioner.

THE COMMISSIONER: Yes. 2 o'clock.

ADJOURNED [12.48 pm]

**RESUMED**

**[1.59 pm]**

5 THE COMMISSIONER: Yes, Ms Orr.

MS ORR: If the Commissioner pleases. I call Mr Anthony Waldron.

10 <ANTHONY JOHN WALDRON, SWORN

**[2.00 pm]**

<EXAMINATION-IN-CHIEF BY MS ORR

15 THE COMMISSIONER: Thanks, Mr Waldron. Please sit down. Yes, Ms Orr.

MS ORR: Mr Waldron, could you please state your full name?---Anthony John Waldron.

20 Your address?---700 Burke Street Melbourne.

Your occupation?---A banker.

25 Have you received a summons to attend and give evidence in this Royal Commission?---Yes, I have.

Do you have that summons there?---Yes, I do.

30 I tender the summons, Commissioner.

THE COMMISSIONER: Yes, exhibit 1.3. Summons to Anthony John Waldron.

35 **EXHIBIT #1.3 SUMMONS TO ANTHONY JOHN WALDRON**

MS ORR: Mr Waldron, have you made a statement to this Royal Commission dated 2 March 2018?---Yes, I have.

40 Do you have the original of that statement there?---Yes, I do.

I tender that statement, Commission.

45 THE COMMISSIONER: With or without its exhibits Ms Orr?

MS ORR: At the moment it is without its exhibits. We will come to the exhibits which I understand you have there as well.

THE COMMISSIONER: Yes. Exhibit 1.4, statement of Anthony John Waldron, 2 March 2018.

5 **EXHIBIT #1.4 STATEMENT OF ANTHONY JOHN WALDRON DATED  
02/03/2018**

10 MS ORR: Now, Mr Waldron, you do have the exhibits to your witness statement?---Yes, I believe so. They are at the counsel's table.

Now, Commissioner I'm tendering these exhibits as well. I understand that there is an application to be made by NAB in connection to these exhibits

15 THE COMMISSIONER: Why is there an application to be made by NAB about the exhibits, Ms Harris?

20 MS W. HARRIS QC: Your Honour, old habits die hard. I beg your pardon, Commissioner. Commissioner, you made a ruling with respect to redactions for confidentiality, and the exhibits which have been uploaded to the hearing book reflect that ruling. I became aware just before lunch that there are six sentences in the 308 exhibits in respect of which a claim for legal professional privilege is advanced.

25 THE COMMISSIONER: Ms Harris, this is most unsatisfactory. These things should have been dealt with out of court without everybody sitting here.

30 MS HARRIS: I accept that, Commissioner, and, as I say, I only became aware of it shortly before lunch.

THE COMMISSIONER: That is too late. Go on.

35 MS HARRIS: I accept that, Commissioner. What we propose is this: we have prepared – finalised the preparation of a short submission and statutory declaration which conforms with the practice guideline and the requirements of section 6AA. I'm afraid that copies of those documents are not in court. Might I - - -

40 THE COMMISSIONER: You may renew your application at 4 pm, Ms Harris. Go on, Ms Orr.

MS HARRIS: Thank you, Commissioner.

45 MS ORR: Mr Waldron, you are the executive general manager for broker partnerships at NAB?---That's correct, yes.

And you have been in that role since May 2013?---That's correct.

And you have been responsible for a program at NAB called the Introducer Program since October 2016?---Yes.

5 And you have been put forward by NAB as its witness for this Royal Commission on issues connected with misconduct by a number of NAB bankers in connection with the Introducer Program, during the period from 2013 to 2016?---Yes.

10 Now, an introducer is a person who refers someone to NAB as a prospective provider of credit to the person; is that correct?---Yes, as a customer, a potential customer to the organisation.

Yes. And how long has NAB had an Introducer Program?---I couldn't give you an exact start date, I'm sorry, but it would certainly through the last decade.

15 The last decade. And is the Introducer Program still operational?---Yes, it is.

How many introducers are currently in the program?---Around 1400.

20 And how many introducers were in the program during the period of the misconduct, to which I will come, from 2013 to 2016. Can you give an approximate number?---At its peak it would have been around about 8000.

25 And under the Introducer Program, NAB pays an introducer a commission for introducing a person to NAB for their lending requirements; is that right?---That's correct.

And the introducer only gets that commission if the loan is applied for and approved?---And drawn down, yes.

30 And drawn down. Thank you. And how is that commission to the introducer calculated?---It is calculated as a percentage of the amount drawn down.

35 And during the period of the misconduct, that we will come to from 2013 to 2016, for home loans is it correct that the introducer got .4 per cent of the approved limit for most NAB loan products as long as it was a new customer who was being brought across to NAB?---Generally, that is correct. There were variations in the amount of commission that were paid but generally that is correct, yes.

40 And if the customer was an existing NAB customer, then the introducer got .4 per cent of the total new lending to that customer; is that correct?---That's correct.

Yes. And in that case did the introducer not get anything if the total new lending did not exceed \$50,000?---That's correct.

45 Yes. Now, is the cost of that commission that NAB pays to the introducer, ultimately passed on to the consumer who enters into the credit contract with NAB?---Essentially, the interest rates that we publish are the same for all customers,

no matter where they are coming from, which channel. So it is absorbed as part of the total costs of NAB, and obviously total costs are passed through to customer. But it's not a specific cost that is – the customer incurs.

5 I just want to make sure I understand that. It's absorbed as part of the total cost to NAB?---Yes.

And the total costs are, you said, passed on to the customer?---Well, generally in all products that the total costs flow through.

10

Yes?---But there is not a specific cost for that commission to the customer.

But because the total cost is passed on, the customer does fund this commission that's paid by NAB to the introducer; is that right?---An individual customer does not fund it, no. It is – the commission is a per cent of that particular contract but it is just absorbed in the total cost base of NAB.

15

And then passed on to the customer. Am I misunderstanding?---Generally all costs of an institution like ours, plus margins, are passed through to customers.

20

I see. I see. The bulk of the introducers during this period from 2013 to 2016, were referring customers to NAB for home loans, residential lending, weren't they?---Yes, that's correct.

25 And is it still the case that introducers mostly refer customers to NAB for home loans?---Yes, that's correct.

The Introducer Program has been a very profitable program for NAB; is that right?---Generally, yes.

30

Yes. And you tell us that – in your statement you tell us that during the period from 2013 to 2016, when the misconduct occurred, 45,960 home loans approved by NAB were submitted through the Introducer Program. That's at paragraph 19 of your statement, Mr Waldron?---Yes, that is correct, yes.

35

And also in paragraph 19 of your statement you provide the Commission with a table which could be brought up – within paragraph 19. That tells us what the value of those loans were that came through introducers. The figures are there. So we see that the total value for 2013 to 2016 was in excess of \$24 billion; is that correct?---That's correct, yes.

40

Thank you. NAB tells its staff that the Introducer Program is an important and valuable part of its business, which brings in a significant portion of its home loan flow; is that right?---Yes.

45

Yes. And introducers can interact with NAB directly or through something called a National Referral Partner; is that right?---Yes, that's correct.

And a National Referral Partner is someone who aggregates referrals on behalf of individual introducers?---That's right. So they will have a number of introducers that they bring together and then come to you as an organisation, yes.

5 Yes. And in that instance, NAB pays the National Referral Partner a commission?---That's correct.

And how is that calculated? Is it on the same basis as we discussed before for introducers?---Yes, it's on the same basis but it is a higher number. Generally it is .6  
10 of a per cent.

Yes?---Plus GST.

And, again, is that only payable in respect of customers who make an application for  
15 a home loan, have that application approved and the funds are drawn down?---That's correct.

And is it only payable for existing customers, again, when the total new lending exceeds \$50,000?---Yes, that's right.  
20

So if – if the National Referral Partner refers someone to NAB for a home loan, an existing customer of NAB, that is less than that amount, there is no commission payable to them?---That's correct.

25 Right. Now, again, is the cost of the commission to the National Referral Partner, ultimately passed on to the consumer?---It's exactly the same as it is for the – when it's a direct introducer.

So it's, again, part of the total cost to NAB?---It's part of the total costs of NAB  
30 running its business, yes.

THE COMMISSIONER: Can I just get some idea of the total cost to NAB on those numbers? Do I take \$4 per thousand and apply it to that total sum as the total cost to NAB?---That is a – that's a good estimate, yes.  
35

Yes. You do the math for me?---So on that total amount, you're sort of around about \$60 million.

Yes.  
40

MS ORR: Does NAB still pay - - -

THE COMMISSIONER: 60, it's about 100, isn't it?---Of the 24 million?  
45 24 million, \$4?---Sorry, 24 billion, sorry.

Yes?---Sorry, I haven't done the maths in my head. I'm sorry, I was – yes.

Well, never trust a lawyer with a calculator, Mr Waldron?---Sorry, I think – yes.

Yes.

5 MS ORR: Does NAB still pay the individual introducer a commission when that introducer's contact has come through the National Referral Partner?---So it flows through the National Referral Partner to then go on to the actual introducer at the end of the day.

10 So NAB pays the National Referral Partner the commission and a portion of that commission goes to the introducer?---That's right. Yes.

Is that right. And do you know what rough proportion goes to the introducer?---That's a matter for the National Referral Partners, that they work that  
15 through.

Yes, I understand. Now, the National Referral Partners operate in much the same way as mortgage aggregator does with mortgage brokers in that they aggregate on behalf of introducers instead of brokers. Is that right?---To an extent, yes. There is  
20 very different services that are provided and different offers that are there because they are very different needs, etcetera, from an NCCP perspective, a Consumer Act perspective, Credit Act, in that – and a broker has obligations under NCCP where there is a specific carve out for introducers that means they can't do, really, anything, but provide you with a spot referrer phone number and the customer's details.

25 But at NAB, in this period from 2013 to 2016, a number of introducers were doing much more than that, weren't they?---There are some examples of that, yes.

Yes. Well, we will come to those. I want to take you to some of the paperwork that  
30 NAB has in relation to the Introducer Program?---Yes.

Things that the introducer is required to complete when they apply to enter the Introducer Program. Could I take you to NABs application form for introducers, which is at NAB.005.036.0223?---I'm sorry, what is the actual tab?  
35

For your benefit, Mr Waldron - - -?---Yes, thank you.

- - - in your statement it is tab 119 in volume 3. If you have volumes there, it is volume 3 of your statement?---Thank you.  
40

You will see it on the screen as well?---Yes, I've got it. I have found it. Thank you.

So this is NABs introducer application form as at November 2016?---Yes, that's right.  
45

Has the introducer application form changed since this time?---I believe there would have been some updates to this form, yes. But largely around the attestation which we are requiring introducers to make.

5 I'm sorry, largely around the?---Attestation so to attest that they understand their obligations.

The attestation?---Yes.

10 I'm sorry, I didn't hear you?---No problem.

So that they attest to what?---That they understand that their obligations under NCCP that they only are allowed to spot and refer.

15 Okay. And that wasn't in the form at this time?---I don't – sorry, I'm just looking at the form now, but I don't believe so. Not in the form itself

20 So the newer version of the form contains some text that tells the person filling out this form that all they can do is spot and refer?---Yes, and there is an attestation that we make the introducer go through and ensure that they understand their obligations, yes.

So they sign something to that effect in the form?---Yes, they do. Yes. Yes.

25 Okay. But at this time nothing like that in the form?---I don't believe so. We certainly had – it was certainly part of what were the other documents that were provided to them but I don't believe it was in the form at that particular point in time.

30 There is an acknowledgment on page 6 of this document at .0228. Is that the sort of attestation that you're talking about where the person applying to be an introducer acknowledges the five things listed there?---That's correct. There's just further information that we're requesting, yes.

35 Yes. So that been expanded - - -?---Yes.

- - - since this time - - -?---I believe so. Yes.

- - - in the way you've identified?---Yes.

40 Okay. Other than that, the form is in the same form?---I believe so, yes.

Could I ask to you look at page 3, which is at .0225. Do you see there section 4, Industry Accreditation?---Yes.

45 Continuing:

*Please fill in the section of the table below that relates to your industry and accreditation.*

?---Yes.

5

Now, the form envisages that introducers will come from a range of professions and occupations, such as financial planners, accountants, property developers, solicitors, builders, architects. Do you see all of those?---Yes, I do.

10

Yes. But the introducer involved in the misconduct that we will come to did not come from any of these industries, did they?---In the main, they did not, no.

Yes. Okay. And if we turn to page 4.0226, we see there section 6, which requires general declarations from the person applying to be an introducer?---Yes.

15

And if we move down to B, we see that the person has to tell NAB if they are currently or have previously been a mortgage broker?---That's correct. Yes.

20

And if they are a mortgage broker, if they tick "currently", they are not eligible for the NAB Introducer Program?---That's correct.

And that remains the case, that mortgage brokers are not permitted to participate in the Introducer Program?---For the purposes of residential lending, no.

25

Yes. Okay. Are they permitted to participate for other purposes?---Where there may be commercial lending, where that particular broker does not have that experience, then they may be able to introduce a loan to NAB as a – for commercial lending purposes.

30

I see. I see. So a residential mortgage broker could be part of the Introducer Program for something nothing to do with home loans, but not in connection with home loans?---That is correct is, yes.

35

I see. Okay?---And this is – there are changes in here. Historically, that was not the case. There were situations where they were able to act as introducers, but this had been changed at this point in time.

Yes. So by the time of the misconduct - - -?---This form.

40

Yes. But certainly by the time of November 2016, this was the situation?---That's correct.

Okay. And then, also on this page, if we pan down to D, 6D, we see that the form asks whether:

45

*Are you or any of the directors or partners referring opportunities under this arrangement involved in any investments or business dealing with any NAB employee?*

5 Does that remain part of the form?---Yes, it does.

And what happens if an introducer ticks, “Yes, I am involved in investments or business dealings with a NAB employee”?---We would generally see that as conflict of interest and we would not appoint the introducer.

10

You would generally see that - - -?---We would not appoint the introducer.

You would not appoint the introducer?---No.

15 And then at F:

*Within Australia and overseas, have you or any other directors, partners been reprimanded, disqualified, removed in relation to matters relating to your honesty, integrity or business conduct?*

20

What happens if the answer there is yes?---We would not appoint them as an introducer.

And could we go up to D:

25

*Do you or any directors or partners referring opportunities under this arrangement have a family or personal relationship with a NAB employee?*

30 What happens if the introducer ticks yes to that?---Generally, we would not appoint them as an introducer. You would want to make sure there is no connection with any banker that is specifically working around this particular area. So we would – there would be an investigation to explore that there was no conflict of interest.

35 So, in 2013 to 2016, were there systems in place that insured that when someone applying to be an introducer ticked, “Yes, I have a family or personal relationship with a NAB employee”, an investigation into that application was commenced?---So two things to probably point out there. First up, this is a form from 2016.

40 Yes. At the end of the period?---Yes, at the end - - -

Yes?--- - - - of that period. So it is different to earlier versions. The second component of that is as – as you know, there has, obviously, been control breakdowns throughout our process that meant there have been instances where there has been a conflict.

45

And do you know whether the people involved in conflict – the introducers involved in the conflict, do you know anything about how they - - -?---No, I do not.

- - - disclosed - - -?---No, I do not know about the individual cases.

Right. And you said this was different to the form as it previously was. Do I take  
5 from that that you mean that earlier in the period of misconduct these sorts of  
questions might not even have been in the form?---I couldn't tell you the exact  
format of the form previously to that, I'm sorry.

And you haven't provided in your statement any earlier versions of this application  
10 form?---No, I don't think we have, but we can.

Right. Okay. We know, don't we, that some of the introducers that were involved in  
the misconduct had very close relationships with certain NAB bankers, didn't  
they?---Yes.

15 Yes. Okay. So that's the application form. I want to take you to the written contract  
that introducers enter into with NAB as part of this program. That is  
NAB.005.039.003. Your volume 3, Mr Waldron, at tab 116. Now, you have that  
document, Mr Waldron?---Yes, I do. Thanks.

20 And this is a contract or agreement between an introducer and NAB?---Yes, that's  
right.

It does not appear to be dated. Are you able to tell us when this introducer  
25 agreement is from?---Just by looking at it, no, I'm sorry. I'm not able to tell you just  
off the exact date of this one. I'm sorry.

Is this the only introducer agreement that you've provided in your statement?---I  
believe so, yes.

30 And your statement also doesn't make clear the period that this Introducer agreement  
is from?---From memory, I don't believe so.

Can we assume that this is from the period from 2013 to 2016?---I'm sorry, I would  
35 have to check. I apologise, I would have to check.

Okay. So - - -

THE COMMISSIONER: Absent some explanation otherwise, Mr Waldron, you  
40 may take it that I will assume that what NAB produces is relevant documents, and  
the relevant document is a form of agreement that was current at the time of the  
conduct concerned. Do you understand me?---Yes, I do.

Very well.

45 MS ORR: And if it assists, Mr Waldron, I will point out to you that the question  
that was posed to you by the Royal Commission to which your statement related  
- - -?---Yes.

- - - is at page 8 of your statement, question 14. You were asked to summarise and exhibit the key documents governing the Introducer Program during the relevant period?---Yes. So I do believe it is the right one.

5 Thank you?---I just can't confirm that.

Thank you. Now, could I take you to .008 in this document. Do you have the doc ID numbers on your copy, Mr Waldron?---Yes, I do.

10 Yes. So that's now on the screen, as well. We can see that this contract between NAB and an introducer includes certain restrictions which are dealt with in clause 2.3?---Yes.

15 And in those restrictions we can see from subparagraph C that the introducer must not make any representations or recommendations or provide any advice to the applicant in relation to NAB, NAB products, whether a facility is likely to be approved or the basis upon which the facility may be approved or provided without NABs prior consent. Does that remain the position, that introducers are not permitted to do that?---That's correct.

20 Thank you. And if we look down to clause 2.3 subparagraph (E), the contract prohibited introducers from attempting or purporting to perform any act beyond their authority under the agreement or do any act not expressly authorised by the agreement relating to an applicant, and, in particular, must not do any act relating to  
25 credit assessment or to a property valuation, explain loan or security documentation, procure execution of loan or security documentation and accept any money on behalf of NAB. I will stop there. You can see they go on?---Yes.

30 Did that remain the case, too - - -?---Yes, it does.

- - - that introducers are not permitted to do these things?---Yes, that remains the case.

35 And in subclause (g):

*Introducers are prohibited orally or otherwise from representing themselves to an applicant or any party connected with the applicant as the agent of NAB.*

40 ?---That's correct.

That remains the case?---Yes.

45 Thank you. And these contractual clauses were not complied with by a number of the introducers involved in the misconduct. Do you agree with that?---Yes, I do.

Thank you. Okay. SO - - -

THE COMMISSIONER: Who, Mr Waldron, was the introducer acting for? The Introducer was paid by NAB. Is that right?---Yes, the introducer was paid by NAB. Yes.

5 Had to be approved by NAB?---Yes.

Okay. Who was the introducer acting for when the Introducer said, “John Henry Smith of 1 Smith Street, Smithfield wants to borrow 100,000 to buy Blackacre”?---In that case the Introducer should purely have been providing a referral to NAB for us to then do all the assessment of the loan ourselves and for all information to be provided to us directly. They should have just been providing, effectively, a name and contact details.

Who, if at all, do you think John Henry Smith of 1 Smith Street, Smithfield would have thought the introducer was acting for?---I’m not sure I can answer that question. I think that would have been dependent upon the customer.

Do you exclude the possibility that my mythical Mr Smith might have thought that the introducer was acting for NAB?---I don’t think I could exclude that, but in remembering that these people that are introducing the loan are well-known to the customer already for some other purpose that the customer knows that referrer for. So whether it be a solicitor or whether it be a financial planner or accountant or real estate agent, they would have been representing themselves to the customer in that way and for those services. And that is how they would have got to know the customer, through those services.

MS ORR: Well, that’s the way the scheme is intended to work, isn’t it, Mr Waldron?---Absolutely. That’s the way it’s intended to work.

30 But we see, and we will come to this, between 2013 and 2016 that’s not in fact the way the scheme did work in a number of instances?---There are cases that, as you say we will get to, where there has absolutely been a breakdown in this process.

The idea that underpins these sorts of clauses in this contract is that the introducer refers the potential customer to NAB and then leaves NAB to assist the customer with their lending needs and plays no further role in that process. Is that right?---That’s correct.

40 Yes. Introducers also received the document called the NAB Introducer Guide. Is that right?---Yes, they did.

Can I take to you that document that you’ve provided in your statement, which is NAB005.0680025, your volume 3 still, Mr Waldron, at tab 117. Now, is this a copy of the NAB Introducer Guide - - -?---Yes, it is.

45 - - - at some point during the period - - -?---Yes. Yes.

- - - from 2013 to 2016?---Yes.

And is this document – is there still a NAB Introducer Guide?---Yes, we still do have a guide. Yes.

5

And is the document in similar form to this document?---Similar format. Obviously, some updates as time goes on. But yes, in similar form.

10 What sorts of updates have been made to it?---Well, we have made considerable control changes around what we do. And, where practical, they will, obviously, be in the updated versions of any documents that we do to introducers.

But this is not a document about your controls; this is a document for the introducer?---Yes, that's correct. It is for the introducer but - - -

15

Yes?--- - - - it is just understanding – it's supposed to explain how things will work between the introducer, the customer and NAB. And so there is ongoing change to these types of documents over time.

20 So perhaps as we go through it, if you could identify any parts that you believe have been changed and how they've been changed. Are you able to do that?---I won't be able to give you exact changes that have occurred, I'm sorry.

25 Would you be able to talk about the general changes that have been made?---If there is anything there, yes.

Okay. So could we turn to the second page, .0026. And we see there clause 2.2:

30 *Referrals should be genuine introductions of third persons unrelated to you. You must not refer yourself or any agent who acts for or on your behalf or any other person that has not come to you through your primary business activities without written approval.*

Is also included in there?---Yes.

35

So “referrals are to be genuine introductions of third persons unrelated to you”. What does that mean?---So that you are actually bringing likely customers to NAB; they are not people who are just purely related to your business. This is not designed to be a principal business for someone. This is supposed to be a secondary business where there is a value to the customer in looking at a loan and that that person then be passed on or referred to NAB.

40

Could we move to clause 2.3:

45 *You should not initiate or encourage any referral to us directly or indirectly to generate commissions. For example, you must not refer a customer if that customer does not have a genuine need for a referral or the primary reason for*

*that referral is to generate commission, rather than to service the needs of the customer.*

5 I just want to understand this. If the introducer is not to initiate or encourage referrals to generate commissions, why are they doing it?---Because there is a need for the customer. The customer is either purchasing a property for some reason. And that purchase would entail a mortgage that is required and, therefore, there is a logical link to a bank.

10 But the introducer receives a commission for doing that?---Yes, they do.

Yes. Could we then look at clause 3.2.1, which is on the next page, .0027. We see some prohibitions, again, which reflect topics we have already dealt with through the contract:

15

*When you refer you must not act as an intermediary between NAB and the borrower.*

?---Yes.

20

Do you see that. And that remains the case?---Yes.

Continuing:

25

*You must not provide any information or documentation in relation to the customer's application or referral, except for the information detailed in paragraph 2.8.*

30 And if you look up at 2.8, you will see that the information referred to there is the applicant's name, contact details and description of the reasons for which the applicant wants credit. So those are the only pieces of information or documentation that the Introducer is to provide directly to NAB. Is that right?---Yes. Yes. That's all they should be providing. Yes.

35 Yes. But in the misconduct that we will come to, there are numerous examples of introducers providing the customer's loan application documentation directly to NAB. Do you agree with that?---Yes, there are situations like that. Yes.

And 3.2.3:

40

*You are not to provide a referral that is not incidental to the carrying on of your business.*

45 Now, you know the nature of the business that the introducers, who were involved in the misconduct – you know the nature of their businesses?---Yes, we do.

You know that they were not financial planners, solicitors, accountants, architects, builders. You know that their business involved things like running gyms?---In some cases that's the case, yes

5 And how is the referral incidental to the business of running a gymnasium?---Again, in those situations it's – those particular introducer doing those activities is not something that we would do today.

Yes?---But there are instances of that that did occur in the past.

10

And NAB did not detect that, did they?---We weren't as – we didn't actually – we weren't as strict on ensuring that they came from just those industries that we felt comfortable with during that period of time.

15 So that's one of the changes you've made to the application form we looked at before. You now have your list of professions - - -?---Yes.

- - - and businesses that you want introducers to come from, but at this time you did not. Is that right?---There wasn't strict adherence to it, no.

20

Yes. Okay. All right. Can we look at the information that NAB - - -

THE COMMISSIONER: Just before we depart from this - - -

25 MS ORR: Yes.

THE COMMISSIONER: - - - can I just understand 2.8. Does it mean that the only information that is to be supplied is NAB is a bank? Is that all that the introducer can tell the would-be borrower?---So they would provide, generally, just the information  
30 NAB is a bank. And then they will provide contact details through to NAB to initiate a discussion with the customer about their lending requirements.

All that the customer is told is NAB is a bank, it lends money?---In – yes, in terms of that, that – the theory that is that – exactly that, and they would then pass them  
35 through to NAB for NAB to have a conversation with them about their lending requirements.

And NAB gets the contact – name and contact details and the fact that this name at those contact details wants home loan. That's the only information permitted under  
40 2.8. Is that right?---Practically, yes. That's a practical example of the way it should work, yes.

And over the life of period that we looked at, that's worth NAB paying out \$100 million, is it, which was the outlay on the Introducer Program?---I'm not sure – is that a question or - - -  
45

Yes?---We believe so. In terms of the value of the mortgages that were put on to the books.

And these introducers are not acting for NAB?---Not specifically, no.

5

Yes. Do go on.

MS ORR: I had said, Mr Waldron, that I wanted to take you to the documents that show what NAB was telling its own bankers about the Introducer Program at this time. So far we've been looking at documents - - -?---Yes. Sure.

10

- - - that the Introducer gets from NAB. Could I ask you to turn to your tab 125. This is NAB0050620003. And, Mr Waldron, is this internal information perhaps from the NAB intranet about the Introducer Program?---Yes, it is.

15

And, again, we can assume it's from the relevant period, somewhere in between 2013 and 2016?---Yes, I believe so. Yes.

But the document is not dated?---No, it's not.

20

And this document gives guidance to bankers about how to deal with introducers?---Yes, it does.

And it sets down rules for bankers in respect of the Introducer Program. Do you agree with that?---Yes, it does. Yes.

25

Could I ask you to look at .0005, the third page in the document. Can I ask you to focus on the notes at the top of the page. NAB is telling its bankers that to become an introducer to the bank introducers must commit to referring a minimum of \$2 million a year for personal lending or \$10 million a year for business lending?---Yes, that's what it says in the notes. Yes.

30

And that was the case, wasn't it? Introducers had to commit to these volume requirements?---So there was – there was a request for them to give us certain volume of our referral. It was never something that was a strict rule and we have never implemented as a strict rule that they must require those sorts of levels. The reason we have talked about those sorts of levels is because, having an introducer who does one or two loans, we have found that one of the big issues that we have is that they do not understand the process, they do not understand the requirements if they do it once every one to two – first one or two years. And so that they are more likely to step out of meeting their requirements. So the idea of having an amount, a volume, there was to ensure that it was something that was done regularly, so that were you in touch with the introducer and that the introducer also understood their obligations, along with us understanding ours.

35

40

45

I want to put to you Mr Waldron that the reason for having it there was to ensure that the introducers knew they had to bring in a particular volume of loans to be introducers with NAB?---It's certainly not a rule that we were – we were enforcing.

5 Well, your internal documents made clear to your staff that introducers had to commit to these volume requirements. So can we assume that your bankers were telling introducers in accordance with this document that these were the minimum volume requirements they had to meet?---They should have been having conversations with them about volume that was requested, yes.

10 Okay. Could we turn to point - - -

THE COMMISSIONER: Just before you leave that, you spoke about the importance of the introducers complying with NAB's requirements. Did I understand you right, Mr Waldron?---Yes. So - - -

15 And but the reason for these volumes was to ensure that you got people who complied with NABs requirements. Is that right?---No. More the issue being that where you get one one year and one not for another two years later, that is less – less likely to understand the processes, less likely to understand what was required at both ends. So we tended to find that not only the – the applications were of lower quality, as well.

20 Can I just understand what was required at both ends. I thought we had agreed that was required at both ends was (1) tell the customer NAB is a bank, and (2) tell NAB name of person is such, contact details are such, that person wants a home loan?---Yes, that is correct. The issue is actually the potential to overstep that and that they went too far, not that they didn't do enough.

25 MS ORR: Over the page at .0006, Mr Waldron, towards the bottom of the page we see a heading Ownership of the Introducer. Do you see that?---Yes.

30 Bankers are told that they have to maintain the primary relationship with the introducer and it's the banker who signed the introducer on to the program who generally has to do that?---That's correct.

35 And that's the way it still works, that the banker who signs on the introducer has ownership of the introducer and the primary relationship with that introducer?---We actually made significant changes around this so that it's not typically a banker who signs on an introducer at all; we have specific people out in the field who will deal with introducers now and the sign-on process. That doesn't mean bankers don't meet them and so on, but we have a process where we have experts out in the field trying to assess that and make sure that we're meeting all of our requirements. And we also run a process where, if there are multiple referrals coming from one introducer, we attempt to split that so it doesn't just go to one banker. And we're trying to get greater segregation of duties that occurs there. But that is a change that's being introduced as part of our reforms. At this time this is accurate.

And those reforms were made as a result of this misconduct. Is that right?---As a part of the project we know which was reviewing this misconduct.

5 And is this part of your changes to the on boarding of introducers? Is that right? Is that what NAB calls this?---That is part of the onboarding process - - -

Right?--- - - - and then our ongoing management of it, as well, yes.

10 Right. So you said there are specific people in the field now?---Yes.

Who are they?---We have business development managers out in the field whose role it is to interact between the bankers and the introducers and to manage that process.

15 When you say they're in the field, where are the business development managers?---They are literally out on the road, around in the local areas and trying to meet those introducers and work with them.

20 And what is their job? What are they required to do?---Their job is to – multi-facetted, but their job is to ensure that any introducer that comes on today understands that it is a very simple spot and refer process, and that's what we expect and what we need them to do. We are to ensure that when someone holds out that the introducer is a particular profession that they truly are that profession. It so to meet the introducer to ensure that it is a reputable business that is there. It is also to look for examples where – of introducers who are the types of introducers that we do  
25 want to work with and try to build relationships with those types of introducers, as well.

30 So what have you just described is a whole lot of work in connection with the introducer and checks on the introducer so that they understand their role?---Yes.

But you raise this in response to my questions about a banker having ownership of the introducer. What's the role of this person out in the field in relation to the banker?---They're working with bankers to, again, just ensure the banker understanding their accountabilities that are there. But it is around trying to  
35 segregate the duty of the onboarding of the new introducers, and even our existing introducers, so they understand their accountability from just purely the banker who is there trying to fulfil a particular customer need.

40 And is it still the case that have there is a banker who has the primary relationship with each introducer?---In some cases that is still the case, because geography almost dictates that, but we are also trying to ensure that, if there are multiple referrals coming from one introducer, that we are spreading it amongst bankers and getting greater segregation.

45 When you say “spreading it amongst bankers”, you mean that the applications that are being directed from the introducer are going to different bankers?---Correct.

Is that right?---Yes. So sending customers to different bankers, yes.

5 And how do you determine which bankers the introducer's home loan applications go to?---It is generally done through geography and the fact that they haven't had the last three referrals – I'm using this as an example number, but they haven't had the last few referrals coming from that particular introducer, as well. So we are attempting to ensure that you don't put all the lending from one introducer through the one banker.

10 Can an introducer say, "I want this loan application to go to banker X"?---They can request it, but it is not something that we will necessarily adhere to.

15 So the introducer can't provide any certainty to the customer about who they will be dealing with within NAB?---Not generally, no.

All right. Okay. When a customer is referred to NAB by an introducer, they have to sign a consent form. Is that right?---That's correct, yes.

20 And you have annexed one of those to your statement. Could I ask you to go to volume 5, tab 294. And I will just find the document ID number. The document ID number is NAB.005.074.0278. Is this an example of a form that a customer would sign when their business has come through an introducer?---Yes, it is.

25 And it's an example of that form during the period of the misconduct from 2013 to 2016?---Yes, it is.

And so we see the customer's name is at the top. This relates to an application for a home loan with NAB:

30 *I or we have submitted my or our application to NAB following an introduction by –*

name?---Yes.

35 That's how it works. And then the customer makes a series of acknowledgments that are underneath that which include an acknowledgment that the introducer is not an agent of NAB for any purpose. Is that right?---Yes, that's right.

40 And:

*NAB is not my or our agent, nor the agent of the Introducer*

?---That's correct, yes.

45 And then there is an acknowledgment by the customer down the page about the commission that is to be paid to the introducer; is that right?---Yes, that's right.

And on the second page, we see that the signature of the customer is required. And this is an example of one we can see on the second page that was signed by a customer on 15 July 2015?---Yes.

5 Thank you. All right. So those are the documents that I wanted to take you to about the Introducer Program. I want to now move to asking you some questions about the discovery of the misconduct to which I have already referred a number of times. Can I start by taking you to NABs letter to the Commissioner dated 29 January 2018. Have you seen this document, Mr Waldron, which is NABs response to the  
10 Commissioner's questions about misconduct?---I have seen the overall cover letter, yes, but I don't have it in front of me. Yes.

So it's RCD.000.034.0003. So you know that NAB was asked by the Commissioner to provide information about any misconduct or - - -?---Yes.  
15 - - - conduct that fell below community standards or expectations over the last 10 years?---Yes, I'm aware, yes.

And this was a document that NAB provided in response to that request on 29  
20 January 2018. Can I ask you to turn to the part of this document that deals with the misconduct, which is on page 5 of the document at .0007. Have you seen this before, Mr Waldron, which is the entry in this submission that relates to the misconduct in connection with the Introducer Program?---Yes, I have.

25 And can you see there that this related to a question about misconduct. Do you see the heading Misconduct?---Yes.

And NAB provided information about lending issues. And this was the first information provided about lending issues and you will see the description is:

30 *Inappropriate conduct by a cohort of bankers and/or third parties resulting in loans not being established in accordance with the group's policies and responsible lending of obligations*

35 ?---Yes, I can see that.

Is that a fair and accurate description of the misconduct in your view, Mr Waldron?---Yes, I think that a reasonable summary, yes.

40 Do you think it's reasonable to refer to the misconduct as inappropriate conduct?---It depends on the individual cases we will see throughout this.

Well, let's take some more serious examples of this misconduct?---Sure.

45 Which you will know of. Is it reasonable to describe those as inappropriate conduct?---Look, that could be described as inappropriate. It could be described as

more harsh than inappropriate. There are situations that people did step outside their responsibility guidelines.

5 Let's be frank, Mr Waldron, there was fraudulent conduct engaged in by NAB bankers and by introducers, do you agree with that?---Yes, there is. Yes.

10 Yes. We see no reference here to any fraudulent conduct. In fact the language is very qualified in the description of the conduct here. If we see the dot points below that, the conduct was in breach of the group's policies and processes including provision of potentially unsuitable loans, reliance on potentially false documentation, use of correct income figures, potentially dishonest application of customers' signatures, and a potential misstatement of some loans in loan documentation. Now, what I want to put to you is that NAB knows and you know that there were unsuitable loans, there was false documentation, there was dishonest application of customers' signatures on consent forms and there was the misstatement of some loans in loan documentation. All of those things occurred, did they not?---Yes, we can now say that they have occurred.

20 Yes?---At the time of doing this we were still doing the remediation program which we are in. And so there was – we were going through that process but, yes, it's fair to say that.

25 Well, I just want to ask you about that because, yes, you were still in the process of your remediation program but are you saying that on 29 January this year, NAB had not formed a view as to whether these things had, in fact, occurred?---We were still going through the process of reviewing files, which we are – is an ongoing process with that. And to do some of that we actually need to make contact with the customers and it is a long process with each individual customer. And so we were still waiting for confirmation from some customers to approve that.

30 Okay. So I understand that insofar as that relates to the provision of potentially unsuitable loans. You were still working out whether each of these loans were unsuitable?---Correct.

35 You were not still working out whether there had been dishonest application of customers signatures, whether there had been false documentation provided in reliance – provided to support loan applications. You knew that those things had occurred?---It's fair to say we believed that was the case. That's why we entered into the remediation program.

40 Well - - ?---Absolutely. But then we're still waiting from confirmation from customers when this document was written.

45 You had dismissed multiple NAB employees for these very reasons - - -?---Yes, we had.

- - - had you not, Mr Waldron?---Yes, we had.

You had formed the view that these things had occurred?---Yes, we had – we had formed a view, we just hadn't heard back from the customer at that point.

No. And that's – I want to separate - - -?---Yes. Fair enough.

5

- - - what the customer is telling you. I'm talking about the conduct of your bankers?---Yes.

10 You had formed the view that these things had occurred well before this document was provided to the Commission on 29 January, had you not?---Yes, that fair.

15 Thank you. Now, in this explanation of the conduct – and I want to make clear, too, that this was the first explanation of this conduct that NAB gave the Commission in NAB's second response to the Commissioner – there is further information about this conduct?---Right.

And you may well have seen that document?---I haven't seen the second document, no.

20 So at the time of this first response to the Commissioner's letter, what NAB tells the Commissioner is that its investigations have identified – I'm just looking for the number of customers, down the bottom of the first column, investigations have identified approximately 2,480 customers to date who may have been impacted by the inappropriate conduct. Investigations are ongoing?---Yes, that's correct.

25

Now, what can you say about that figure as you sit here today?---So we had – to ascertain those numbers we have to do a file review. So we started off reviewing files across what we called 60 bankers of interest, reviewing about 11,000 files and that 2480, we believe, needed a second review to ascertain whether that customer – whether there were customer impacts off the back of that. At present we are still working through all of those reviews. We are about 70 per cent something through that second file review as of this morning. And in that case the number has reduced because we have ascertained there are some instances where there isn't an issue with the customer's file. And we are still working through finalisation of those exact numbers.

35

So what would you say that number is as at today. Are you are able to give a figure?---I wouldn't be able to give you an exact figure, I'm sorry, but it is lower than the 2480.

40

I see. And we see also from this page in the second column that there were two self-reports to ASIC about this conduct, in February and August 2016. Now, I'm going to come to those - - -?---Yes.

45 - - - but you can see that that was information given to the Commissioner. And NAB was asked by the Commissioner in the letter that this is a response to, whether the conduct resulted from practices including risk management, recruitment or

remuneration practices. And we see the response to that in the third column. Do you see there:

5 *Incentive structures and targets contributed to a small number of people choosing to behaviour unethically.*

That's correct, isn't it? NAB has formed the view that its incentive structures and sales targets were a causal factor in this misconduct?---That they were a part of, yes.

10 Yes, one of the causal factors?---One of the causal factors.

Yes. And the first one that NAB chose to tell the Commissioner about here. In what ways did NABs incentive structures and targets contribute to this unethical behaviour?---So again, it is an individual case-by-case issue with each banker that was part of that. But what we saw in the case of some bankers is that they created relationships that potentially didn't exist between a banker and an introducer for the purposes of creating a payment to an external third party. And that external third party – there was some relationship between the banker and that external third party for payments. So we did see situations like that in the reviews that we've done.

15

20 And were they rewarded for that conduct through the incentive program, through NABs incentive program?---They were also rewarded through the incentive programs for sales as well, yes.

25 We will come back to that in more detail?---Yes.

And NAB also told the Commissioner in this third column that it had identified that certain controls had proven ineffective, including detection of fraud, management of conflicts of interest, monitoring and reporting, and the Introducer Program on-boarding – we now know what that means – and due diligence processes. Now, what I want to put to you is that these are some pretty important areas of NABs business to have ineffective controls for. Are they not?---Yes, I agree.

30

35 What NAB has told the Commissioner here is that its processes for detecting fraud were ineffective?---Yes, particularly in the Introducer Program, yes.

40

And when you say “in the Introducer Program”, we have to be clear, don't we, we are talking about conduct of bankers as well as introducers?---Yes. And introducers, yes.

And what NAB is also saying here is that its processes for managing conflicts of interest were ineffective?---There has been breakdowns of those which has caused some of these issues, yes.

45 And its monitoring and reporting processes in connection with the Introducer Program were ineffective?---Yes.

You would be aware – you have mentioned the NCCP Act – what I have been referring to as the National Credit Act?---Yes.

5 You mentioned that in your evidence earlier and you would be aware of the statutory obligation on NAB under section 47 of that Act to do all things necessary to ensure that its credit activities are engaged in efficiently, honestly and fairly?---Yes, I am.

Are you aware of that statutory obligation?---Yes, I am.

10 And NAB did not do all things necessary to ensure this in respect of large numbers of residential home loans that were the subject of introducer referrals entered into between 2013 and 2016; do you agree?---That is why we have established the remediation stream and work that we are doing here, because we have found breakdowns in our processes that we needed to fix, yes.

15 And do you agree that those breakdowns were contrary to the obligation imposed on NAB as a licensee under section 47 of the National Credit Act?---For these customers, there has certainly been a breakdown for these customers in terms of what is required for those customers.

20 You would also be aware that NAB is required under that legislation to have in place adequate arrangements to ensure that NABs clients are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to NABs credit activities. That in section 47(1)(b) of the Act. You are aware of that?---I'm aware of  
25 general provision, yes.

You are aware of that obligation. And do you accept that NAB also failed to comply with that obligation in respect of that large number of residential home loans between 2013 and 2016?---For these customers there is obvious breakdowns in our controls  
30 around these.

Okay. Let's move to how NAB worked out that this was going on.

35 THE COMMISSIONER: Again, before you depart from the subject, you spoke of a breakdown of controls, Mr Waldron. A part of what I've got to do eventually, I think, may be to assess what ADIs and other financial service entities have made of complaints and revelations. The industry is a large industry, large participants, lots of people. Things go wrong. It's a human system, therefore things go wrong. Sometimes things go wrong through dishonesty. Sometimes things go wrong  
40 because of neglect, carelessness, or just sheer coincidence. I understand all of that. There is a whole raft of law up there governing this industry.

45 One thing that I may have to look at, I think, is what the attitude, either of the industry generally, if there were such a thing, participants in the industry, is to the notion of obedience to the law. Obedience to the law that governs the way they conduct their affairs. There may be a difference – I don't say there is – there may be a difference between a breakdown in controls and an acknowledgment of breach of

law. Treat that as the soliloquy it undoubtedly is, Mr Waldron, or deal with it as you wish. But I don't want people ignoring the fact these are ideas that are at least on the table.

5 Yes, go on, Ms Orr.

MS ORR: As I said, Mr Waldron, I want to move to how NAB worked out that this misconduct had occurred, which you deal with in your statement. You tell us in your statement that NAB received anonymous calls to its whistleblower program in  
10 September and October 2015?---That's correct.

And in your statement you described those calls as alerting NAB to potential misconduct by bankers in Greater Western Sydney?---That's right, yes.

15 Can I take you to some documents that deal with that whistleblower contact?---Sure.

Volume 3, your tab 126. NAB.005.074.0522. Now, Mr Waldron, this is a document, an email, that records what a member of NAB has said to another member of NAB about the first of those whistleblower complaints. Do you see that?---Yes, I  
20 do.

It's Katie Carroll writing to Fiona Lynch about:

25 *an anonymous WB, whistleblower, complaint I received on Friday. Anonymous alleges the below staff members are charging NAB customers a fee for personal loans. These fees are allegedly made as cash payments under the table.*

And we see that the three staff members that the whistleblower spoke of – we don't have their names or the branches at which they worked – but we can see that one of  
30 them was a branch manager?---That's correct, yes.

And the other two were customer advisers. What is a customer adviser?---Essentially, it's a teller.

35 Thank you. Anonymous alleges they were advised of this by a customer and also a broker. Anonymous was not prepared to provide names of the customer or broker who provided with this information. I assume that's either him or her. Anonymous alleges this is practice has been in place for five months. Now, this is the first whistleblower disclosure. It wasn't about the Introducer Program at all, was  
40 it?---No, it wasn't specifically about that, no.

It was, in fact, an allegation of bribery?---Potentially, yes.

45 Yes. That had been going on for five months, involving three NAB employees, including a branch manager?---That's right, yes.

And having received this disclosure, NAB involved its major financial crimes unit; is that right?---Yes, what we call forensic services, yes.

5 Forensic services. Thank you. Could we turn to 0526, in your tab, if you just move through a few pages, Mr Waldron?---Yes.

You will see another email chain there?---Yes.

10 Now, if you turn to the second page there, which is 0527, you will see the email we just referred to?---Yes.

15 Then if we move in the chain to the page before it, 0526, we see an email from Mike Griffiths to Katie Carroll, copied to forensic services. And Mr Griffiths says to Katie – and I want to take to you the second paragraph:

*The information received is third-hand, general in nature, but coincides with another two separate pieces of intelligence that have been received indicating such type of misconduct has taken place within NAB retail –*

20 There is an area redacted there –

25 *or the local area surrounding same. The intelligence received separately alludes to completely different bankers but there is a correlation to the extent of alleged same type of activity and even similar name. Our preliminary assessment for planning purposes indicated to me that we should work, firstly, with the other intelligence, which was more factually based, and provide greater detail.*

30 Do you see that?---Yes, I do.

So having received this whistleblower complaint on 14 September 2015, NAB discusses it internally and it is revealed that similar conduct is already being investigated, different bankers but same area; is that right?---Yes, that's correct.

35 So NAB knew about conduct of this nature in this area prior to the September 2015 whistleblower disclosure?---So it is suspected at that particular point in time, yes. And our forensic services team are continuously doing reviews looking for misconduct and so forth.

40 What they are doing here is looking into two separate pieces of intelligence?---Correct, yes.

Do you see the reference there?---Yes, I do. Yes.

45 Do you know what those pieces of intelligence were?---No, I do not.

Can I show you some documents to try and assist with that. Can I show you a document which is not annexed to your statement, it is NAB.032.001.0605. Now, this is a document that has been produced to the Commission by NAB under a notice to produce. Can you see that it is an email from Aaron Windridge?---Yes.

5

To Ivan Bosnich?---Yes.

Much earlier than the whistleblower complaint which was in September 2015. This is an email from 2 April 2015?---Yes.

10

And if we turn over the page, to 0606, we will see that Mr Aaron Windridge, the person who wrote this email, is a senior analyst – sorry, we will need to go down to the – he is a senior analyst in assurance. What is assurance?---It's our first line risk function.

15

Yes. So on the 2 April 2015, Mr Aaron Windridge, from your first line risk part of NAB - - -?---Yes.

20

- - - is emailing Mr Bosnich. Do you know who Mr Bosnich is?---No, I don't personally, no.

And can you see that the heading to the email, the subject matter of it, if we go back to the top of the first page, is forward – and what I want to put to you is that under that redaction is a branch name?---Yes.

25

Continuing:?

*Branch Introducer/branch lending concerns.*

30

Do you see that?---Yes, I do.

Now, this email tells us that a Comprehensive Assurance Review had been conducted on a particular branch. Is that right. Do you see the references to that in the first few paragraphs?---That what I ascertain from it as well, yes.

35

And a Comprehensive Assurance Review happens when a branch fails two standard assurance reviews and that necessitates a third visit?---Yes.

40

And this particular branch, that has been redacted:

*was selected to complete our test case on due to the fact that they will require a third visit after failing their previous two reviews*

45

?---That's correct, yes.

And you know which branch that is?---Yes, I am aware, yes.

Yes. See the next paragraph:

*Unfortunately, we have uncovered –*

5 Now, I take this to mean “uncovered in our comprehensive assurance review of that branch”:

10 *We have uncovered a range of concerns related to introducer files and what appears to be star sales incentive discrepancies that indicate questionable involvement by a branch manager, and thus seeking your assistance.*

Now, do you know who the branch manager is who is referred to in this email, Mr Waldron?---I believe so, yes.

15 Yes. And is that branch manager one of the branch managers who was subsequently dismissed as a result of the misconduct connected with the Introducer Program?---Yes, it is.

20 Yes. Now, Mr Windridge tells Mr Bosnich that he has identified concerns relating to introducer files and what pares to be star sales incentive discrepancies. Can you tell explain what that means, what the star sales incentive program is?---Star sales is – incentive program is a program that those writing mortgages and lending are under for – as their sales incentive scheme for our branch network, our call centre, and our mobile lenders.

25 So it’s an incentive scheme that rewards volume of sales in lending?---Yes, that is the – that is the premise of it, yes.

30 Now, the document comes back to that later. We will move to it. But can we stick with going through it to the heading Introducer Concerns?---Yes.

35 We see there a lot of redactions, but a redaction at the start of the line which is a redaction that refers to a particular introducer has referred significant business to a redacted branch over the recent past. NAB Profiles list the introducer connections’ address in a property aligned to or in close proximity to the family of a particular branch manager; is that right?---That’s correct.

40 Then there are references to the branch manager and a former NAB employee and their residential addresses. And a reference to the business address of the introducer. Do you see that?---Yes, I do.

And then Mr Windridge says:

45 *This raises the question, what is the connection between the branch manager and the introducer. Whilst it appears that the introducer has been a long-term customer of the bank, we have been unable to locate any details about the introducer on Google to validate that there is a business operation. And since*

5            *February 2012, the introducer's referrals to the branch have totalled 211 loans with commission paid in excess of \$402,000. Commission payments are credited to a particular NAB account, and when the credit is received large internet transfers are debited. We are unable to determine where these funds are transferred and if there is any link with the branch manager.*

Do you see all of that?---Yes, I do.

10            So this is what NAB is uncovering in April 2015, months before the whistleblower disclosure. Do you accept that?---That's correct, yes.

If we go over the page, we will see some further information. Can I take you to the section underneath the large redaction:

15            *A newly established introducer to a branch with nature of business being a gymnasium. From our quick observation and searches conducted on Google the following was identified. It appears that particular person is not only the director or owner of the introducer, but also the chief financial –*

20            Sorry, I just need to make sure I'm not reading into parts that are redacted here. I think I did. I'm sorry. I will – I think I read something to you that I should not have read to you. And we will move to the 23 October 2015 reference:

25            *Applied for a personal loan, which was created by the branch manager and referred by the particular introducer.*

Now, there is more discussion there, but I want to take you down to the part that deals with the star sales incentive discrepancies. What we see here is Mr Windridge telling Mr Bosnich:

30            *Each introducer should be aligned to a banker or at least a separate introducer number held for each banker receiving referrals from the introducer. The branch manager appears to be completing the ECLs for a large number of home loans including completing the check lists. Whilst the branch manager has completed the ECL, third parties, banking adviser or mobile banker, are creating the ..... opportunities and moving it to sales stage 4 which is the trigger to receive the SSI points for the deal. That is, it appears other bankers are claiming the sale which, based on the work being done, really looks to be the branch manager's sole sale opportunity. We note that branch managers benefit from sales recorded for their bankers, as well as themselves. In our view, there is a strong possibility of double-dipping –*

we will need to go down in the document:

45            *...there is a strong possibility of double-dipping in this instance, because both the BA and the branch manager are getting SSI for the same deal. In effect, on face value, it would appear that bankers not involved with the deal with being*

*financially rewarded when they may not have had input into the file. We also have concerns regarding whether these customers are being met face-to-face and, if so, by who.*

5 Now, having read all of that to you, I would like you to explain in more layman's terms what this all means about seeable opportunities and moving to sales stage 4 to receive SSI points for the deal. Am I right in understanding this to mean that there was misconduct that had been identified at this branch, by the branch manager, that involved him claiming sales - - -

10 THE COMMISSIONER: Misconduct by the branch manager that had been identified. Is that what you are saying? Yes.

MS ORR: Yes. So the assurance team in their comprehensive assurance review - - -

15 THE COMMISSIONER: Yes. Not that it had been identified by the branch manager, but it was misconduct - - -

MS ORR: I'm sorry.

20 THE COMMISSIONER: - - - but it was misconduct by the branch manager. Yes.

MS ORR: I'm sorry. Yes. I'm sorry. I may have put that in a confusing way.

25 THE COMMISSIONER: Start again, Ms Orr. I have confused you completely.

MS ORR: Thank you, Commissioner.

30 THE COMMISSIONER: That what I'm there for.

MS ORR: I want to make sure my understanding of what's being described here - - -

35 THE COMMISSIONER: Sure.

MS ORR: - - - is correct.

In layman's terms, is what the assurance review team had found, that a branch manager in a particular branch had been securing sales incentives, payments, under a sales incentive program that the branch manager ought not to have received, because he was double-dipping and claiming incentive payments for work done by others and for work that had not been done at all?---So that is what is being - that is the hypothesis which is in the email. And that is why a third review would have to be undertaken. But at this stage, from what I understand from the email, it is purely - that's the hypothesis at this stage that needs to be - - -

Okay. Okay. Understood?--- - - - needs to be tested and needs to be certain that is actually the case.

5 Okay. So we're in April 2015, this branch has failed two assurance review, necessitates a third and in the course of that third assurance review this is the hypothesis that they're coming up with about misconduct by the branch manager?---That's the hypothesis they were taking to the review process.

10 And this hypothesis proved to be correct, didn't it, Mr Waldron?---Ultimately, it did prove to be correct.

15 Yes?---There was, though, a number of fraud issues there from that particular branch and the manager of that branch that were ongoing, including the SSI pieces. But some of that was specifically done to ensure that he didn't pop up on reports and so on, as well.

I see?---So it is more complex than what you see in this email.

20 Okay?---And, in particular, that branch manager was trying to avoid popping up on reviews and reports, to avoid the actual controls that were in place. This is a – this is a good example of the individual committing fraud against not just – against NAB, as well as using falsified information there and receiving payment, not only through the SSI process, but also in potential collusion with the introducer.

25 Yes. I see. I see. So this is April 2015?---Yes. And - - -

A particular branch manager who ends up being dismissed, because he's - - -?---Yes.

30 - - - part of the misconduct that you uncover, is already on NABs radar and NAB already has a series of suspicions and a hypothesis about misconduct by that bank manager in connection with the Introducer Program?---Yes, that's correct. And the only thing I was trying to add to that is there is a lot of complexity behind the scenes in actually what was going on with this particular case.

35 Yes. Yes. Well, I can see that from the language used in this description?---Yes.

The various systems within NAB that - - -?---Yes.

40 - - - related to this misconduct?---Yes. And, essentially, those systems are just the systems we use to put an application through for a home loan.

45 But at this time in April 2015, NAB was aware one of the potential causes for misconduct of this nature that was being hypothesised about was its own Star Sales Incentive program, its own sales incentive program that these lenders were operating under?---Correct. But, ironically in this particular case, the branch manager was not completing sales to ensure he didn't pop up as a high performer in SSI.

Yes. And in other instances it was the reverse. Is that right?---Yes. There are other examples of that, but in this case he's actually trying to avoid being a stand-out performer.

5 Yes. Okay. So the whistleblower complaint comes in September 2015, but there has been five months before that when these sorts of issues are already being examined in the same area within New South Wales, within Greater Western Sydney, involving one of the same people?---Correct.

10 Right. Now, there was a second whistleblower contact, wasn't there?---Yes, in October.

Yes. Can I take you to some documents.

15 THE COMMISSIONER: Are you tendering this document, Ms Orr?

MS ORR: Thank you Commissioner, I will.

20 THE COMMISSIONER: That becomes 1.5, NAB.032.001.0065, email from Windridge to Bosnich, 2 April 2016.

**EXHIBIT #1.5 NAB.032.001.0065, EMAIL FROM WINDRIDGE TO BOSNICH DATED 02/04/2016**

25

THE COMMISSIONER: Yes.

30 MS ORR: Can I take you to some documents in connection with the second whistleblower disclosure in October 2015. We will go to NAB.005.074.0550 in your volume 3, Mr Waldron, your tab 127. Now, Mr Waldron, this is an email, an internal email within NAB, that gives the summary of the information disclosed by the second whistleblower disclosure. Is that right?---Yes, that's correct.

35 On 16 October 2015?---Now, the nature of the conduct disclosed this time differs a bit. Do you agree?---Yes, it does.

40 What we see here is an anonymous person calls and advises that this person was concerned with a syndicate in the west Sydney LAM?---Local area market.

45 Local area market – taking bribes and the like. That person reported the following: there were 11 people involved, six of them branch managers. A particular person was running the whole syndicate. A number of other people who are named, but redacted, were all involved and all worked for another person whose name has been redacted in the past. The branches that are involved are listed. And I want to put to you that there are five branches that have been redacted there. So this person is  
-- -?---Yes.

- - - reporting about misconduct across five branches involving 11 people, six of whom were branch managers. Is that right?---I believe so, yes.

5 And the whistleblower tells NAB that these people are making up fake payslips, fake ID, fake Medicare cards and the person has seen a little bit of evidence and has also heard from others in the local area market, one of them a branch manager at a different store not involved in the syndicate. They charge \$2800 bribery for each customer for home loans mainly, but also personal loans. There has been some information about the bank manager and their location. The CA – customer  
10 advisor?---Correct.

The customer advisor went for a home loan. Is it customer advisor?---CA stands for customer advisor, yes.

15 Continuing:

*The customer advisor went for a home loan and someone thinks he used a fake guarantee. They could not identify the person on the guarantee. The CBA statement used in support of the loan had a date stamp of 2003 down the  
20 bottom. People are being promoted on the basis of home loans and other lending so they appear they are smashing their targets, but some of it's false.*

This is what the whistleblower was explaining. Now, is that – again do we interpret that as being about the incentive program and people being rewarded for their sales of home loans and smashing their home loan sales targets?---I'm only reading what's  
25 here in the whistleblower's report. It's very difficult to actually know exactly what they were talking about at that particular point in time.

30 Well, what do you think they're talking about when they are talking about they're smashing their targets?---I presume that the whistleblower was talking about them exceeding their – whatever their targets were – if they were in sales or referrals or whatever they were – for the – in the attempt to get promoted.

35 So NAB employees who work in lending have sales targets, number of home loans per month, per quarter?---Generally, there is a sales target that is there for most of our lending people. It is not always product specific; it depends on the type of role they are in.

40 The whistleblower is recorded as saying:

*One customer recently said at a particular branch, they told him he could borrow \$800,000, but the valuation was only \$450,000. The whistleblower said the money exchanges hands in cash, in envelopes, white envelopes usually over the counter. Money is deposited at CBA, so NAB can't detect the deposits.  
45 Happening on a daily or weekly basis and has been happening for a number of years.*

Whistleblower was very concerned about confidentiality. Whistleblower had heard the matter raised before, said the whistleblower had heard the matter raised before, but it was still going on, so wasn't sure if anything was being done about it. Whistleblower sounded genuinely concerned about how bad this is and how bad it would be for the bank.

Now, this is the information provided by the second whistleblower in October 2015. Is that right?---That's correct.

10 Yes. Now, the NAB branches that were listed by the whistleblower included, did they not, the particular branch that we had been discussing in relation to the assurance – the comprehensive assurance review. So one of these five branches was that same branch that NAB had been working on from April 2015?---Correct, and they were all in the Greater Western Sydney.

15 Yes. Thank you. All right. So, having received this information in these two whistleblower disclosures, NAB commenced an investigation. Is that right?---That's correct. Yes.

20 And that investigation was commenced in October 2015?---No, that's not correct. It would have – the investigation would have started immediately from the first whistleblower report. So we would have been doing ongoing investigation. Had a second – had a second whistleblower, as well, so that we would have actually been looking at it and then the second whistleblower report also occurred, so that we  
25 would have added to that at that particular point in time. We didn't wait for the second whistleblower report to start looking at things.

Well, that's not what you said in your witness statement, Mr Waldron. Could I take you to paragraph 24 of your witness statement. Thank you. Paragraph 24:

30 *In October 2015, following these anonymous calls, NAB's forensic services investigation team conducted an investigation in relation to the allegations.*

35 Do you say that investigation commenced earlier?---I guess what I was trying to say was that generally when we receive a whistleblower report we do work to look into it. What has happened here is once the second whistleblower report has occurred, we have, if you like, undertaken a full blown review through forensic services.

40 THE COMMISSIONER: Mr Waldron, there's a world of difference between "would have" and "I know". I will be much assisted if you confine yourself to what you know or you can point to in the documents. If you give me evidence about what would have happened, might have happened, that's not going to be particularly helpful to me. Perhaps you might care to ask the question again, Ms Orr, and you might care to answer it again. Mr Waldron, in terms of what you know or what you  
45 can point to in documents. If you don't know, say so. Nobody expects everybody to know everything.

MS ORR: Mr Waldron, what I'm asking about is the fact that in your statement you indicated that the investigation commenced in October 2015. Do you know that to be the case?---Yes, I do.

5 Right. So the investigation did not start after the first whistleblower disclosure in September 2015?---A full investigation was started after the second whistleblower report in October 2015.

10 MS HARRIS: Commissioner, I hesitate to interrupt. I just want to draw my learned friend's attention to paragraph 68 of the statement, which contains the detailed chronology which contradicts, with respect, the premise that's being put to the witness.

15 MS ORR: Well, I will ask you to answer the question by reference to that paragraph, Mr Waldron, because you say there that on 14 September a whistleblower called with information that led NAB's forensic services team to undertake investigations. The only time that you pin that investigation commencement to is in the paragraph that I've just referred to, paragraph 24, where you pin it to October 2015?---That is correct. In the statement we pin it and in the summary – and  
20 remembering that the first piece is a summary, not a chronology of every single event. The second piece was a chronology of every single event. And so in the chronology what we have attempted to pick up is the fact that post the first whistleblower call we would have started - - -

25 THE COMMISSIONER: Well, would have, Mr Waldron?---We did.

May I remind you - - -?---Sorry, we did.

30 - - - there is a world of – no. Just listen. I need you to be accurate in this, for your own safety. If you know something, tell me?---Correct.

If you don't know, tell me you don't know. I am not going to think the worse of you because you don't know?---No, I understand that. I understand that. Sorry - - -

35 Think about the question, think about the answer, then give me the answer.

MS ORR: It might assist, Mr Waldron, if I take you to another document which you have exhibited to your witness statement behind tab 159 in volume 3, which is NAB.032.001.0042. This is a letter that was written to ASIC on 21 December  
40 2015?---Yes.

And do you see that NAB told ASIC under the heading Background:

45 *In late October 2015 an internal fraud investigation was initiated.*

?---That's correct. Yes.

That is correct, isn't it? The investigation did not commence until late October 2015?---So, yes, the full investigation started at that point in time.

5 You seem at pains, Mr Waldron, to distinguish between the investigation and the full investigation. Is there any document that you can point to that shows that any form of investigation was underway after the first whistleblower complaint in September 2015?---Just the chronology of events at paragraph 68. No, I don't have any other documents to prove that.

10 Thank you. All right. You tell us in your statement that in October 2015 NAB convened a credit investigation working group, as well. And, as part of the investigation that NAB got underway, it interviewed a number of bankers from Greater Western Sydney. Is that right?---That's correct.

15 Thank you. And on 9 November 2015 NAB dismissed its first banker in connection with these allegations. Is that right?---Yes, that is correct.

20 Okay. So the first banker is dismissed, 9 November 2015. And I would like to show you a document that deals with the conduct of that banker. If I could take you to NAB.005.074.0534, your tab 126, Mr Waldron. Now, you will need to move through tab 126 to get to 0534. And I would like you to look at the email from Fiona Lynch to Katie Carroll on Monday, 9 November 2015. The subject is "re whistleblower update:

25 *Hi, Katie. Following interview with fraud and admissions from a NAB banker, this employee has been terminated effective today. Employee resigned, however we did not accept this and advised her she was being dismissed. No notice to be paid. Reasons for dismissal below. You accepted numerous documents in support of lending applications for customers directly from a*  
30 *referral source known as – and that referral source is not a registered introducer with NAB.*

35 So, just pausing there for a moment, the obligation on the banker was to accept documents in support of lending applications directly from the customer, not from an introducer, let alone someone who was not even a registered introducer with NAB. Is that right?---That's correct.

40 Continuing:

*Secondly, you accepted identification documents from a person, rather than from the customer directly, also in breach of NABs policies.*

45 ?---Yes.

Continuing:

5            *You were offered cash payments from the person on at least two occasions. On one occasion you accepted this payment before returning it days later. You failed to advise senior management of these payments. You engaged in email correspondence with the person to facilitate the creation of fraudulent payslips for customers to be included as support verification documents in loan applications.*

10            Is that an accurate summary of the conduct that led to the dismissal of the first NAB banker?---As I understand it, it is, yes.

              Yes. Thank you. In your statement you say that in or around November 2015 NAB dismissed five bankers and terminated its contracts with two introducers. That's correct?---Yes, it is.

15            And those five bankers, I assume, include this banker dismissed on 9 November?---Yes, it is.

20            So the five bankers who were dismissed at this early stage in November 2015 were each involved in significant misconduct. Is that right?---It was – well, it was certainly misconduct that was easily identified, yes.

              And do you agree it was significant misconduct?---Yes, it would be, to be - - -

25            And it was misconduct that also involved introducers?---Yes, it was.

30            Okay. Can I take you to some summaries of the conduct of those other bankers that were dismissed in November 2015. Staying within your tab 126, Mr Waldron, NAB.005.074.0540. This is an email from – the second email on the page, an email from Fiona Lynch at NAB to other NAB employees, dated 1 December 2015. And it provides an update on the whistleblower investigation. Is that right?---Yes, that's right.

35            And the first page refers to – we see the first redaction. That relates to the first NAB banker that was dismissed?---Yes.

              And we are told that the following employees – and we will come to the information about them:

40            *...have been summarily dismissed as a result of the investigations undertaken following the two disclosures, noting some individuals were not specifically named. However, these disclosures led to further investigation and information being obtained about other individuals.*

45            Now, I want to deal with the first person whose name is redacted underneath that paragraph I have just been reading from. Do you know who that person is, Mr Waldron?---I'm sorry. I have lost the paragraph that you were at.

Above "On 29 July 2015"?---Yes.

And you can see the name of the NAB banker - - -?---Yes, I can.

5 - - - that this relates to. So this particular NAB banker was dismissed for conduct that included falsely assigning a lending application referral to a particular NAB introducer, who then received commission payments he was not entitled to. Do you see that reference?---Yes, I do.

10 And this particular banker also accepted payments to their personal account from the same introducer. And that was described by NAB as a significant conflict of interest?---Yes.

Do you see that? Two - - -?---Yes.

15 - - - \$1000 payments - - -?---Yes, I do.

- - - in July and September of 2015. And this banker also accepted payments from the introducer and failed to advise NAB of the payments, also described as a conflict of interest. I may be referring – sorry – I'm talking about the same payments, but the failure to advise NAB of those payments is - - -?---A conflict of interest.

The conflict of interest?---Yes.

25 Then there's false allocation of referrals to a particular introducer who had not referred the customers. Do you see that at the top of the next page:

*This resulted in the introducer receiving commission payments to which he had no entitlement.*

30 Top of page - - -

THE COMMISSIONER: Well, have we moved on to a different banker?

35 MS ORR: I'm sorry. My mistake?---Yes.

We have. So let's leave the second banker for now. Sticking with the first banker whose name you can see there?---Yes.

40 We can see that the other conduct includes not completing face-to-face meetings with clients and a lack of duty of care when reviews documentation in support of lending applications which resulted in fraudulent documents being accepted?---That's correct, yes.

45 So that – that's the conduct of the first banker that led to that banker being dismissed. I'm calling him the first banker, but this was the second banker that NAB dismissed?---Yes, I understand.

Now I move to the next banker, who I apologise, I had already moved into there .... redaction. This second banker in this list had conduct that resulted in this – their dismissal that included:

5           ...*falsely allocating multiple referrals to a particular introducer, despite that  
introducer not having referred the customers, resulted in the introducer  
receiving significant commission payments to which he had no entitlements.  
This banker was also dishonest in their responses about their relationship with  
10           the introducer and about the introducer’s personal details. This banker  
requested an increase to the commission payment percentage to the introducer  
with no valid reason to do so. And the contact details provided by the banker  
was the address of a property owned and occupied by members of the banker’s  
immediate family. This banker had a personal relationship with the introducer,  
15           which represented a significant conflict of interest and which the banker did  
not disclose. And on 15 October 2015, this banker paid \$15,000 to a  
customer’s account from their personal account prior to the customer’s loan  
being drawn down. The customer later repaid the money. This represents a  
significant conflict of interest which you failed to disclose. The banker acted in  
20           this manner despite being verbally warned and required to undertake remedial  
actions following a similar incident in September 2015.*

Now, you know the name that has been redacted for this banker?---Yes, I do.

25           You know that that banker is the same banker who was identified in the email that  
we discussed before involving the assurance – the comprehensive assurance review  
at a particular branch in April 2015?---Yes.

30           Thank you. And then – and, just to be clear, that’s a bank – that’s a branch manager  
-- -?---That is a branch manager.

--- we’re talking about there?---Yes, it is a branch manager.

35           And this third person, you can see their name, as well; you don’t have the redaction.  
Is that right?---That’s correct.

And you know that that third person dismissed here was also a branch  
manager?---Yes.

40           Yes. And this third person is dismissed for conduct that includes:

45           ...*accepting numerous documents in support of lending applications for  
customers directly from a person who the banker was aware was not a  
registered introducer with NAB, engaging in email correspondence with a  
person, sending and receiving fraudulent payslips for customers to be included  
as support verification documents in loan applications. This banker was  
dishonest in their responses as to the nature of their relationship with the  
person and the frequency of their communication. This banker was aware of*

5 *other employees in a particular branch regularly accepting referrals from the same person. This banker knowingly condoned this practice and failed to advise management of this unauthorised activity. This person failed in their role as branch manager to provide appropriate oversight of the lending within a particular branch. This resulted in numerous loans being supported by fraudulent documentation. This banker demonstrated a lack of duty of care when reviewing documentation in support of lending applications, which resulted in fraudulent documents being accepted.*

10 So that is the conduct that led to the dismissal of the third person in this list, the fourth person that NAB dismissed in connection with this conduct?---That's correct.

15 So, by this point, of the four people who have been dismissed, two are branch managers?---That's correct, yes.

Right. And then two at a level below branch managers. And each of these people are working at branches in Greater Western Sydney?---That's correct, yes.

20 Thank you. So the conduct of each of these bankers that we've just discussed involved dishonest conduct. We see that?---Yes.

And it involved fraudulent conduct?---Yes, it did.

25 Now, again, I want to ask you, as someone with the benefit of not having redacted documents, the five bankers that you refer to that were dismissed in or around November 2015, they were from a number of different branches within Greater Western Sydney, weren't they?---They were, yes.

30 How many branches were they from?---Off the top of my head I'm not sure. I would need to check.

35 So we know there is two branch managers, multiple branches. We know that one of the branch managers is the same person that NAB has been looking at since at least April 2015 in connection with the Introducer Program. So this is November 2015, and another thing that you've told us that happened in November 2015 was that the NAB group Chief Risk Officer recommended that consideration be given to creating a task force to investigate whether there had been collusion among bankers that could constitute fraud or breaches of NABs responsible lending obligations. Is that right?---That's correct, yes.

40 Okay. So in summary, we are in November 2015 and by this time five bankers from multiple branches have been dismissed, including two branch managers. Two Introducer arrangements have been terminated as a result of this investigation?---That's right.

45 There are multiple arms of NAB involved in investigating the conduct; is that right?---That's correct, yes.

And the group Chief Risk Officer has recommended creating a task force to look into this?---That's correct.

5 These are all things that had happened by this point in November 2015. So NAB wasn't treating this as just isolated incidents of dishonesty at this point, were they?---No, we weren't.

10 NAB knew that this pointed to significant failings in its risk management systems?---We believed so at that particular point, however, we were still trying to work out whether it was in a local area or widespread at that particular point. But, yes.

It certainly wasn't in a single branch?---Wasn't a single branch, absolutely.

15 It was across multiple branches - - -?---Absolutely.

- - - and people within very senior positions in those branches?---That's correct.

20 But by this time, November 2015, there had not been any report to the NAB board about any of this, had there?---No, the first – the first report to the board was in the December board meeting.

25 There was no report to the board until 15 December, 2015, was there?---That's correct, yes.

And at the same time there had been no report of any form to ASIC, had there?---Not at that point in time, no.

30 But you were aware of NAB's statutory obligation as a financial services licensee under section 912D of the Corporations Act to make written reports to ASIC in certain circumstances?---Yes, I am.

35 And you would know that NAB had to give ASIC a written report if it had breached or was likely to breach any of the obligations set out in section 912A of the corporations Act. Were you aware of that?---Yes, I am aware of that .

And the breach was – or the likely breach was significant. That was the second requirement for the reporting obligation to kick in. You appreciate that?---Yes.

40 And whether or not a breach is significant is to be assessed having regard to matters such as the number or frequency of similar previous breaches, the impact of the breach on the licensee's ability to provide the financial services under the licence, and the actual or potential financial loss to clients of the licensee arising from the breach or likely breach. Are you aware that they are all matters that the Corporations  
45 Act directs you to in assessing whether or not a breach or a likely breach is a significant one that needs to be the subject of a written report to ASIC?---Yes, I am.

Thank you. And you know about the obligations in section 912A of the Corporations Act, so the obligations that this breach report obligation attaches to; do you understand what I mean by that?---At a high level I do, yes.

5 Yes. So you would know that the written report obligation kicks in if there is a breach or a likely breach which is significant of obligations such as NABs obligation to do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly; is that right?---Yes, I am.

10 It also kicks in if there is a breach or likely breach that is significant of NABs obligation to have in place adequate arrangements for the management of conflicts of interest that may arise wholly or partially in relation to activities undertaken by the licensee as part of the financial services business. You understand that?---Yes, I do.

15 So those are the obligations imposed on NAB, and when NAB took the view that there had been a breach or likely breach of those obligations that was significant, section 912D tells NAB that it has 10 days – 10 days to make a written report to ASIC about that breach or likely breach. Do you understand that, Mr Waldron?---I was – I wasn't familiar with the exact timeframe, but I understand the timeframes are there.  
20

There are people within NAB who deal with these things?---Yes, absolutely there are.

25 Branches of NAB whose responsibility is - - -?---Yes, absolutely.

- - - deciding when a significant breach report needs to be made to ASIC?---Yes, there is.

30 And we can assume that they understand the - - -?---Absolutely.

- - - requirements of the statute and they are aware of the 10-day time limit for doing this. Could I show you also an ASIC regulatory guide in relation to this obligation. See if you have seen this before. It is RCD.0021.0001.0145. Have you seen this document before, Mr Waldron? It's an ASIC publication. It's a regulatory guide that deals with breach reporting obligations by Australian financial services licensees?---I personally have not seen it, no.  
35

40 Right. Well, I would just like to show you the guidance that's given in here to entities like NAB for how to determine when a breach is a significant breach. So could I take you to page 9 of this document. The page numbers are in the bottom right-hand corner. Do you see there table 3, Examples of breaches that may be significant. Now, if you could go to the next page in that document, which is a continuation of this table of examples of breaches that might be significant, could I  
45 ask you to look at example 6, Fraud in Supply of Financial Services by a Representative. So ASIC is telling NAB and others that:

5           *We consider that fraud by a representative and your failure to prevent fraud by a representative, is likely to involve a significant breach of each of your obligations in section 912A because such breaches will have some impact on your ability to supply the financial services covered by your licence; indicate that your arrangements to ensure compliance with your obligations are inadequate; and involve actual or potential financial loss to your clients or to you.*

10       Now, I think you said you were not familiar with this document, Mr Waldron?---No.

15       This is the guidance from ASIC to entities like NAB to assist them in determining whether a breach is significant. By November 2015, when NAB had dismissed five employees across multiple branches for fraudulent and dishonest conduct and set up a task force to investigate collusion, fraud and breaches of responsible lending obligations, there was a significant breach or likely breach that needed to be reported to ASIC, was there not?---I wasn't specifically involved at the time of this occurring, so I don't know what the assessment was internally at that particular point in time against these rules.

20       THE COMMISSIONER: Well, let me put this to you, Mr Waldron. NAB knew enough to sack five employees for dishonesty and for conflict of interest; is that right?---That's correct.

25       It knew enough by November to sack people for those reasons. Are you telling me it didn't know enough to tell ASIC that there was a problem?---No, I'm not telling you that. All I'm telling you is I wasn't directly involved with the assessment at that point in time.

30       I understand that?---So I'm not certain why or why not decisions were made.

MS ORR: But NAB has put you forward as the witness to deal with these matters?---Correct, yes.

35       And the ASIC notification, when it ultimately comes, is annexed to your witness statement?---Yes. In December.

40       Now, I have provided you with the guidance provided by ASIC, and I ask you whether you accept that in November 2015 there had been a significant breach that needed to be reported to ASIC?---So I would take guidance from our internal people on something like that. We have specific people whose role it is to assess that.

45       Do you know when NAB lodged its section 912D breach report with ASIC, Mr Waldron?---I would have to check the dates in my statement. I think it was around December. But I would need to check those dates.

It wasn't in December, Mr Waldron. It was months later in February?---Sorry, yes.

Of 2016?---It was in February.

Do you see that reference in paragraph 92 of your statement?---Yes, I do see that.  
Yes.

5

So February 2016, despite the statutory time limit of 10 days upon becoming aware of a significant breach. Can you offer any explanation for that, Mr Waldron?---No, I cannot. Other than that we had formally notified of the event, but we hadn't completed the section 912D assessment, but there had been some notification to ASIC but we hadn't completed that assessment. So I cannot – I can't tell you why.

10

What do you mean by that? When was there some notification to ASIC?---I think it was on 21 December.

15 Yes. That didn't happen until 21 December - - -?---Yes.

- - - 2015, did it, Mr Waldron?---No, it didn't.

Weeks after the dismissal of these bankers across multiple branches and the establishment of the task force and the other matters we referred to earlier?---That's correct.

20

All right. Can I go back into the chronology of events that you deal with in your statement, Mr Waldron. Back into November 2015, as well as having dismissed five bankers by November 2015, NAB had also taken internal action against a number of other bankers at that time, hadn't it?---Yes. We had.

25

So can I take you to a document that explains that, which is NAB.005.074.0540. Before I move on to that document, Commissioner, I will tend the ASIC regulatory guide that I have taken Mr Waldron to.

30

THE COMMISSIONER: By all means if you want to tender it. I suspect I – it may or may not be appropriate for evidence. But let's take it in as exhibit 1.6, ASIC regulatory guide, RG78, RCD.0021.0001.0145.

35

**EXHIBIT #1.6 RCD.0021.0001.0145, ASIC REGULATORY GUIDE, RG78**

40 MS ORR: Thank you. Can I ask you to turn to page 0541 of this document?---Sorry, which tab number was that one?

We are back into 126, Mr Waldron?---126. Thank you.

45 And we are back to the document that we had been dealing with before, that talked about the three employees that were dismissed following - - -?---Yes.

- - - the first dismissal?---Yes.

Now, again, it's difficult with redactions, but - - -?---I understand.

5 - - - you can see - - -?---Yes.

- - - that the redacted block that appears towards the bottom of that page is the name of another banker?---Yes, I can.

10 A different banker?---Yes, I can.

And you can see, if we put both this page and the next page on the screen at the same time, that there are three other bankers whose names have been redacted?---Yes, I can see that.

15

And these are three bankers that at this same time in November 2015 NAB took internal disciplinary action against; is that right?---Yes, that's correct, yes.

And you can see the names of these three bankers?---Yes, I can.

20

And you can see that the first of those bankers – you can see there was a file review and there were things detected in that file review and there was a recommendation made that appears at the top of the following page:

25 *LSR recommendation is for an amber non-reversible gate to apply. This will result in a 25 per cent reduction in SSI payment.*

Do you see that?---Yes, I do.

30 And if we look down – I want to ask you some questions about that – but if we look down to see what recommendations were made for the other two bankers, we can see that the next one had a recommendation for an amber reversible gate, to apply?---That's correct.

35 And the third one, had a recommendation for an amber non-reversible gate to apply. So two had amber non-reversible gate recommendations and one an amber reversible gate recommendation.

40 THE COMMISSIONER: Ms Orr, given the time I wonder whether the absolute excitement of amber reversible gates and amber non-reversible gates might better be left over for tomorrow, given Ms Harris has an application to make.

MS ORR: Thank you, Commissioner.

45 THE COMMISSIONER: Is it a convenient time?

MS ORR: It is a convenient time. Thank you, Commissioner.

THE COMMISSIONER: Thank you. There is no need for you to remain unless you think it necessary, Ms Orr. Yes, Ms Harris, you want to take up some question of privilege?

5 MS HARRIS: I do, Commissioner.

THE COMMISSIONER: Mr Waldron, thank you. You should leave the box and be back here in time to recommence your evidence at 10 o'clock tomorrow. Now, I noticed this morning that the queue to come into the courthouse was very long. I would be grateful if counsel overnight gave some thought to whether it would be too inconvenient if we were to begin say at quarter to 10 each day rather than at 10. I know those last 15 minutes are important, but I am concerned about the traffic at the security point down below. We are guest in this – well, I am a guest in this building. I need to remember I'm a guest in this building and to that end it may be not tomorrow but thereafter we might move to a 9.45 start if counsel would be good enough to think about it, talk to their instructors, see whether those – that does present some practical difficulty about starting at that time and we will deal with that tomorrow. In the meantime, if you can be back in time for 10 am tomorrow Mr Waldron?---Thank you.

20

<THE WITNESS WITHDREW

[4.01 pm]

25 THE COMMISSIONER: Yes. Thank you. Ms Harris.

MS HARRIS: If the Commissioner pleases. Might I hand up four documents. The documents are, firstly, submissions and a statutory declaration which cleave to the requirements of both the practice guideline number 2 and section 6AA of the Royal Commissions Act. The second two documents are the two exhibits within the 308 exhibits in Mr Waldron's statement in respect of which redactions for legal professional privilege are sought. They have been handed to the Commission in a form which marks up, if you like, the proposed redaction. If the Commission has document NAB.005.043.0313, which is referred to in paragraph 65 of Mr Waldron's statement - - -

35

THE COMMISSIONER: There is only the one redaction in that, is there?

MS HARRIS: Indeed, Commissioner.

40

THE COMMISSIONER: And who is JT?

MS HARRIS: JT is a person at the meeting whose identity I don't know but one sees that JT is - - -

45

THE COMMISSIONER: Is he/she a lawyer?

MS HARRIS: I beg your pardon. It appears to be – it might be the person identified in the other document, but whoever it is, they are conveying the content of legal advice, which has been received.

5 THE COMMISSIONER: I see. Yes, you can have that redaction. Next.

MS HARRIS: Thank you, your Honour.

THE COMMISSIONER: Old habits, Ms Harris.

10

MS HARRIS: It is not going to be the last time, I regret, your Honour.

THE COMMISSIONER: Yes, I know. But I'm part of the mothballed fleet; I'm not part of the serving fleet anymore, Ms Harris.

15

MS HARRIS: I will do my best. I actually wrote a note on the top of my pad today saying "Commissioner".

THE COMMISSIONER: Yes.

20

MS HARRIS: The other document – the first dot point on page 2. Again - - -

THE COMMISSIONER: I can understand the first sentence. Why the second sentence?

25

MS HARRIS: Because, well, the second sentence is not really explicable without the first, but it is said that the particular legal view is to be supported by - - -

THE COMMISSIONER: I think the second sentence is heroic, but yes, go on.

30

MS HARRIS: And that's the size of it, your Honour. I've done it again, I beg your pardon. It's a long day.

THE COMMISSIONER: You may have those. Is there any other?

35

MS HARRIS: No, Commissioner.

THE COMMISSIONER: I mean it when I say these things are not to be taken up in the course of hearing. They have – if you have them, tell the solicitors we have made a mistake, there is an application. I will sit out of hours to deal with it. I will not deal with it during the hearing.

40

MS HARRIS: No, we understand that, Commissioner, and we are – we can put it down to teething problems but we hear the Commission loud and clear.

45

THE COMMISSIONER: Yes. Thank you. 10 am tomorrow, please.

**MATTER ADJOURNED at 4.04 pm UNTIL WEDNESDAY, 14 MARCH 2018**

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