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TRANSCRIPT OF PROCEEDINGS

O/N H-871453

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

9.46 AM, FRIDAY, 16 MARCH 2018

Continued from 15.3.18

DAY 5

**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, MR C. TRAN and MR R.
CHAILE for ASIC**

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

MS D. HOGAN-DORAN SC appears with MS J. SHEPARD 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: Ms Orr.

MS ORR: Commissioner, Ms Harris.

5 THE COMMISSIONER: Yes, Ms Harris, would you mind going back into the witness box, thank you. Obviously going to be a very long morning, Ms Orr. It is two minutes to seven and seems to be stuck at two minutes to seven on the court clock. So it's going to be a very long day.

10

<LYNDA GAY HARRIS, ON FORMER AFFIRMATION [9.46 am]

<CROSS-EXAMINATION BY MS ORR

15

MS ORR: Ms Harris, I was asking you questions yesterday about the way Aussie Home Loans dealt with misconduct, fraudulent misconduct by Mr Shiv Sahay?---You were. That's right.

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Do you recall that?---That's right. Yes, I do.

And the last document that I had taken you to was a document that summarised the actions that Aussie Home Loans was going to take in response to that misconduct; do you recall that document?---I don't recall the exact document.

25

Yes?---So if someone could pull it up.

I will show you another document now?---Okay.

30

I want to move on in the chronology - - -?--- Right. Okay.

- - - to 12 November 2013. I will show you a document which is AHL.0002.0001.2456. And to assist you with the timeline, Ms Harris, the document we looked at yesterday was dated 27 September 2013?---Right.

35

So this document is 12 November 2013. And it's a document put together by Aussie Home Loans to summarise the actions that its panel lenders have taken in response to Mr Sahay's misconduct as at this date; is that right?---That's right, yes.

40

And we see there:

The following lenders have taken the following action and formally notified Aussie. Suncorp – letter of broker termination received 8 August 2013 (no cessation of trail).

45

Now, that's a reference to the trail commissions payable to Aussie Home Loans in respect of Mr Sahay's loans?---That's what I would understand it to be, yes.

5 Yes. So Suncorp has not ceased paying those trail commissions. The second lender, Bankwest:

Letter of broker termination dated 12 November 2013, cessation of trail commission noted.

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

- - - Ms Harris?---Yes.

15 And a third lender, Homeside, letter of broker termination dated 22 October 2013, there appears to be no reference to cessation of trail commission there?---Right.

20 So Aussie at this point, in going through the actions taken by lenders, was concerned to understand which of the lenders were going to cease the trail commission payments to Aussie Home Loans and which were not; is that right?---As one of a number of elements we were looking at, yes.

Yes. And we also see that a number of lenders had verbally indicated to Aussie that they would review their portfolios introduced by Sahay?---Right. Yes.

25 And you see Mr Sahay's total Aussie portfolio, as at the end of October 2013, reflected in that table?---Yes, I do.

So \$70 million worth of loans from Mr Sahay as at the end of October 2013?---Yes.

30 259 loans in total?---Yes.

Do you see that?---Yes. So trail commissions were coming in on 259 loans valued at more than \$750 million at this point?---Yes.

35 Now, over the page, you see the heading Financial Impact, Bankwest Action?---Yes, I do.

Continuing:

40 *Based on the Aussie portfolio data and reconciliation of this with Bankwest, the immediate financial impact to Aussie will be approximately \$2000 per month. This amount does not include potential future increases in trail commission from Bankwest as part of their –*

45 I think that should be a reference to tiered; is that right?---I would assume it's tiered, yes.

Yes, tiered step up model. And is that a reference to the fact that the trail commission payments increase the longer the loan has been in place?---No.

5 Is that the tiered model?---The tiered model is more around the quality of the – of the applications.

I see. And can you explain what the potential future increases in trail commission from that model would have been for Mr Sahay’s portfolio?---I can’t explain that, no. That was – that would sit in other areas. Someone like David Smith would be able to explain that.

10

Thank you. So at this point the financial impact that Aussie is noting as a result of Mr Sahay’s misconduct is a loss of approximately \$2000 per month on the Bankwest part of the portfolio; is that right?---That’s right. Yes. Yes.

15

And Aussie sets out what its proposed next steps are in the next section of the document. And the first next step is to:

20 *Challenge Bankwest’s decision to cease all trail commission payable on their Shiv Sahay loan portfolio.*

Do you see that?---Yes, I do. That what it says, yes.

25 And do you know whether or not there was a challenge to Bankwest’s decision to cease the trail on Mr Sahay’s portfolio?---I don’t, I’m sorry. I don’t know.

You don’t know if it was done nor, if it was done, what the result was?---No, I don’t. I’m sorry.

30 But we can see from this document this is something Aussie Home Loans decided to do in November 2013 in response to Mr Sahay’s misconduct?---I can see on this document that that was one of several steps that were proposed. I can’t – I simply don’t have the knowledge to be able to tell you that it actually happened.

35 Well, Ms Harris, you have been put forward by Aussie Home Loans as the witness to explain to this Royal Commission Aussie Home Loans’ handling of these four former brokers’ misconduct. Are you unable to tell this Royal Commission whether Aussie Home Loans did challenge Bankwest’s decision to cease trail commission payments in respect of Mr Sahay’s portfolio?---I’m sorry, but yes, that’s what I’m saying. So, you know, I have familiarity with the process that was followed, the actual relationships with our lenders post that, and what actually happens does not necessarily – does not sit in my area.

40

45 Yes. I see. And the other witnesses put forward by Aussie Home Loans were also not involved in these events?---The other witnesses, one was not there at the time, one of the other witness – who I mentioned – David Smith actually manages now the lender relationships. He didn’t manage it then.

Yes?---But he would know what our practice is with lenders.

5 Yes. But none of you will be able to answer my questions about the action that Aussie Home Loans took in November 2013 in relation to Mr Sav Sahay's misconduct?---I'm not saying that Mr Smith can't, I am simply saying I can't guarantee he will. I haven't actually asked him specifically.

10 You know, don't you, Ms Harris that Mr Smith's statement doesn't deal with these events of misconduct at all?---Right.

It is all dealt with in your witness statement?---Okay. Because I haven't seen the other witness statements so I'm not aware of what's involved in the other ones.

15 So you can't assist the Royal Commission on this?---On that particular question, no. I'm very happy to talk about the process and to talk about how we manage both the brokers and on the customers, but on that particular question, I'm sorry, I can't. We can certainly find out and that can be tabled at a later time.

20 I will tender that document, Commissioner.

THE COMMISSIONER: Exhibit 1.51. AHL.0002.001.2456. Panel lender summary 12 November '13.

25 **EXHIBIT #1.51 PANEL LENDER SUMMARY DATED 12/11/2013
(AHL.0002.001.2456)**

30 MS ORR: Ms Harris, can I take you slightly forward in time to 10 December 2013, when an issue arose with another customer of Mr Sahay's?---Mmm.

35 I will show you a document. AHL.0002.0001.5017. This is an email from William Fitzgerald to Chris Meekin. William Fitzgerald being a risk management officer?---That's right.

And Chris Meekin being another Aussie Home Loans employee; is that right?---Yes, she was in customer dispute, yes.

40 THE COMMISSIONER: He was in?---Customer disputes.

Thank you.

MS ORR:

45 *Hi Chris, Mel T sales manager will be giving you a call shortly for some advice regarding a potential customer complaint that is formulating and has some*

background with the Shiv incident. Essentially, the customer has been told they are eligible for a FHOG –

is that a reference to a first home owner's grant?---It is, yes.

5

Continuing:

...when they are not. And appear to have a big funds shortfall, ie, circa 25,000. Loan has already been approved but looks unlikely to settle. Mel is going back to the broker to get more details but there probably should be a few people across this one due to the potential insurance angle also.

10

?---Yes.

15 Yes. I will move on to a further document , but first I will tender that document, Commissioner?---Exhibit 1.52. AHL.0002.001.5017. Email Fitzgerald to Meekin. 10 December 2013.

20 **EXHIBIT #1.52 EMAIL FROM FITZGERALD TO MEEKIN DATED 10/12/2013 (AHL.0002.001.5017)**

MS ORR: Now, that email that I have just shown you, Ms Harris, was dated – sorry, was from 9.35 am on 10 December. Can I now show you an email from later on the same day at 5.05 that afternoon. AHL.0002.0001.4804. Perhaps we could have both pages of this two-page email on the screen so I can show you, Ms Harris, that this is an email from Melanie Tomkins, sales manager mobile. Melanie Tomkins is – has been involved in emails we've looked at yesterday; is that right?---Yes, that's right. Yes.

25

30

And the email is to Andrew Rasby, another person within Aussie Home Loans; is that right?---At that time, yes.

35 And what was Andrew's position?---He was New South Wales ACT state manager.

And a number of other Aussie employees are copied on the email, including Chris Meekin, who we saw on the previous email; is that right?---That's right, yes.

40 Now, there is a bit of detail in this email, Ms Harris, but it's important that I take you to that detail. This is Melanie Tomkins telling Andrew Rasby that she needs to run something past him. You will see that the subject line is:

45

Urgent issue. Previous Shiv Sahay deal.

Second paragraph:

Shiv Sahay was terminated with Aussie in August after Suncorp revoked his accreditations. Further file reviews by both Aussie and other lenders on our panel have indicated there may be further concerns on top of those identified by Suncorp.

5

And then a summary is provided of a customer's situation. A customer who had got in contact with Aussie; is that correct?---Yes, that's correct.

And the summary is:

10

Single female applicant, husband not included due to adverse credit history. I will endeavour to get VEDA report not on file from Shiv.

15 What is a VEDA report?---Veda is a report that talks about the credit rating of the individual and has a history of credit inquiries.

Continuing:

20

Land loan for a client with Suncorp. Loan amount 267,000, purchase price 293,000. Loan drawn 5 June 2013. First home owner's grant application form submitted to Suncorp as part of application. Copy not on file. Above loan incurred mortgage insurance of \$3556.70, appears deposit of 26,000 paid from customer's genuine savings. Construction loan 383,000 submitted prior to Shiv's termination. Construction tender, \$400,257. Loan amount since amended to \$353,750 due to servicing issues. Loan unconditionally approved prior to Shiv terminating. New broker, Keira Hooper.

25

Now, this is someone who would have been allocated to this customer's file after Mr Sahay was terminated; is that right?---That's right, yes.

30

Continuing:

35

New broker, Keira Hooper picked up file, contacted clients and introduced herself and confirmed status of the deal. Approval expired. Keira made contact with clients and they and husband advised applicant was in hospital, having just given birth. They were not aware they were pregnant and baby was around 13 weeks premature and not in a good way. Keira advised she needed to reassess loan as Suncorp required her to state no change to circumstances and she couldn't do that. Initial calculations indicated it didn't service and Keira was researching if it could be done with an alternate lender. Client's contacted Suncorp directly and extended approval. As baby was in critical condition, Keira didn't advise Suncorp of circumstances at this stage as clients indicated baby not expected to survive. Notification received that additional information needed to be provided with first home owner's grand, as Shiv had not included, including contract of sale for land and signed building tender.

40

45

OSR –

could you tell us who OSR is?---Office of State Revenue, I would assume.

Thank you. Responsible for the administration of first home owner's grants; is that right?---Yes.

5

So:

10 *OSR advised Suncorp that first home owner's grant had been declined due to value exceeding 650,000. So far clients have paid 32,000, including a gift of 12,500 to the builder and another \$26,000 deposit on the land. There will be a shortfall of close to 15,000 due to first home owner's grant not being received. Until all own funds are paid towards the construction Suncorp will not release first progress payment. Construction has not commenced but is due in the very near future.*

15

Now:

20 *Client has not been advised of first home owner's grant being declined at this stage, as I have advised Keira to hold off until advised on best way to communicate this and possible solutions. Impact to Aussie brand and potential financial claims are likely as client is in an extremely fragile state and have paid considerable savings towards this purchase already. Clients would be potentially liable for the full amount paid to the builder if construction didn't proceed. I would appreciate some guidance on what approach could be taken with this one, what our responsibilities are, and also the best way to discuss with the client.*

25

Now, are you familiar with how Aussie handled this customer's issues, Ms Harris?---I am familiar superficially with the process that was followed here. I can't give you a categoric – a categoric outline of the actual steps that happened after this. I can certainly tell you that, according to our records, we have not paid any compensation. So I would assume a further investigation happened. The other thing that I would add about this one is that it's an incredibly sad example, and obviously the new broker was struggling with what do they do when a family is in a very traumatic stage. And I can understand that.

30

35

The family was in, as you describe it, a traumatic stage and they weren't told, were they, of what had happened with Mr Sahay?---No, they weren't. No.

40 Yes. And this was a situation where a customer had got an unconditionally approved loan through Mr Sahay in circumstances where the first home owner's grant had been factored into the serviceability assessment and the application form for that grant had been submitted to Suncorp as part of the application, and then the customer was unable to service the loan and the first home owner's grant was denied. That's right?---Yes, that what I believe. Yes.

45

Yes. And instead of talking to this customer about Mr Sahay's misconduct, which it appears extends to having factored in a grant that had not been made into the serviceability assessment for this customer's loan, the customer was told nothing about that; is that right?---So the customer was certainly told that Mr Sahay had left.

5

Yes?---If – if we actually look at the – at what we can and can't say, and we are guided by legal advice on what we can and can't say, at this point we didn't have categoric proof – highly likely, we all believed it, but we didn't have categoric, tangible, technical definition of fraud and what actually happened. So our focus in these situations is to focus on trying to look after the customer the best way we can rather than go through with the customer information about Mr Sahay who, at that stage, had not been proven guilty.

10

You don't - - -?---I'm not doubting he did the wrong thing. I'm not doubting that this was misconduct, so please believe that. I'm not doubting that. But it's a really difficult situation during this period of working out what do you say and what don't you say when – when there hasn't been actual proven conviction.

15

I want to ask you about that, Ms Harris, because over the course of a single day, a single day file review was enough for Aussie Home Loans to decide that Mr Sahay's conduct was so egregious that he ought be terminated with immediate effect at the end of that day. You agreed with that yesterday?---And I agreed with that and I agreed with that on the basis there was sufficient evidence to us that he did not follow the Aussie processes and procedures, and was not complying with what we believed responsible lending should be.

20

25

That's right?---That a very different thing to the definition of fraud. That the only point that I'm wanting to make here.

You didn't even tell the customer that first bit: that Aussie Home Loans, following a review of files, had formed the view that you had just articulated. Not even that piece of information was provided to the customer, was it?---Probably not, no.

30

No. And you talked about the focus of Aussie Home Loans at this stage being to do what's in the best interest of the client. You don't think it would have been in the best interests of this client to explain Aussie's position on the conduct of this broker, who had put through her unconditionally approved loan that ought never have been approved?---I think in this situation – I'm sorry, perhaps we are differing here – I think in this situation our focus needs to be on the customer to see whether we can possibly get some solution for the customer. So it's – the customer first, in my book, and obviously that's different.

35

40

Well, I'm going to put to you directly, Ms Harris, that this email reveals that the focus was not on the customer and the customer's interests. The folk focus was on the impact to the Aussie brand and potential financial claims being made against Aussie by this client?---I agree that that's the last part of that. But there's also in

45

previous emails – and there’s also the concern here about looking after the customer as well. It’s always going to be a balance.

5 Yes. And the balance wasn’t right here, was it, Ms Harris?---I don’t think we have enough information in that to determine how much effort we were putting in with the customer.

10 To put how much - - -?---How much – how much effort we were putting in to try to resolve the customer’s issues in this case.

I see. I will tender that document, Commissioner.

15 THE COMMISSIONER: Exhibit 1.53. AHL.0002.0001.4804, email Tomkins to Rasby, 10 December 2013.

**EXHIBIT #1.53 EMAIL FROM TOMKINS TO RASBY DATED 10/12/2013
(AHL.0002.0001.4804)**

20 MS ORR: Thank you. At some point, Ms Harris - - -

THE COMMISSIONER: Just before you go on, Ms Orr.

25 MS ORR: Yes.

THE COMMISSIONER: The client was told that Mr Sahay had left; is that right?---That’s right.

30 Didn’t think of telling the client that Mr Sahay’s engagement had been terminated?---It’s actually difficult in that situation when the – when the customer is going through what is a stressful process of applying for a home loan – to put additional stress on them by saying he was terminated for – because then they start to think about other things. Our focus is on if we could possibly look after the customer
35 and get them what they are needing, that that should actually be the first priority

Yes.

40 MS ORR: At some point, Ms Harris, ASIC became involved in relation to Mr Sahay’s misconduct, did they not?---They did. Yes.

And do you know how ASIC came to be involved?---I believe Bankwest notified them.

45 And the ASIC investigation that was conducted revealed that Mr Sahay, while acting as Aussie’s credit representative, had made false statements in applications and created and used false bank statements for 17 of his clients?---Yes.

For the purposes of securing home loans totalling approximately \$7 million?---It was that – that was the case and it’s completely and utterly unacceptable.

5 And those home loans were all through Bankwest and Suncorp?---They – this particular – Shiv Sahay seemed to put his loans in those areas, yes.

Well, he didn’t put all of his loans through Bankwest and Suncorp, did he?---No, not all. No.

10 We saw you notified multiple panel lenders about his previous termination?---Yes. In the previous one. Yes, they were. Yes.

But what I have just referred to, the 17 clients for which there was a finding he made false statements and used false bank statements?---Yes.

15 They were all Bankwest and Suncorp clients, and we know that not as a result of any investigation undertaken by Aussie but as a result of investigations and action taken by Bankwest and Suncorp; is that right?---That’s right. So the lenders each will do an investigation, having received an alert from us that they need to look at the files,
20 yes.

And Mr Sahay was – Mr Sahay was subsequently charged with criminal offences; is that right?---He was.

25 And he was convicted of those criminal offences, having pleaded guilty?---He was – he was.

30 And you have explained the nature of those criminal offences in paragraph 44 of your statement. There were 13 false statements made in loan applications submitted on behalf of clients to Bankwest and Suncorp. 23 false documents in support of those false statements, primarily bank statements, and he used 26 false documents in loan applications he submitted to Bankwest?---That’s right. He pleaded guilty to those, yes.

35 Yes. And Aussie Home Loans never worked out whether Mr Sahay’s criminal conduct had also affected loans with other lenders?---We – as I said before, we notified the lenders and we asked them to look. We looked after the customers that were in the process of having a loan approved or settled and then practice in the aggregator market is that the lenders look after the customers after that and that’s
40 primarily because you get that who owns the customer. So whilst we will keep in contact with the customers, the decision about these kind of things is done by the lender and actions are done by the lender. That’s what we believe – that what we ask the lenders to do and that’s what they agree to do.

45 I think the answer to my question is yes. Aussie Home Loans never worked out whether Mr Sahay’s criminal conduct – excuse me – affected loans with other lenders. Is the answer to that question yes?---Yes.

Thank you. Now, did Aussie Home Loans report Mr Sahay's misconduct to the MFAA?---No, we didn't. No.

5 And why not, Ms Harris?---I don't know and I have been asking exactly that question. We should be reporting it to the MFAA. I talked yesterday, I know, about the importance of the MFAA and doing that, and so far I have not had a reasonable explanation as to why we didn't. But we didn't.

10 Yes. So your evidence yesterday was that, in answer to my question why has Aussie chosen the MFAA, rather than the FBAA, you said it was quite a few years ago now – this is transcript 312 at line 37 – that:

At the time the MFAA was the only association which expelled brokers.

15 ?---Yes.

Continuing:

20 *So there was a level of frustration in Aussie that we would terminate a broker for doing the wrong thing, and they would go and work for someone else. So we actually applied to the ACCC for us to be able dictate that all of our brokers needed to be a member of the MFAA as opposed to the MFAA or the FBAA. We believed it was a more rigorous organisation.*

25 That was your evidence?---That was my evidence and that's what I still believe very strongly.

And you can't explain why - - -?---I can't. What I can say - - -

30 - - - in the face of this misconduct there was no report to the MFAA by Aussie Home Loans?---I cannot explain why. I can – I can certainly say that there was clearly a lapse in our process. We should have done it. We do, do it now, so there is a very diligent process now but we didn't at that case. There was a – there was that period when for whatever reason we weren't doing what we should have been doing. We
35 are looking at it, we are making sure that we are fixing it. This is about identifying these things and trying to come up with – not trying, coming up with solutions.

I'm going to ask you today about misconduct of four former brokers - - -?---Yes –
40 yes.

- - - from Aussie Home Loans. Mr Sahay is the first in time?---Yes.

45 In 2013. How many of those did you notify the misconduct to MFAA?---We notified the number 4.

Just the last one?---Yes. So the case with these three, we did not notify them. So there was that period, as I said.

A lengthy period, was it not, Ms Harris?---It was a lapse in our process and it was over a lengthy period.

Yes?---And we – it shouldn't have happened.

5

Can I show you another document, AHL.0002.0001.5035. This is a letter or an email from the MFAA to Aussie Home Loans on 3 February 2014?---Yes.

10 So you terminated Mr Sahay on 8 August 2013, but it's the MFAA who tells you in February 2014 that they have made a determination to expel Mr Sahay?---That's right. Yes.

And you don't know how the MFAA came to be aware of Mr Sahay's misconduct?---No.

15

No?---No, I'm sorry.

I tender that document, Commissioner.

20 THE COMMISSIONER: Exhibit 1.54. AHL.0002.0001.5035, email from Kennedy, 3 February 2014.

25 **EXHIBIT #1.54 EMAIL FROM KENNEDY DATED 03/02/2014
(AHL.0002.0001.5035)**

30 THE WITNESS: I would assume that one of the lenders notified them, but I can't categorically say that.

MS ORR: Yes. If we turn to the second broker who you deal with in your statement, Ms Harris?---Yes.

35 That's a broker by the name of Emma Khalil, K-h-a-l-i-l?---That's right.

Now, Aussie first became aware of Ms Khalil's misconduct on 5 or 6 March 2014; is that right?---That's right.

40 And how did Aussie become aware of that misconduct?---Notification by the lender.

And which lender?---I have to go back - - -

45 You deal with this in paragraph 71 of your statement?---Do I? Okay. So it was Westpac. That's right, it was Westpac, related to their product features at the time.

So, as with Mr Sahay, Aussie found out about fraudulent misconduct on the part of one of its brokers from a lender, not from anything connected with its own processes?---No. That's right.

5 So Aussie's processes again didn't prevent this misconduct from occurring, nor did they detect the misconduct when it had occurred?---I think that's absolutely true. Yes.

10 And this is some time after the events involving Mr Sahay. Those events were back in August 2013?---Yes.

15 We are now in March 2014. And Aussie's processes had not been improved in a way that prevented or detected this misconduct?---Aussie's processes did not identify this particular example, but we – we were reviewing files, we were attempting to start a really rigorous compliance program and we certainly had, very clearly, the expectation in the business that we – we should be looking for brokers that do the wrong thing and if we find brokers that do the wrong thing there, and that's proven, then we will terminate their contract. So very clearly that was the expectation.

20 THE COMMISSIONER: The expectation was you would terminate their contract and that would be the end of it, wasn't it?---The - - -

25 In particular, there was no expectation that you would report it to any authority?---The expectation was that it would have been reported. It wasn't reported. You are absolutely right.

Reported to whom?---The expectation was that it should certainly have been reported to the MFAA.

30 But not to ASIC or any other regulatory authority?---No, that – we were also talking about reporting to ASIC.

35 MS ORR: You were talking about reporting to ASIC?---We were talking about the need for us to start reporting to ASIC at the same time.

This particular misconduct of Ms Khalil was detected by Westpac because there was an anomaly that they recognised. Do you see the reference you make to that in paragraph 71 of your statement?---Yes, I do.

40 The customer had applied for a credit card at a Westpac branch?---That's right.

45 And the credit card application was independent of Ms Khalil and Aussie Home Loans. The credit card application recorded details of income that was materially inconsistent with those provided in the application – we need the next page - - -?---That's right.

- - - submitted by Ms Khalil. This prompted a review of the customer's home loan application, a review by Westpac, and the issue centred on Ms Khalil's clients using potentially fraudulent letters of employment as proof of income in submitting applications to Westpac?---Yes.

5

Why didn't Aussie detect Ms Khalil using potentially fraudulent letters of employment as proof of income in her loan applications?---So clearly our compliance team didn't pick it up and the line 1 compliance, being the mobile business leader, did not pick it up either.

10

Do you know anything about the details of what made the letters of employment fraudulent?---Yes. So there – they were the same employer sometimes, the same numbers sometimes. So when you are looking at a series of applications there should have been – we should have recognised the pattern.

15

Yes?---On their own, perhaps not, but certainly if you put bills one behind the other, then we should have.

I want to put to you Ms Harris, that it wasn't difficult at all to detect this fraud. The same employer appeared as the employer of multiple clients who - - -?---Yes.

20

- - - Ms Khalil was submitting home loan applications for. The letters of employment, according to your Aussie documents were all in a very similar format in a similar font, they all had very similar detail. You accept all of that?---Yes. Yes. We should – we should have picked it up, yes.

25

Well, at this time did Aussie have some sort of fraud team or some sort of program designed to detect these anomalies?---We were – we're a small organisation, we would have had about 200 people there, plus the brokers. We had a compliance team and the compliance team's role was to review files and to investigate further if any particularly – particular anomalies – anomalies, sorry – becomes apparent. We have since then significantly beefed up that compliance time and we are about to beef it up even more with line 1 compliance roles. So we recognise that we need – we recognise now that we need far more resources in order to do that effectively. Plus, obviously, the number of customers and brokers have increased.

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35

Is there a fraud team now within Aussie?---There is not a fraud team. There is a compliance team that will be looking at these things.

And how many people are in that compliance team that will be looking at these things?---The risk and compliance team now totals nine. That's at the level – that's the second level. The first level, we have – we have the mobile business leaders that I've talked about and the retail business consultants. So there are 27 of those. And in addition we have got two centralised roles which we are actually repurposing. So the centralised roles were more around coaching in credit. We are repurposing them so that we can take advantage of the broker dashboard that we are developing. So the broker dashboard will actually – it comes out of Power BI, and it has got a process

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45

flow related to – coming out of sales force and what that dashboard will do is allow us to look at every broker under a number of different categories. So, you know, rework, funds to complete, living expenses, those kind of things, so that we can be looking across the board at all our broker group and then we are then going to be
5 more able or more able to identify and recognise if there are patterns. So someone – it's coded red, green, yellow, the obvious thing. So as soon as there is multiple red there is the capacity then to say, "Okay, we need to drill down more into that what particular broker is doing". All right? So that centralised team will be coordinating that and then we are putting another five resources into each of the states that will be
10 that line 1 working in the state office actually doing checking, checking the files and actually working with the brokers to make sure they are – they are understanding – if there are areas that they are not meeting NCCP requirements, that they understand very quickly and are given the skills and knowledge on how to do that.

15 How will that system, which is as I understand it is not yet operational, these are things you are developing; is that right?---I saw a draft of the broker dashboard a week ago.

20 Yes?---So it's very – it's very close.

So it's – right?---We have just got to make sure that the data in it is accurate, but it's – it's certainly built and we're testing it.

25 Yes. But not yet implemented?---Not right now, no.

No?---No. But it – we're – in the testing we are – we are actually picking up some patterns already. So it's just that testing.

30 Patterns of misconduct by your brokers?---We're just – we can see what brokers are doing what already. So what I'm saying there is that we are starting – as a pilot, as a test. I can't categorically tell you the results, but it's in a form where we can test and test scenarios and test things so that it is able already to give us trends. We don't know, as I said at the outset, that the data is accurate, so we can't actually act on it, but we certainly are very confident it will give us far greater ability to look, identify
35 trends and start preventing – which is what should have happened with these. So your point is absolutely valid.

40 So what sort of things have you picked up already in the pilot phase?--?---We are identifying where there seems to be trends, going back to discussions before about living expenses sitting on HEM. So why are they doing that? So let's have a conversation with the broker about whether that's justifiable or not. So that's some of the things that we are starting to identify.

45 What other things are you starting to identify?---Brokers that have high rework, which would suggest that they are not necessarily taking – they are not putting in all the documents in the way it should, and rework can potentially affect a customer. So

we need to talk to the broker about making sure that they are providing the documents as the lender is asking for so that the deal preferably goes through quicker

5 Any other things that you have picked up in the pilot phase?---They were just – they were a couple that I noticed when we had the demonstration.

10 And how will this new system detect fraudulent conduct?---So there is the ability in the system to look at supporting documentation and supporting documentation is related to this. So it will show if there is indications of any issues and it will then allow our compliance team to look in more detail about the loan applications for that broker and see it in that sequence that I talked about earlier.

15 Is the supporting documentation logged into the system or does the system just record the form of supporting documentation that was submitted by the broker?---The system – often, the supporting documentation is separate. Depends on whether the supporting documentation is in Toolbox, which is our system.

20 So the supporting documentation itself is not loaded into the system?---No, because it's based on Power BI. So it's a data – so, you know, it will show where there are supporting documentation, but it will allow people then to dig in that.

25 I'm asking this because I want to understand how you are going to identify the fraudulent supporting documentation that wasn't identified for Ms Khalil where multiple clients have letters of employment from the same employer, in the same style, being submitted by the broker?---And that's a valid comment. I can't tell you exactly how that's going to work, except that that one of the key objectives of this tool: for us to be able to pick up issues like that a lot earlier than we have up until now.

30 Well, that objective will fail if the documents themselves aren't part of the system, won't it, because you need to be able to look at the face of the letter of employment and see that it's in the same style and from the same employer as another client?---It will – it will trigger pulling up the supporting documentation and looking at that supporting documentation.

35 That's what I'm trying to understand. What will trigger that, Ms Harris?---What will – what will trigger that is a pattern. What will trigger that is whether there's supporting documentation or not and so that that pattern. I think that we need – and I can't – I'm not the technical person here, I'm sorry – but I think we need to make
40 sure we build in to the broker dashboard some way of determining the supporting documentation. I can't tell you how that is done within Power BI, but that's – that's what we should be doing.

45 That would seem to be a good idea, in - - -?---Yes.

- - - light of the misconduct of just the fours particular brokers you focused on in your statement, would it not?---It – it would.

Yes?---So just to be clear, I have seen – I have seen a demonstration of the tool for 20 minutes. I haven't been involved in the build process of it, I've seen the – I've seen the demonstration of it. It has given me a high level of confidence. As a business we are very excited about having a tool like this. The more technical thing,
5 how does it work, and what do they pull and where does it pull from, I'm not the expert in that. I can't say that supporting documentation will be a critical area of focus for us. I can certainly say that.

10 You just don't know how that going to work?---I don't know technically.

Yes, okay. Okay. Could we go back to Ms Khalil?---Yes.

15 Who in 2014, March 2014, Westpac tells you is involved in what they suspect to be fraudulent misconduct?---Yes.

Can I take you to an Aussie document in light of that disclosure, AHL.0002.0001.3235. Now, I think we need to pull – yes, thank you. Pull up the next page as well. So we have two communications here on 6 March within Aussie. The first is the one on the right side of the page at 3.31 pm from Shaane Wilson, a sales manager for mobile, to Matthew - - -?---She's a – she was a mobile business leader, yes.
20

Yes. To Matthew Whyte?---Yes.

25 Who is Matthew Whyte?---He was the Queensland Northern Territory – well, is the Queensland Northern Territory state manager.

Okay. And so Ms Wilson – is that right, Ms Wilson?---Yes. A Ms, yes.

30 Ms Wilson is telling Mr Whyte that Emma Khalil has been lodging deals with Westpac using letter of employment as only source of income?---Yes.

And:

35 *This has come to light yesterday, as one of the loans that was due to settle has fallen over due to anomalies.*

Do you see that?---That yes, I do.

40 Continuing:

The Westpac staff member who was processing the credit card application reported this to the housing area, which has now resulted in the file being investigated further.
45

Now, do you see the next paragraph refers to Ms Wilson having spoken to Emma in length today to understand what has occurred?---Yes. That's right, yes.

Continuing:

5 *Emma has indicated that she's done quite a few loans with Westpac recently using the letter of employment, which Emma supplied the draft copy to applicant and/or employer. The draft letter could certainly be –*

draft letter of employment –

10 *could certainly be just the wording for employer to follow. I asked Emma if she was aware of her knowingly doing anything that wasn't honest. And that – and she stated that she was all okay with the process. I also asked Emma if she kept very good diary notes to ensure that if any questions were raised she could support herself with her file notes. Emma does not keep good diary notes and time line of events.*

15

If we move another paragraph down:

20 *Emma had also asked me what would happen if she was found to have done something wrong. I explained that she could lose her Aussie agreement, lose her income and trail book as well as be blacklisted with MFAA. Emma was showing visible signs of stress and worry.*

25 Now, could I ask you to look at the next email at 7.21 that day. Matthew Whyte to Steven McKenzie. Who was Mr McKenzie?---Mr McKenzie was the head of sales operations. So he was in charge of the compliance team and he was in charge of making sure that further investigations would be done.

30 And I want to direct you to a part of the first paragraph where Mr Whyte says to Mr McKenzie – he refers to a meeting that they are going to have with Emma:

35 *I will ensure that the focus of the meeting is not to make any accusations or deliver any disciplinary action, but rather to find out as much as we can about the file in question. I will, however, confirm to her that if Westpac find that there was fraudulent activity on her part and revoke her accreditation, then that will in effect put her in breach of her contract and ultimately result in her termination from Aussie.*

Further down:

40 *Can you please contact Westpac to initiate an audit of loan files. Ones noted below are related to the file in question. I assume this will trigger an internal audit from Aussie's end on a number of recent files scanned by Emma. Can you also please ask Westpac if they have already commenced an investigation yet and initial findings, this will determine whether we suspend Emma immediately, pending outcome of Westpac investigation, or whether we wait*
45 *until the findings are advised back to us.*

And then there is a reference to potential pending legal action. Do you see that?---Yes, I do.

5 Now, why was the issue of Ms Khalil's termination by Aussie Home Loans for fraud left in the hands of a third party, left in the hands of the lender? Whatever action Aussie was to take was going to be dependent upon the action taken by Westpac. Why is that?---So Westpac – and in fact all the large banks – have credit specialists and fraud teams that have the expertise to be able to determine fraud. We don't have that. So we are reliant on the lenders to provide that expertise because they are
10 ultimately the organisation that's approving the loan. So, you know, we are the front end and we don't have those skills. We have people to check and to look at files, but the legal definition – which is what you're going to need in these cases – you need a legal definition that's defensible, is very difficult for us to do. We had a broker who was arguing – what she did was appalling, so please, I'm not justifying that – but
15 what we had a broker who was arguing very strongly that she had not done this. So you – we were not in a position to know who had done what, how, where, when, and so for that reason it's actually the prudent, I think, and responsible thing for us to go to the lender who had those skills and expertise for them to make a determination. The thing I would stress here is that there – you know, there is never any doubt that
20 we will terminate if the person has done the wrong thing. And in this case they did the wrong thing. But right at the beginning it is often quite difficult to know exactly what is the truth and what isn't, and how you best handle it.

25 What I want to put to you, Ms Harris, is that it's not good enough. It's not good enough that Aussie Home Loans outsources to a third party investigations of fraudulent conduct made against one of its own employees. What do you say to that?---Made against an independent contractor who operates with us. So they are not – they are not an employee, is what I'm - - -

30 I'm sorry, I'm wanting to – you are referring to my characterisation of Ms Khalil as an employee, I understand?---Yes. As an employee, yes.

35 So an independent contractor engaged by you, and operating under your brand - - -?---Yes.

- - - as an Aussie broker. What I'm putting to you is that it's not good enough that you outsource entirely your obligation to look into a serious allegation of fraudulent misconduct, you outsource that to a third party, and your action is entirely dependent upon the actions of that third party?---We – we are outsourcing it to a third party that
40 is directly related to the situation, and they have a level of expertise that we simply don't have within our business. And they are the ones who are responsible for – for providing the home loan.

45 Do you think you ought develop that expertise within your business, Ms Harris?---I think it's – I think it's a very difficult area. I don't know how – how – what we would have to do to set up a unit that is big enough and robust enough to be able to make these determinations, especially when we have lender partners who have units

to do this. They have people, they have teams that do nothing but this. We are not big enough to be able to justify that, so I think it's appropriate to find the best third party we can with some – some interest, some relationship in the particular situation, and ask them to determine that.

5

THE COMMISSIONER: Well, can I just see if I can summarise where we have got to, because – is it open to me to conclude from your evidence that at the time of the Khalil events - - -?---Yes.

10 - - - and earlier, Aussie was of the view that it was for the lender and not Aussie to investigate and determine whether there was fraud associated with one or more particular transactions?---Yes. So our compliance team were responsible for highlighting if there were issues and anomalies, but the lender would be one determining fraud, yes.

15

Is it open to me to conclude, from what you have told me, that it remains Aussie's view that it is for the lender not Aussie to investigate and determine whether there was fraud associated with one or more transactions?---So it's slightly different now, sir, in that because we have – and we are a wholly owned company under CBA, we now have access to that fraud – those expertise that I talked about earlier. So we can actually get their input and seek their expertise in these situations.

20

In respect of a transaction made with a bank other than CBA?---Sorry, say that again.

25 In respect of a transaction made with a bank other than CBA?---Yes. If there is - - -

You call on the CBA fraud team for example, to take a random case, with respect to a loan with ANZ or Westpac or NAB?---Well, they are – they – yes, so they are able – they're the same as us having our own fraud team, which is what we're talking about here. They provide the same support. So they are in a better position to be able to determine that definition. I keep coming back to the definition of fraud. You know, that – that we can provide anomalies or evidence, or indications of anomalies, but they are in a much stronger position. And so now with the CBA piece, yes, they would be – potentially, I can't think of a time, sir, but they would potentially be in a position to be looking at supporting documentations which were – you know, has already been identified tends to be the area where fraud is committed.

30

35

Am I to also understand from your evidence that at the time of the Khalil and earlier events Aussie was of the view that it was for the lender not Aussie to deal with the client in respect of a drawn down loan?---Once the loan has settled, yes, we notify the lenders and ask them to contact the customer if required.

40

And is that still the position of Aussie today, that it is for the lender, not for Aussie, to deal with the client in respect of a drawn loan?---In respect to any potential fraud. Obviously we keep in contact with the customer, but on this particular area, yes.

45

The last matter I want to take up with you is that am I to understand from your evidence that, at the time of the events of Sahay and Khalil, the only steps Aussie took with respect to the broker were to terminate his or her engagement with Aussie?---Yes.

5

In fact, in those events, it did not notify or deal with MFAA?---No. There was a gap in our process at that time. Yes.

10 And in particular Aussie made no report of any kind to any regulatory authority?---That is what appears, yes.

Yes. Yes, Ms Orr?---And what I need to add to that is that a is a real gap. We should be, we should have done then, we should be now, sir, I'm absolutely acknowledging that.

15

20 MS ORR: Ms Harris, the two pages that are on the screen are the last two pages in an email chain. Could I ask for the first two pages of that email chain to also be brought up on the screen, which are 3233 and 3234. I showed this to you, Ms Harris, because I want to tender the entirety of this document. You will see that the first page there is a note recording Ms Khalil's account of events in the interview that was subsequently conducted by Aussie with Ms Khalil and her husband on 7 March?---Yes.

25 I tender the document that commences with AHL.0002.0001.3233. An email from Matthew Whyte to Jo-Anne Gilbey dated 7 March 2014.

THE COMMISSIONER: That will be exhibit 1.55.

30 **EXHIBIT #1.55 EMAIL FROM MATTHEW WHYTE TO JO-ANNE GILBEY DATED 07/03/2014 (AHL.0002.0001.3233)**

35 MS ORR: Ms Harris, could you please look at AHL.0002.0001.0174?---Sorry, is that – is that what's going to be on the screen?

It's coming now, Ms Harris?---Thank you. Sorry.

40 And this, again, is a multipage email chain. Now, can I ask you to turn within it to 175, which I think is the page we have on the second half of the screen?---Okay. Right.

45 Do you see there that on 13 March, a few days later, Jo-Anne Gilbey, whose name is cut off, appears on the – you can see it on the from, on the email?---Yes.

Jo-Anne Gilbey is telling Mr McKenzie that she recommends immediate suspension of Ms Khalil?---Yes.

Continuing:

5 *The volume and similarities in the letters of employment indicate that at the very least the broker has been negligent in her role, if she was not an active participant. On our credit matrix, Westpac is the only lender that accepts only a letter of employment as the sole income verification when the LVR - - -*

?---Loan to value ratio.

10 Yes. And I assume there were probably meant to be some words that followed that, about the LVR, but we don't have them?---Yes, I would assume that it is something to do with the

15 Yes, the particular LVR. So on 13 March a recommendation for the immediate suspension of Ms Khalil?---Yes.

And on the previous page, 174, we see that Stephen McKenzie supports that recommendation?---Yes, he does.

20 I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 1.56. Email to McKenzie, 13 March 2014, and associated email. That's AHL.0002.0001.0174.

25

EXHIBIT #1.56 EMAIL TO MCKENZIE AND ASSOCIATED EMAIL DATED 13/03/2014 (AHL.0002.0001.0174)

30 MS ORR: Ms Khalil was suspended from Aussie Home Loans on 13 March 2014?---Yes

And her accreditation was withdrawn by Westpac - - -?---Yes.

35 - - - the following day, 14 March. And, following that withdrawal of her Westpac accreditation, Aussie sent suspension notices to Ms Khalil's company as well; is that right?---Yes.

40 And on 25 March there was internal discussion about potential revocation of Ms Khalil's accreditation. If we go to – thank you. AHL.0002.0001.3317. Now, if we could turn to 3319. Mr Whyte, Mr – do we have – there we go. On 25 March, Mr Whyte in an email to a number of people at Aussie. Says he's needing to get some clarity on where to from here:

45 *What we know is, (1), that Westpac will be revoking Emma's accreditation.*

Now, as it turns out they had in fact already revoked her accreditation on 14 March, but Mr Whyte appears not to be aware of that in this email.

5 *Customer is accusing Emma of fraudulent activity and are seeking restitution of deposit that has been forfeited due to inability to settle on purchase of property. Has threatened to go to Today Tonight.*

And then down the bottom:

10 *Based on Westpac's decision to revoke accreditation, I will have to terminate Emma. Can you please provide the termination letter so that I can advise her.*

Do you see that?---Yes.

15 So the decision to terminate Ms Khalil was based on Westpac's decision to revoke her accreditation?---Yes. So she – as soon as they revoke her accreditation she breaches her contract and therefore termination of the agreement occurs.

20 Yes. That was the basis for the termination?---Yes.

Thank you. And if we go to 3317, the first email in this chain, we see an email from Aussie's corporate counsel to a number of people within Aussie, including Matthew Whyte:

25 *As discussed on the phone, to ensure we have a robust legal position, the termination letter should outline all breaches of the agreement and any misconduct by the broker. By undertaking an investigation of the matters and outlining all issues and breaches in depth, we are strengthening Aussie's legal position and our right to terminate. What we want to avoid is any argument by Ms Khalil that termination of the agreement, as well as her future income stream through the life loyalty bonus, by Aussie was incorrect, unjust or a penalty. To this end the more detail and breaches that we can outline in the termination letter the better placed Aussie will be in future to rebut legal proceedings.*

35 So could you explain what Ms Khalil's future income stream through the life loyalty bonus would be?---So that would be the trail bonus.

40 That's the trail commission, is it?---That's right.

So are the two things referring to the same thing there? The future income stream and the life loyalty bonus, are they both references to her trail commissions?---Yes, they would be.

45 I see. So this is about consideration of whether the trail commissions that are going to be paid by the lender to Aussie, a proportion of those will need to continue to be paid on to Ms Khalil; is that right?---No. No, no, it's not that. So this is the legal

team being conservative and robust in their process. As far as I'm aware, when someone loses their accreditation, I'm very comfortable for us to terminate straight away. The legal team are saying, "What other information do we have in order to have a robust case."

5

I understand that. I want to understand, when a broker is terminated by Aussie, what happens to the portion of the trail commission that comes from the lender to Aussie. What happens to that portion that would otherwise be going to the broker who submitted that loan?---If the – the trail is – the lender has the ability to cease trail payment certainly on the loans that were fraudulent and on all loans for that particular broker. So they have – they certainly have the right to do that.

10

And if they do not do that, I think I understood from your evidence yesterday, that the trail commission would be picked up – the portion of the trail commission for the broker would be picked up by the broker who takes over the loan; is that correct?---No, no. So the way that works is if a broker picks up that the customer – and they are the customers in the pending – so between the customer being seen and settlement, if the broker looks after the customer and takes them through to settlement then that new broker will be entitled to the commission involved in taking them through to settlement.

20

I see?---But the trail isn't then given to another broker.

I see?---We – we will take responsibility for the – the loans that this – that Ms Khalil in this case had written. We would take responsibility for working with, communicating and looking after her customer base. It's only the new customers that would go to another broker.

25

So does that mean, Ms Harris, that if the lender doesn't terminate the trail commission to Aussie, Aussie in these circumstances retains the entirety of that trail commission as it continues to come in? They don't provide any portion of that to another broker who has taken over looking after that customer?---That's right.

30

Yes?---Yes. The way the commission works, the broker will be – will receive financial benefit for the customers that they look after from settlement ongoing.

35

I tender this email chain, Commissioner.

THE COMMISSIONER: Exhibit 1.57. AHL.0002.0001.3317. Email from Howell to Whyte, 26 March '14 and associated emails.

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EXHIBIT #1.57 EMAIL FROM HOWELL TO WHYTE AND ASSOCIATED EMAILS DATED 26/03/2014 (AHL.0002.0001.3317)

45

MS ORR: Now, Aussie revoked the authorisation of Ms Khalil and her company as credit representatives of Aussie Home Loans on 4 April 2014?---Yes.

5 And on 10 April Aussie notified ASIC that Ms Khalil had ceased to be a credit representative - - -?---Yes.

- - - of Aussie; is that correct?---Yes.

10 And that was done by a standard form, a standard ASIC form that provided no information to ASIC about the circumstances that had led to the termination of her relationship with Aussie as an authorised credit representative?---So that – my understanding is that that then triggers ASIC to come back and request documents to give the background on the situation.

15 What – what do you base that understanding on, Ms Harris?---On the reports that I've seen from ASIC where we have provided documents that they have requested.

20 Well, let me show you the document you provided to ASIC. AHL.0002.0001.3260. It's a three-page document. If we could start with the first and second pages on the screen. Do you see that this is a standard ASIC form - - -?---I can.

- - - Ms Harris?---Yes.

25 And what it tells ASIC is that on 4 April 2014 a person with a particular credit representative number has ceased to be appointed as a representative by Aussie under their credit licence?---Yes.

Is that right?---Yes.

30 And we see Ms Khalil's name as the second of three on this form. So this is not a form just about Ms Khalil, it's about three different individuals or entities ceasing as credit representatives of Aussie; is that right?---I think so, yes.

35 And the final page of the form is 3262. So you've now seen the entirety of the form and you can see that there is no explanation of any reasons for cessation?---Sorry, it was not. Yes, you are absolutely right. It was not a formal notification to ASIC about – about her. It was simply letting ASIC know that she had ceased to be a credit representative.

40 Is your evidence that ASIC contacted Aussie as a result of receiving this form and asked for information about why Ms Khalil had ceased to be a credit representative?---What I believe is that there was a follow-up email about others and ASIC asked for a list of all brokers who had been – the very few brokers, in fact, who had been terminated due to adverse circumstances. And that - - -

45

I want you to think carefully about this, Ms Harris, because there is a letter that I will take you to later from ASIC in connection - - -?---Right.

- - - with Mr Sahay. Is your evidence – and I will tell you there is nothing in your statement about this - - -?---Right.

5 - - - is your evidence that, in response to receiving this form, ASIC contacted Aussie Home Loans and requested further information about Ms Khalil?---I – I’m – my apologies, I was thinking that it was a formal ASIC notification. It was simply the notification about the credit rep, so - - -

10 Yes?--- - - - I withdraw that.

Yes. Yes, thank you. I tender that document, Commissioner.

15 THE COMMISSIONER: Comment exhibit 1.58. AHL.0002.0001.3260. What do we call it? ASIC cessation form, is it?---A cessation of her being a credit rep – or credit representative, I should say.

20 THE COMMISSIONER: ASIC cessation of credit representative form, 10 April '14.

EXHIBIT #1.58 ASIC CESSATION OF CREDIT REPRESENTATIVE FORM DATED 10/04/2014 (AHL.0002.0001.3260)

25 MS ORR: If it assists, Commissioner, it’s a form CL31 under the National Consumer Credit Protection Act

THE COMMISSIONER: Speak of little else, Ms Orr.

30 MS ORR: Ms Harris, the letter that I think you may have been referring to earlier, we don’t have. I don’t think it was provided by Aussie, but we have Aussie’s response to that letter to ASIC, which is AHL.0002.0001.2446. And again, if we could have the first and second pages of this document on the screen, that would be helpful. Do you see that this is a letter from Aussie to ASIC on 13 October 2014.
35 You will recall that the document we just dealt with, the notification of cessation as a credit representative, was in April 2014. So this October letter from Aussie to ASIC records that it is in response to a letter from ASIC dated 23 September requesting further information in relation to steps taken by Aussie following the revocation of Mr Sahay’s authorisation under the AHL credit licence?---That’s right.

40 Now, ASIC put certain questions to Aussie, which Aussie has answered in this letter. The first question required details of any review conducted by AHL and the findings of that review to determine whether any fraudulent documents may have been submitted to AHA panel of lenders other than Suncorp due to that relevant period.
45 Do you understand this letter, Ms Harris, to be part of an investigation into Mr Sahay?---Yes.

An investigation that was not triggered by any investigation by Aussie, but by Suncorp, I think you thought earlier?---Yes.

5 Yes. So as part of that investigation, ASIC has sought information from Aussie, and Aussie has answered the particular question I just read out by saying:

10 *In the situation of Shiv Sahay, Aussie relied on the detailed investigations conducted by its panel lenders, in particular Suncorp. Once Suncorp revoked Mr Sahay's accreditation, Aussie terminated Mr Sahay and notified all its panel lenders and made it clear that they should review his pipeline and settled loans. It was made clear in discussions with the panel lenders that Aussie was very happy to assist in any way with their investigations and that Aussie would welcome more understanding of any findings.*

15 Now, ASIC also asked Aussie – at question 4 – for details of all credit representatives of Aussie other than Mr Sahay whose authorisation to act has been revoked since 1 August 2013 to the date of this letter, as a result of the credit representative being suspected of giving loan applications to a credit provider which contained false documents. And Aussie told ASIC that since 1 August 2013 – so a
20 period of less than a year – it had revoked the authorisation of eight credit representatives due to suspicions of loan applications submitted with false documents. And do we see there that Ms Khalil is listed as one of those eight?---We do.

25 And Ms Khalil is also listed in the table that follows question 5 about credit representatives who have had their accreditation cancelled by a credit provider?---Yes.

30 Now, is this the correspondence that you had in mind - - -?---Yes. It was, I'm sorry. - - - when you answered my questions before?---Yes.

35 THE COMMISSIONER: Exhibit 1.59. AHL.0002.0001.2446. Aussie to ASIC, dated 13 October 2014.

EXHIBIT #1.59 AUSSIE RESPONSE TO ASIC LETTER DATED 13/10/2014 (AHL.0002.0001.2446)

40 MS ORR: Aussie didn't report Ms Khalil's conduct to the police?---No, we didn't. No.

45 But ultimately Ms Khalil was charged with criminal offences?---Yes, she was.

She convicted of eight counts of fraud; is that right?---Yes, she was.

And you deal with that at paragraph 100 of your statement?---I do. That's right.

And, again, following the identification of this misconduct Aussie didn't write to any of Ms Khalil's customers to tell her what Ms Khalil had been doing?---No, we
5 didn't. Because the customers at that stage were in – obviously were in a settled loan, assuming that that loan was provided to them, and it would be up to the lender to look at whether there were any issues around arrears that would be suggesting that the customer was not able to afford their loan.

10 So do I understand the answer to that question to be no, Aussie didn't write to any of Ms Khalil's - - -?---To the best of my knowledge, no.

No. And you say in your statement that Aussie took steps to arrange for Ms Khalil's customers to be assisted by alternative Aussie brokers?---Yes. So the pending
15 customers would have been.

Yes. And what were they told about Ms Khalil's circumstances, those customers who were dealing with an alternative Aussie broker?---They would have been told that her contract had been terminated.
20

And nothing about the circumstances that led to the termination of her contract?---They may have been told verbally something to do with that. I can't guarantee, I wasn't there, when they were – when they were – had the conversations with the MBL, mobile business leader, or the state manager.
25

THE COMMISSIONER: They were told, were they, that the contract had been terminated?---Yes.

Not just that they – they weren't just told that she had left?---No, they would have
30 been told that her contract was terminated.

Say was – clients were told simply, "Oh, he's left"?---I understand that - - -

Yes?--- - - - that – in - - -
35

What was the difference with Ms Khalil's circumstance, that it was thought appropriate to tell her clients that she had been terminated, but not appropriate to tell Mr Sahay's clients that he had been terminated?---I think it's – it's – we are talking about a period of time here and we are talking about Aussie getting more
40 understanding and experience – unfortunately – in having to manage these situations and therefore having a higher level of confidence about the words that they could use.

You said to me that the clients of Khalil would have been told that she had been
45 terminated. Is that something you know or something you surmise?---That is what I would hope happened.

Hope?---I – yes, hope.

5 Because it is forensically convenient to you, sitting in the witness box, to take the answer that I had earlier suggested to you; is that right, Ms Harris?---Yes. I – let me just say, that is what – if anyone had a conversation – has a conversation with me in these situations, the advice I give them is to say that the contract was terminated. So it's not just that I'm – I'm saying the thing here, it is what I firmly believe. It is what I practice continually.

10 Yes. Well, I have interrupted you Ms Orr. May I go back to exhibit 1.59, which is the letter Aussie to ASIC, AHL.0002.0001.2446. The second page of that document, Ms Harris, do you have that in front of you?---I do.

15 Question 4 lists eight who have – whose authorisation as credit representatives has been cancelled; is that right?---That's right.

Five talks of credit representatives who have had their accreditation cancelled by a credit provider; is that right?---That's right.

20 Why is there a difference between the two lists? Why are there two only whose credit – whose accreditation has been cancelled by a credit provider, but there are eight who have been cancelled as a credit representative?---So when I look at the names in the list – so the point 5 does relate to us receiving notification from a lender that their accreditation will be cancelled. If I look at the other list, we did not receive
25 those notifications from the lenders, but we had enough concerns about the practices of those brokers to determine that we needed to terminate their contract.

Now - - ?---Now, that's my assumption of reading the letter, sir.

30 Yes. And you will recall I asked you a series of questions earlier this morning about what I should understand from your evidence. In particular, one of those questions was whether at this time it was Aussie's view that it was for the lender to investigate and determine the question of fraud. Do you recall me asking you that question?---I do. In – in terms of defining fraud or not, yes.

35 Yes. Well, am I to infer from this letter, in particular the differences between paragraphs 4 and 5, that there were cases where Aussie – without waiting for a lender – decided that it had enough concerns to warrant terminating the engagement of a broker as a credit representative?---Yes.

40 Now, Aussie was in a position, in at least those cases, from within its own resources to arrive at a conclusion that the appointment as credit representative should be terminated; is that right?---That's right.

45 Yes?---If - - -

Thank you?---Some of these don't necessarily – wouldn't necessarily be defined as fraud is my point. But it is still behaviour that we believe is not appropriate for the business and therefore their agreements were terminated.

5 MS ORR: Just to be clear about that, Ms Harris, both of these tables relate to people suspected of giving loan applications to a credit provider which contained false statements; do you see that?---I can. So if I look at the first on that list, that was a situation where the broker told the customer that the loan was approved before the loan actually was approved. So - - -

10 Where was the false document in connection with that?---I don't – I don't – I'm not really, really familiar with that, one but what I can say is that there may not have been a false document. There may have been false – misleading and false information given to the customers.

15 THE COMMISSIONER: Just before you – just before you conclude your answer, just for your own safety, go back and look carefully at what is said in paragraph 4. Think about the question you have just been asked. If needs be, we will have it repeated. Then answer it?---Okay. So - - -

20 But read paragraph 4 before you go on?---All right. So I know in paragraph 4 we talk about “contained false documents”. So what I don't know is whether misleading information is also considered false in that case. I don't know. I didn't write the letter.

25 MS ORR: Well, whoever wrote the letter took the view that the eight people in the first table were suspected of giving loan applications to a credit provider which contained false documents; do you agree with that?---That's exactly what the letter says, yes.

30 Thank you. Could I just come back to the topic that we – that Commissioner started with then, which was what was said to customers about whether Mr – I'm sorry, whether Ms Khalil had been terminated or had left?---Yes.

35 You deal with this in paragraph 79 of your statement under the heading Correspondence with Customers regarding Ms Khalil. And what you told the Commission in your statement is that:

40 *Where a home loan application was pending AHL, reallocated Ms Khalil's customers to another Aussie broker. Those Aussie brokers were directed to contact Ms Khalil's former customers to offer to revisit and, if appropriate or necessary, resubmit their home loan application. Those steps were taken as soon as practicable after AHL became aware of the misconduct.*

45 Those are the only steps taken that you refer to in terms of the correspondence with customers regarding Ms Khalil. You didn't say anything in your statement about

those new brokers being told to explain to the customer that Ms Khalil had been terminated; is that correct?---That's correct. That what's said in that paragraph, yes.

5 Thank you. Can we move, Ms Harris, to the third of the brokers that you deal with in your witness statement, a person by the name of Madhvan Nair?---That's right.

Mr or Ms?---Mr.

10 It's Mr Madhvan Nair. Now, he was a franchisee broker; is that right?---Yes. So he worked in a store, yes. He was - - -

THE COMMISSIONER: Sorry, he worked?---Sorry, he was – sorry to cut you off, he was originally an mobile broker, and then he moved into working out of a store.

15 MS ORR: So that distinguishes him from the first two brokers; is that right?---That's right.

Yes. And Aussie first became aware of his misconduct on 24 June 2014?---Yes.

20 And how did Aussie become aware of his misconduct?---So ANZ notified us of concerns. So again, it was the lender notifying us.

25 Could I take you to AHL.0001.0001.3136. And do you see there – if we could have the second page of that email on the screen as well. That would assist. An email from Ms Brown. Ms Brown was from ANZ?---That's right.

To Matthew Whyte concerning Madhvan Nair. And under heading Case Background:

30 *We have detected five applications with an employer owned by the same entities and all five have payslips in identical form with the same yearly income of 75,000 for each applicant.*

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

And ANZ explains to Aussie in this email a bit about investigations that it has conducted to date?---Yes, they did.

40 In relation to those payslips. I won't go through that in detail, but I want to put to you, Ms Harris, that the anomalies with the payslips, much like the anomalies with the letters of employment for Ms Khalil, were easily detectible?---Yes. I - - -

You accept that?---I do.

45 But they were not detected by Aussie?---No, they weren't. They weren't.

Yes. We have moved on a little in time. We are still in 2014, but systems had still not been improved to permit detection of this sort of conduct?---Systems hadn't been improved sufficiently to detect; you are right.

5 Now, there is another email in that chain on the first page, 3135. This is Jo-Anne Gilbey receiving an email from Matthew Whyte. And Matthew Whyte tells Ms Gilbey that:

10 *Mr Nair has submitted 15 applications to ANZ over the last six months. Five have been reviewed and there have been similarities identified in the payslips of the applicants, same employer, same payslip format, same salary, and all have different positions. ANZ fraud department have recommended revoking accreditation, however after discussing with ANZ state manager Wendy Brown this morning we have agreed on the following steps: Aussie to conduct a*
15 *review on Madhvan files across a number of lenders to determine whether this is systemic fraud. Madhvan placed on fraud watch at ANZ and all applications to be investigated.*

20 *On completion of Aussie audit, Matt Whyte to meet Wendy Brown to go through the findings. Wendy Brown and Matt Whyte to meet with Madhvan to conduct formal interview in relation to these files. If Madhvan is found to have acted fraudulently or been complicit in any fraudulent activity, then ANZ will revoke accreditation and he will be terminated from Aussie immediately. If it's*
25 *determined that Madhvan had no knowledge and was not complicit in the fraudulent activity, then he will be given a warning only.*

?---Mmm.

30 Now, as we saw with Ms Khalil, I want to put to you that the action taken by Aussie in response to Mr Nair's conduct was again dependent upon the results of the investigation taken by ANZ and whether or not they made a decision to revoke Mr Nair's accreditation?---Yes, that's right. So we – we committed to conduct a review ourselves, but if – and at the same time of ANZ and if ANZ withdrew his loan writer accreditation then that breached his contract with us.

35 Yes?---And immediately the agreement was terminated.

Thank you. I tender that email chain, Commissioner.

40 THE COMMISSIONER: Exhibit 1.60. AHL.0001.0001.3136, email Whyte to Gilbey 24 June '14 and associated email.

45 **EXHIBIT #1.60 EMAIL FROM WHYTE TO GILBEY DATED 24/06/2014 (AHL.0001.001.3136)**

MS ORR: Can I take you to AHL.0001.0001.3110, Ms Harris. Now, we might need – this is quite difficult to read. We might need to - - -?---

5 - - - magnify. Thank you. This is the same day as the notification from ANZ, 24 June. It's 2.33 in the afternoon now, and Jo-Anne Gilbey is sending this email to Matthew Whyte. She has done:

10 *...a high level look at Madhvan's files and I believe that the below action is justified. I have reviewed recent scanned files in speed view and have identified the following five files. His letters of employment are very similar and are all signed by the same person, regardless of employer.*

Do you see that, Ms Harris?---I do, yes.

15 So there are 45 files reviewed. I think we are going to need to go down the page to see this. I'm sorry, we are going to need to go to a different document to see this. The high level review on the day of the notification from ANZ is as recorded in this email and the anomalies detected in that high level review are as recorded here by Ms Gilbey; that's correct? And I will tender that document before moving to the
20 next Commissioner.

THE COMMISSIONER: Exhibit 1.61. AHL.0001.0001.3110, email Gilbey to Whyte, 24 June '14.

25 **EXHIBIT #1.61 EMAIL FROM GILBEY TO WHYTE DATED 24/06/2014 (AHL.0001.0001.3110)**

30 MS ORR: And I will ask that you now be shown, Ms Harris, AHL.0001.0001.3144. This is the following day, we will again have to zoom in on it so that you can see that this is an email on 25 June 2014. Another one from Jo-Anne Gilbey to Matt Whyte. So by 1.55 the following day Ms Gilbey has identified a total of nine opportunities submitted to Westpac that have questionable letters of employment, with two
35 company names involved:

40 *No landline number identified or operating address on letters of employment or internet, etcetera, that I could identify. All have been signed by a particular individual –*

whose name is redacted –

45 *as the operations manager. I have only identified one ANZ submission with letters of employment and they are not included in the above. I have reviewed 45 files.*

Do you see that?---I do.

Thank you. I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 1.62, AHL.0001.0001.3144. Email Gilbey to Whyte, 25 June '14.

5

EXHIBIT #1.62 EMAIL FROM GILBEY TO WHYTE DATED 25/06/2014 (AHL.0001.0001.3144)

10

MS ORR: There were discussions with ANZ about steps that should be taken?---Yes.

15 And these involved Aussie reviewing files across a number of lenders to determine whether there was systemic fraud; do you accept that?---Whether there was fraud related to this broker across multiple lenders, yes.

20 Yes. And these steps were agreed between ANZ and Aussie; is that correct?---Yes, it seems to be the case, yes.

20

Why did Aussie need to agree the steps with ANZ?---In all honesty, I don't know. So that's unusual. I was surprised when I read that.

25 You read that in – it might be help if we get the document back up on the screen that has already been tendered?---Yes. But I - - -

But you saw that?---Yes, no, I did. I – yes, I did. I did.

30 It was 0001.0001.3135?---Yes.

30

35 So Matt Whyte and Wendy Brown of ANZ had agreed a strategy for this. You say that was unusual. Why?---Because normally the discussion with the broker, if there are issues, does not necessarily involve the lender directly. There has been discussions with the lenders, obviously, to – as one of the factors before that discussion happens. But in my experience the discussion is usually with Aussie people. So it would be the state manager, it would be perhaps someone from compliance in the discussion. That's my experience. I'm trying to be as helpful as I can here, so - - -

40 Yes. Well, the day after this, 25 June, the same day as the 44 – 45 file review, Mr Nair was suspended by Aussie; is that right?---That's right, yes.

45 Well, he was suspended by the franchise entity; is that correct?---Yes, that's correct. Yes.

45

And then in the following weeks, various lenders started terminating Mr Nair's accreditation with them?---That's right.

St George did so on 1 July 2014. You deal with that in paragraph 113 of your statement?---Yes – yes.

And Westpac followed suit on 7 July 2014?---Yes, they did.

5

And on that same date Aussie terminated its agreement with Mr Nair's company?---Yes, that's right.

10 Could we have AHL.0001.0001.0032. This is the termination letter sent by Aussie to Mr Nair on 7 July 2014?---Yes.

And if we could have the last page of that document on the screen as well – 0036. You will see that that termination letter was sent by Matthew Whyte?---It was. Yes.

15 I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 1.63. AHL.0001.0001.0032. Termination letter 7 July '14. AHL to Nair.

20

EXHIBIT #1.63 TERMINATION LETTER FROM AHL TO NAIR DATED 07/07/2014 (AHL.0001.0001.0032)

25 MS ORR: And on the same day as sending this termination letter, Ms Harris, Aussie sent the prescribed form to ASIC notifying that Mr Nair was no longer – he had ceased to be a credit representative of Aussie?---That's right. Yes.

30 And, again, that form said nothing about the circumstances of Mr Nair's departure from Aussie?---That's right.

35 And Aussie said nothing to ASIC about the circumstances of Mr Nair's departure from Aussie until the letter that we saw earlier on 13 October 2014, which was sent in connection with ASICs investigation of Mr Sahay?---Right.

That's the document that is AHL.0002.0001.2446. There was no notification to the police of Mr Nair's conduct, Ms Harris?---No.

40 But criminal charges were ultimately brought against Mr Nair through the work of ASIC?---That's right.

And Mr Nair admitted to 18 counts of fraud?---He did.

45 And Aussie doesn't know how many of Aussie's customers or loans were affected by Mr Nair's fraudulent conduct?---We don't know how many settled customers were affected by it.

Aussie is only aware of the ones that ASIC detected in its investigation; is that right?---Aussie is only aware of the ones that – that were detected and the ones that we had records of.

5 No compensation or remedial steps were taken in connection with this conduct?---With Mr Nair we did pay a compensation, I believe, to a customer. Can I just check that.

10 Yes. You deal with this in paragraphs 139 to 141 of your statement?---That's right, yes.

I see. So there is an ex gratia payment that was made; is that what you are referring to?---An ex gratia payment made to the customer, yes.

15 So there was a customer who had been affected by the conduct of Mr Nair who complained to Aussie Home Loans; is that right?---That's right. Yes.

And that customer had engaged a solicitor to act on their behalf?---That's right.

20 And why did Aussie pay that customer, who complained to Aussie, an ex gratia payment?---There had been a financial loss for that customer and while some of the – as I understand it, I wasn't part of the investigation, but let me explain what I understand. As part of the investigation there was recognition that Aussie, or in particular Mr Nair, was partially responsible for that, and therefore some kind of
25 financial compensation was applicable.

He was partially responsible for what?---For the situation that the customer was in.

30 What was the situation that the customer was in?---I need to double-check my notes. It will be in the notes in here. So it's not? You are shaking your head.

I don't know what you are referring to there, Ms Harris?---Well, you're asking for - - -

35 If you have a document that explains it, then I'm happy for you to locate it?---Right. Okay.

40 Is that what you are saying, that you have another document there somewhere?---Yes, I believe there were – there are details about the particular customer. I'm happy to attempt to locate it. It just might take me a little bit of time.

Well, I don't think that's the most efficient way of doing it?---Right. Okay .

45 Let me ask you this, Ms Harris. What is an ex gratia payment?---An ex gratia payment is a lump sum payment made in a situation without defining exactly what for. Is my definition of it. I can't say what the definition of it was in this particular circumstance.

What would you say to my description of an ex gratia payment being a payment to ensure that a person does not take further action, further action against Aussie?---That may well be an element of it. I wasn't involved directly this, but it certainly can be. It can be a gesture. and it can be a gesture on the basis that other
5 aspects are no longer continued with. That's - - -

So you say in your statement this person had a lawyer and complained to Aussie and in response Aussie made an ex gratia payment. Can we infer from that that the ex gratia payment was made in response to threatened legal proceedings?---You can
10 infer from that that there was acknowledgment that the customer had been disadvantaged in some way, and we were partially complicit in that.

Do you know what the sum of the ex gratia payment was?---I think it was 13 and a half thousand.
15

13 and a half thousand dollars. And you are unable at present to tell the Royal Commission what the circumstances of that customer's complaint were?---I can certainly look for it, and I'm sure there is a document and I'm happy for our barrister to table the document about the details.
20

Well perhaps your barrister will be able to find that document and ask you some questions about it in re-examination. I will move on for now

THE COMMISSIONER: Words that chill everyone along the bar table.
25

MS ORR: I will move on to the final broker – I will move on to the final broker dealt with in your statement, Ms Harris. Mr Bernhard Meehan?---That's right.

He was a mobile broker like the first two - - ?---He was.
30

- - - dealt with in your statement?---He was. He was.

And Aussie first became aware of fraudulent misconduct by Mr Meehan in 2015, on 2 February 2015?---That's right.
35

And this time it was Aussie who detected the misconduct; is that right?---Yes. That's right.

And us Aussie detected it as a result of a file review, you tell us in your statement?---Yes. And Mr Meehan's files were selected for review in circumstances where Aussie was conducting targeted reviews for brokers who had submitted over 50 per cent of their loans to a single lender; is that right?---That's right.
40

And it wasn't just the fact for Mr Meehan, that had had submitted more than 50 per cent to a single lender; it was also the fact that the particular lender that he had submitted them to was Westpac; is that right?---That's right.
45

Because Aussie had formed the view that the credit assessment processes at Westpac were more lax than at other lenders; is that right?---Aussie had formed the view that the fact that they were just requiring a letter of employment, as opposed to payslips, would be something that that brokers would become aware of –

5

Brokers would be - - -?---Become aware of, that they had a policy where it was going to be easier to provide the documentation that was necessary.

10 And do you mean, by that, a letter of employment is an easier document to falsify to prove income than other sorts of - - -?---Yes.

- - - income documents?---Yes.

15 And therefore there was a greater risk of fraud in connection with applications submitted to Westpac?---If a – if a broker is putting substantial majority of their loans to the one lender, it was – it was a trigger for us to need to investigate more to understand why that is. It's not always, there are situations where the broker is doing that for good reason, but it is – it is a trigger for us to start looking. That another area that we are going to build into the broker dashboard. So percentage of – percentage of loans going to one lender.

20

Yes?---So that that's a trigger for us to look further.

25 I understand. But here, as I understand it, the extra trigger was the identity of the lender. Is that right, do you accept that?---What I accept is that the product features at the time with that lender meant that if someone was wanting to do the wrong thing and, you know, we have – we have over a thousand brokers and the vast, vast, vast majority of people want to do the right thing by the customer. So we are talking about a few here – and I think that's important to acknowledge.

30

Yes. I will just read from your statement though, to be clear about this, at 143:

35 *The file review of Mr Meehan was prompted by AHLs observation that Mr Meehan had submitted over 50 per cent of customer home loan applications to Westpac. In the context of AHLs knowledge that Westpac's credit assessment processes accepted letters of employment to be used for income verification.*

That correct?---That's correct. Yes.

40 And do you accept that – I think you already have – that that's because a letter of employment is a document that easier to falsify than other income documents?---That seems to be the case, yes.

45 Yes. Thank you?---I'm not – I haven't – I haven't tried to do that myself, but it would seem to be logical.

Well, does Aussie have processes in place to deal with the risks of fraud associated with home loan applications where the proof of income is a letter of employment?---My understanding is that all lenders now ask for more verification than that. We certainly – when we are training our brokers, we certainly ask them to
5 obtain as much documentation as they can, including payslips, and for them to – where possible – check that the money on the payslip – so the indication of what the customer is being paid is actually seen again in the bank statements as a – as a verification process.

10 So having detected this on 2 February 2015, there was a preliminary report created within Aussie on 10 February 2015; is that right?---That’s right. Yes.

And that document is AHL.0005.0001.1654. Are you familiar with this document, Ms Harris?---Yes.

15

And could I ask that the second and third pages of the document be displayed on the screen. And we see there that the purpose of this document is to provide key stakeholders with a background into matters involving Mr Bernie Meehan:

20 *There are a number of identified issues involved Bernie that need to be addressed in detail before a decision is made as to what formative action, if any, should be taken.*

And under the background section, there is a reference to the detection on 2 February
25 2015, and you see the second paragraph down:

30 *Bernie Meehan was identified as submitting a large volume of loans with Westpac. Issues have been recorded previously in regards to Westpac’s submissions, particularly around the use of false payslip, so further investigation was warranted, and as part of Jo-Anne’s review a number of Bernie’s files submitted to Westpac contained a series of payslips that were in fact not only in the same format but also in the same font and style. In addition all the payslips in question contain an annual salary, however the majority lack leave entitlements and in one case the ABN listed does not even exist.*

35

?---Yes

Continuing:

40 *This could be a legitimate error, however based on the overall number of payslips recorded as being similar in style it certainly raises concerns of potential fraudulent activity. Furthermore the salary amounts are in fact, in the vast majority of cases, actually similar whole dollar figures, and when further investigation was made into bank statements and supporting
45 documentation the salary deposits could not be found. There is no relevant information to support these salaries and the subsequent regular deposits.*

And we see from page – that page on the right-hand side of the screen:

Westpac are not aware of the behaviour.

5 Do you see that under the table?---Yes, I do.

It is noted that as part of the actions they be notified:

10 *...as they will be able to assist us in the investigation process ensuring that all of the information supplied to them has been reviewed and that the appropriate decisions have been made.*

And the conclusion is:

15 *Based on the information at hand it would appear that Bernie Meehan could be engaging in practices that are contrary to the requirements outlined in his franchisee agreement and contrary to the provisions of the NCCP. One or a combination of these matters, if proven, could potentially bring the Aussie Home Loans brand into disrepute. The concern is that there are some 22 files*
20 *containing payslips with no supporting documentation to assist in proving that the salaries are legitimate, let alone if the client is in fact employed by the said employer.*

I will tender that document, Commissioner.

25

THE COMMISSIONER: Exhibit 1.64. AHL.0005.0001.1654. Document entitled matter of Bernie Meehan overview, 10 February '15.

30 **EXHIBIT #1.64 DOCUMENT ENTITLED MATTER OF BERNIE MEEHAN, OVERVIEW DATED 10/02/2015 (AHL.0005.0001.1654)**

35 MS ORR: A further report was created on 20 February 2015, you tell us in paragraph 151 of your statement. I will show you that document opinion. It's AHL.05.01.195 had. – AHL be 0005.0001.1954. Do you recognise this document, Ms Harris?---Yes. It's an incident report. Yes.

40 And could I ask that the second and third pages of the document be displayed on the screen. And I would like to direct your attention to number 3 on that page, Controls that Did not Work or Were Not in Place. Do you see that the document records:

45 *Nil controls failed. Broker has submitted payslips that appear to be fraudulent on a number of occasions.*

I want to suggest to you, Ms Harris, that that means there has been a failure in controls, not that nil controls have failed?---I agree.

Yes. So you don't know why the document records "nil controls failed"?---I don't.
No.

5 In circumstances where this broker as has managed to engage in fraud on multiple occasions before detection by Aussie?---No, I don't – I don't know why that been written like that.

Under that, number 4, Impact:

10 *Describe and/or quantify the potential or actual impact: financial, nil at this stage. Reputation/customer: potential for impact to brand reputation depending on exposure. Regulatory: potential breaches of the NCCP.*

That's the National Credit Act?---Mmm.

15

Could I also direct your attention to item 7 on the following page. Preventative action. Preventative action description, this is to address the cause?---Yes.

Continuing:

20

Continue to proactively monitor files of Aussie brokers across the board to ensure that a high level of compliance is maintained. Focus on brokers where there are high submission rates with particular lenders, particularly Westpac, due to their policy that they do not require payslips in the majority of cases.

25

This is not an isolated incident within Aussie and requires continued monitoring.

?---Yes.

30 What do you know about steps that were taken as a result of the identification of this issue as not an isolated issue within Aussie?---So there was – although it took several months to instigate, there was a review done that primarily focused on lender concentration.

35 What were the results of that review?---The results were that all brokers, where they had a large amount of percentage, were looked at. So their loan applications looked at. But I'm not aware of anyone else that was actually found to be fraudulent as a result of that review.

40 And having recognised that there were brokers - - -?---Yes.

45 - - - with high lender concentration and having decided that there was no fraud in connection with those, what steps, if any, did Aussie take to deal with the high lender concentration for those brokers?---So when there is a high lender concentration, as was identified in that case, then that information is provided to the mobile business leader, assuming it is the mobile channel, or the retail business consultant. And they have conversations with the broker to verify why the broker is putting most of – or

the majority of their loan applications with one lender and the advice that we give in that situation, having had a conversation with an MBL two weeks ago about exactly this, the advice they give is, you know, what it does is starts to make us question that they are putting the loan with the best lender for that customer. So they – you know,
5 the broker really needs to be able to demonstrate that that particular product was particular for that customer or they are not doing their investigations properly, they are not looking at requirements and objective properly.

10 I tender the incident report, Commissioner.

THE COMMISSIONER: Exhibit 1.65. AHL.0005.0001.1954. AHL incident report, 20 February 2015.

15 **EXHIBIT #1.65 AHL INCIDENT REPORT DATED 20/02/2015
(AHL.0005.0001.1954)**

20 MS ORR: Mr Meehan was suspended on 25 February 2015, Ms Harris?---He was.

And he was terminated as an authorised credit representative of Aussie, as was his company, on 3 March 2015?---Yes, he was.

25 And his agreement with Aussie was terminated on 6 March 2015?---Yes.

And on 16 March Aussie lodged the standard form with ASIC notifying that Mr Meehan and his company had ceased to be credit representatives of Aussie?---Yes.

30 And at some point in March 2005, which you don't specify in your statement, Aussie notified panel lenders of Mr Meehan's termination under adverse circumstances - - -?---Yes.

- - - and asked them to review all loan applications pending settlement, as well as settled loans and to take any necessary action?---That's right. Yes.

35 And on 10 April 2015 we see the first notification across these four brokers by Aussie to ASIC; is that right?---Yes, that's right.

40 And the notification to ASIC was that Mr Meehan had been terminated under adverse circumstances; is that right?---That's right, yes.

And you explain that in paragraph 163 of your statement. Precisely what was said to ASIC about those adverse circumstances?---I can't tell you that. I wasn't party to the conversation.

45

Do you have any document recording that notification to ASIC?---We have – we have information. We certainly have information that we provided to ASIC when they issued a notice requiring the production of books.

5 I'm sorry, when they issued a notice?---When – when ASIC issued a notice requiring production of books to AHL.

I see. That – that comes, as I understand your statement, that step taken by ASIC comes after you have notified them of the termination under adverse circumstances; is that right?---That's right. Yes.

So I infer from your statement that, as a result of that notification ASIC, commences an investigation into Mr Meehan?---That what I believe happened, yes.

15 And as part of that investigation a notice was issued to Aussie requiring books to be provided to ASIC?---That what I understand, yes.

And on the same date that Aussie made this notification to ASIC of adverse circumstances Aussie also, for the first time in the four cases that we have looked at, notified the MFAA - - -?---Yes.

- - - that Mr Meehan had been terminated in adverse circumstances; is that correct?---That's right, yes.

25 And I will show you AHL.0005.0001.1816. Is this the notification by Aussie to the MFAA on 10 April 2015, Ms Harris?---What I understand it to be, yes.

And the MFAA was notified that Mr Meehan had been terminated by AHL in circumstances that AHL consider adverse?---In circumstances – consider adverse. Yes. Yes.

Is that the entirety of the information that was given to the MFAA about the circumstances of Mr Meehan's termination?---So that will trigger a discussion, because in the lender market "adverse" – adverse is a word used for misconduct.

35 What – why doesn't Aussie use the word "misconduct"?---I don't know. I can't tell you that. And I'm not – that not – I honestly don't know the answer to that.

And do you know - - -?---I think it would be some kind of legal thing, but I don't know that – I don't know why.

Do you know what the result of this notification to the MFAA was?---It was to revoke his membership.

45 Thank you. I tender that letter, Commissioner.

THE COMMISSIONER: Exhibit 1.66, AHL.0005.0001.1816. Letter Aussie to MFAA, 10 April '15.

5 **EXHIBIT #1.66 LETTER FROM AUSSIE TO MFAA DATED 10/04/2015
(AHL.0005.0001.1816)**

10 MS ORR: Aussie still didn't notify the police about Mr Meehan's conduct; is that right?---That's right.

Across all four of these brokers, there was never a notification by Aussie of the conduct to the police?---That's right. Yes.

15 And as part of ASICs investigation, ASIC ultimately formed the view that Mr Meehan had submitted payslips, document check lists and loan serviceability forms in nine home loan applications to Westpac over a 12 month period in 2014 to 2015, which were false or materially misleading?---Yes.

20 And, again, Aussie doesn't know how many loans have been affected by the misconduct other than the nine home loans to Westpac identified by ASIC; is that right?---That's right. Yes.

25 And did Aussie communicate with any of the customers in the nine files identified by ASIC?---Each of the customers would have been reallocated to a broker. If I didn't say that in these notes, my apologies.

30 And what, if anything, were those customers told about Mr Meehan?---They would have been told – I would like to think they were told that his contract was terminated. What I can guarantee to the court is that they were obviously told that he had left. I don't know what they were physically told. My apologies.

35 All right. Those are the questions I want to ask you about the individual brokers referred to in your statement. But there are some other documents in connection to those brokers that I would like you to identify for the court. The first is Aussie's contract with Mr Nair dated 3 September 2008. Which is AHL.0001.0001.4501. Now, is this a copy of Aussie's independent contractor agreement with Mr Nair? I appreciate it's difficult for you to answer that without seeing another page, so I will try and find for you the page that is signed by Mr Nair?---That at the end of the
40 agreement.

Yes. Thank you. We go to the last page, I think it's 4523, you see this is the contract, the independent contractor agreement with Mr Nair?---I do, yes.

45 And can I just direct your attention to a small number of provisions within the contract. The first is on 4527. So on 4527 we see how the upfront commission is calculated for Mr Nair. And it might assist if we have 4526 and 4527 on the screen

at the same time. So up front commission payments on new settled loans; do you see that at the bottom of page 3?---Yes, I do.

5 You are entitled to be paid on each monthly payment date a commission, up-front commission, in respect of each settled loan calculated in accordance with the table. In clause 1.2?---That's right.

10 And 1.2 tells us that Aussie will determine a pass-through rate based on IMSV, for the previous calendar month in accordance with the following table. And IMSV, we see from 4525. So it's the preceding page. In month settlement value. Do you see at the bottom of page 2?---Yes, I do.

15 In month settlement value or IMSV means the settled loan amount of each settled loan in respect of a given calendar month according to records provided by panel lenders and/or strategic partners?---That's right, yes.

20 So if we could go back to the table, on page 4527. A pass-through rate based on the IMSV for the previous calendar month in accordance with the following table. And the pass-through rate is between 20 and 55 per cent depending on the value of the IMSV. Is that right?---That's right. Yes.

25 Now, there is also on the same page, if we could pan back out, a reference to a performance-based up-front commission on new settled loans. Clause 2. Do you see that?---Yes, I do.

And what do you understand about the circumstances in which the performance based up front commission payments are made?---Could I ask for that to be expanded, that section?

30 Yes of course. So clause 2?---I will just read it.

Thank you?---Sorry, could you ask the question again then?

35 I was just hoping you could explain to the Commission how this performance based upfront commission works. This is separate to the other commission that we were just looking at that was calculated applying the formula that I referred to?---Yes. So my understanding is the performance commission is where we receive a higher rate from the lender. When we received, it should be – past tense.

40 So the commission paid to Aussie Home Loans is higher?---There are – back then it was more around volume. Now it's about quality of the deals. And it is possible that the lender will determine to pay a higher amount. That not a consistent thing. If there is a higher amount then that flows down.

45 So at this point it's connected to the volumes of loans coming from Aussie Home Loans through to the lender; is that right?---My understanding back then is that that's what it related to. Yes.

Okay. All right. And one other page I want to show you in this document, Ms Harris, which is page 10, 4533. We see from clause 9 that commission was also payable on the cross-sale of products?---That's right.

5 And what products were Aussie brokers cross selling?---At that time there would have been an insurance product. There would have been mortgage protection insurance. So they would have – they would have had access to products related to the customer and the home loan.

10 And they still do, do they not?---Yes, they still do.

Aussie brokers still cross-sell a variety of insurance products in connection with the home loan application?---Yes. We do. We still have mortgage protection insurance, general insurance, yes.

15

And Aussie brokers continue to be remunerated for the addition – the add-on to the home loan of the sale of one of these products?---Yes, they do.

20 And whose products are they?---It will vary depending on who the product is. So, you know, Allianz provides the insurance, for example. So each of them, ALI provide the mortgage protection insurance.

And - - ?---So there is a variety.

25 So the cross-sale payment comes from those entities; is that right?---Yes.

Okay. And also on this page, clause 10, we see the minimum performance requirement that Aussie imposes on the broker?---Yes.

30 You must introduce at least six new settled loans each calendar month or such other amount of settled loans as may be advised to you from time to time by Aussie in its absolute discretion?---That's right.

35 And does that sort of requirement remain in place in Aussie's contracts with its brokers?---It remains in place. Yes. It remains in place.

I tender the Nair contract, Commissioner.

40 THE COMMISSIONER: Exhibit 1.67, AHL.0001.0001.4501, contract between AHL and Nair of 3 September 2008.

**EXHIBIT #1.67 CONTRACT BETWEEN AHL AND NAIR DATED
03/09/2008 (AHL.0001.0001.4501)**

45

MS ORR: I want to show you the contracts for Ms Khalil and Mr Sahay. I'm not going to go to them in detail, but do you accept that they contain provisions of the same nature - - -?---Yes.

5 - - - as Mr Nair's contract. Ms Khalil's contract is AHL.0002.0001.3285?---I think that just the cover - - -

Yes. The contract starts at 3286?---Yes.

10 And you will see Ms Khalil's signature at 3314?---Mmm.

So we see Ms Khalil entered into a contractual arrangement with Aussie in August 2007, 6 August 2007?---Yes.

15 Some years prior to the detection of her misconduct?---Yes.

And could I just take you to one additional clause. I will show you in this one at 3297. Clause 15.3:

20 *In the event that –*

if we could have 15.1 still displayed at the same time that would be useful:

25 *In the event this agreement is terminated pursuant to clause 15.1 –*

so 15.1 we see above is the right of termination for all of the reasons there listed?---Mmm.

Continuing:

30

In the event this agreement is terminated pursuant to clause 15.1 we will notify all panel lenders and the MFAA or other appropriate professional organisations of the circumstances of the termination. You, the Aussie mortgage advisor, and any associate respectively agree not to make any claim Australia against Aussie in respect of such notification.

35

?---Mmm.

40 But no such notification was made to MFAA, we have established that, in relation to Ms Khalil?---That's right.

I tender that contract, Commissioner.

45 THE COMMISSIONER: Exhibit 1.68. AHL.0002.0001.3285. Contract AHL and Khalil 27 June 2007.

**EXHIBIT #1.68 CONTRACT BETWEEN AHL AND KHALIL DATED
27/06/2007 (AHL.0002.0001.3285)**

5 MS ORR: Now, I don't need to take you to Mr Sahay's contract, Ms Harris,
because I tendered that yesterday when we were establishing how long Mr Sahay had
been a broker with Aussie Home Loans. Now, before we leave the topic of these
four brokers, I want to draw your attention to Aussie's response to a letter from the
Commissioner asking it to identify misconduct engaged in over the last 10 years.
10 That response came as part of a response from CBA. And you may or may not have
seen it – I will put it on the screen so you can have a look at it. If we could have on
one side of the screen RCD.0001.0003.0004, to show you the title page. And then I
will – on the other side I will have 0001.0003.0034. Have you seen this document
before, Ms Harris?---No.

15 Could I have 0034 and 0035 now on the screen. These paragraphs, paragraphs 170
to 177, were the response of Aussie Home Loans to the Commissioner's question
about the identification of misconduct and conduct falling below community
standards and expectations over the last 10 year period?---Mmm.

20 It appears you weren't involved in - - ?---I wasn't involved in this document itself.

There is no mention here of any of the four brokers that we have discussed?---The –
the thing that I was – I did have visibility over was a list that we compiled which
25 actually had those brokers included in the list, and the heading of that list was
Misconduct.

I think you might be referring to a spreadsheet that was provided by CBA as part of a
second response to the Commissioner's letter?---Right. Was I? Okay.

30 Yes?---That was what I was directly involved in.

And your point is that there is a reference to conduct that was attributable to the four
brokers. I don't think they were named, but conduct attributable to the four brokers
35 was in the spread sheet; is that correct?---I believe that to be the case. So the
spreadsheet I saw actually had their names on it. I didn't see it after that.

Can I ask you to look at 175 in particular. Where appropriate Aussie has reported the
conduct issues to ASIC and through group investigations to the police. Do you
40 accept that it was appropriate in all four instances that you have given evidence about
for Aussie to report those issues to ASIC and through to the police?---It should have
been considered, absolutely, yes.

45 Well, do you agree with me that it was appropriate that that occur in each of these
four instances?---Personally, yes.

And do you agree therefore that this statement in this document is – is not accurate because Aussie did not report critical conduct issues that are covered by your evidence to ASIC or to the police?---So if this sentence is just talking about the four brokers, then we didn't. We have recently notified the police about a broker that we terminated and so it may have been referring to that as well.

And do you see that the second sentence here is:

In addition as Aussie requires all Aussie brokers to be a member of the mortgage and finance association of Australia, the MFAA, Aussie has reported conduct issues to that body.

Now, it is true that Aussie has reported conduct issues to that body – we see that the fourth broker, the conduct issues were reported. But you have accepted, have you not, that conduct issues of the first three were not reported to the MFAA and ought to have been?---Not by Aussie. No. You're right.

Thank you. I have already tendered this document, Commissioner.

THE COMMISSIONER: Yes.

MS ORR: Could I take you to some documents which are compliance certificates that Aussie Home Loans has to lodge on an annual basis as an Australian credit licensee?---Right.

Ms Harris. Could I take you to the first, which is exhibit LH1 to your statement?---Sorry. Sorry.

LH1 – the documents that I have referred you to so far in your evidence were not annexed to your statement. I'm now taking you for the first time to a document that is annexed to your statement?---Right. Thank you.

A series of documents behind your tab 1?---Yes.

Which are annual compliance certificates that Aussie submits to ASIC. And you have provided us with the compliance certificate that covered the period of 12 months from 14 March 2013, and one that covered the period of 12 months from 9 April 2014. Both of those are behind your tab 1, exhibit LH1?---Sorry.

And could I ask that the first one just be brought up on to the screen as well. AHL.0008.0010.0340. And could I also have on the other side of the screen, 0361. Can you see from the first and last page of this document that it's Aussie's annual compliance certificate to ASIC signed on 14 April 2014?---Yes, I see that.

And could I ask that you look at 0357 within that document?---It is on the screen.

I think it's coming now. This is the part of the document where Aussie has to certify as to its ongoing compliance with licence obligations. Do you see that?---Yes, I do.

5 Are you familiar with this tile style of document, Ms Harris? I assume that you are, given that you have annexed these to your witness statement?---I am superficially familiar, yes.

10 And can you see that by this document Aussie certified to ASIC that in the 12 months from 14 March 2013 it had adequate arrangement and systems in place to ensure that it did all things necessary to ensure that the credit activities authorised by its licence were engaged in efficiently, honestly and fairly?---Yes.

15 That it had adequate arrangements and systems in place to ensure that it complied with the conditions of its licence?---Yes.

That it had adequate arrangements and systems in place to ensure that it complied with the credit legislation?---Yes.

20 And to ensure that its representatives complied with the credit legislation?---Yes.

And on the following page, 0358, that it had a written plan that documented arrangements and systems for compliance with each of its general conduct obligations?---Yes.

25 And, finally, that it had adequate risk management systems?---Yes.

30 So by this document Aussie certified to ASIC that it had complied with all of these statutory obligations, yet this was the year that Mr Sahay and Ms Khalil's fraudulent conduct was discovered, and it became apparent that there were inadequate risk management systems and that Aussie's representatives were not complying with the credit legislation and that Aussie had not done all things necessary to ensure that the credit activities authorised by its licence were engaged in efficiently, honestly and fairly; do you agree?---I agree that the controls necessary to pick up those two examples, considering the vast number of brokers we deal with, did not pick up that behaviour.

40 Do you agree that these parts of this document that I have directed you to ought to have been answered "no, we do not have adequate systems in place to deal with risk management", and the other matters that I have taken you to?---What I'm saying is in hindsight we could have had more robust risk management frameworks and more robust compliance testing and that's what we are building now.

45 So do you maintain that these were the correct answers in this document?---I'm not in a position to say yes or no, because at the time perhaps it was viable. I don't know. I didn't – I am not responsible for filling in the form, so I don't know how those clauses need to be interpreted.

Can I take you to another document, Ms Harris, which is CBA.0506.0002.0001. This is a document dated 11 February 2016 entitled Findings have Risk Culture workshops?---Right, yes. I'm just – I'm familiar with it.

5 You are familiar with this document?---I'm just waiting for it to come up.

So this is a document that post-dates the conduct that we have been speaking of for the four brokers because it's from 11 February 2016?---Yes. Yes.

10 When the document is found it would be useful – I will repeat the number: CBA.0506.0002.0001, and it would be useful to have the first and second pages of the document on the screen. We have encountered a difficulty, Commissioner, in that the system - - -

15 THE COMMISSIONER: That's the first in three and a half days. I think – I don't think I should be sitting here stamping my foot and going blue in the face because we have encountered a difficulty at this point, should I? Maybe I should.

20 MS ORR: I hope not. I hope not. Could I suggest, Commissioner, that as this is the last document that I want to take Ms Harris to, and as there are matters that I understand I need to discuss with Aussie's barrister before I complete my questions, that we have a brief adjournment to allow me to have that –

25 THE COMMISSIONER: How long do you need, Ms Orr?

MS ORR: I don't know - - -

30 THE COMMISSIONER: Do you want five minutes? I mean, a barrister's five minutes is a very malleable concept.

MS ORR: I think it would be useful given we have the two matters to deal with, Commissioner, if we had 10 minutes.

35 THE COMMISSIONER: I will come back at – I have eight minutes past 12. I will come back at twenty past 12.

MS ORR: Thank you, Commissioner.

40 **ADJOURNED** [12.09 pm]

RESUMED [12.22 pm]

45 THE COMMISSIONER: Yes, Ms Orr.

MS ORR: I apologise, that document is now uploaded and some personal details have also been redacted from the document. Before I bring that document onto the screen, I have had some discussions with my learned friend who appears for Aussie Home Loans and she has provided me with two additional documents which I seek to
5 tender. Neither of these documents are on the online system, but both will be in a short period of time. The first is the letter dated 10 April 2015 from Aussie to ASIC notifying of the termination of Mr Bernard Meehan under adverse circumstances. The Commissioner will recall that was the subject of evidence and the letter has been
10 found. I have a hardcopy of that letter that I can tender, and it also go on the online court book shortly.

THE COMMISSIONER: Exhibit 1.69, copy letter 10 April 2015, AHL to ASIC re Meehan.

15

**EXHIBIT #1.69 COPY LETTER FROM AHL TO ASIC RE MEEHAN
DATED 10/04/2015 (AHL.0005.0001.1932)**

20 MS ORR: The second, Commissioner, is a letter from ASIC to Aussie Home Loans dated 23 September 2014. It is the letter to which Aussie Home Loans responded in the October letter that I earlier tendered. This is AHL.0002.0001.2441. Again, it is not in the online court book yet, but shortly will be. I can tender the hard copy provided by Aussie Home Loans counsel.

25

THE COMMISSIONER: Exhibit 1.70, letter ASIC to AHL, 23 September '14. AHL.0002.0001.2441.

30 **EXHIBIT #1.70 LETTER FROM ASIC TO AHL DATED 23/09/2014
(AHL.0002.0001.2441)**

MS ORR: Now, the final document that I wish to ask questions about,
35 CBA.0506.0002.0001. Now, if we could have the first and second page on the screen. We see in paragraph 1.1 of this document, Ms Harris, that it outlines the findings from a risk culture assessment performed by CBA audit and assurance between November and December 2015:

40 *The assessment focused on the mindsets and behaviours of staff when managing risk in Aussie Home Loans, which will be key to the successful roll out of the operational risk management framework in AHL.*

Now, can I take you to the executive summary, 3.1:

45

Our assessment found that risk accountabilities within line 1 are not clear and, as a result, staff default ownership to line 2. In addition, we heard of limited

line 1 risk capability, knowledge and risk mechanisms to manage risk on a day-to-day basis.

You see that, Ms Harris?---I do.

5

And in the Background, at 4.1, we see that:

Group audit and assurance facilitated 10 risk culture workshops, covering 67 staff who represented the majority of AHL divisions based in the Sydney head office. We did not cover the broker and AHL distribution channels as they were outside the scope of the assessment.

10

So can you help me understand who was included and who was not included?---The people that were included were what we would commonly know as head office staff.

15

So not the mobile brokers?---No.

And not the franchise brokers; is that right?---Mmm.

So the head office staff are assessed in this document and the findings in clause 5 of this document. 5.2.1:

20

We heard that accountabilities for risk across line 1 are not clear. Not all staff are aware of their obligations, while others are not aware of the tools available to manage risk. Only 15 per cent of staff agreed that risk tools and systems allow them to easily manage risk. As risk activities are absorbed into businesses usual time, staff feel that the management of risk is hidden and not a priority in everything they do. Ownership of risk by line 1 is not an everyday activity, in order to meet risk obligations staff rely on the line 2 team to take accountability for risk activities, though there is not adequate resourcing in the central risk team to sustain these obligations.

25

30

?---Yes.

And can I take to you 5.3.1:

35

Less than 40 per cent of staff felt they had a strong understanding of risk management or receive the appropriate training to manage the risk.

Further down in that paragraph:

40

Further confusion exists where there is no guidance on which CBA policies are required to be met and how they should applied to AHL.

5.4.1:

45

5 *We heard that AHL culture promotes good news stories with visible communication of sales or operational successes, and not the same visibility for proactive management of risk or lessons learned from mistakes. Over 30 per cent of staff contemplated that raising an issue could be more trouble than it's worth, with the time taken to resolve issues once raised stopping staff members from speaking up.*

5.5.2 on the next page, Ms Harris:

10 *The results of the risk culture assessment show a relatively immature risk culture which will impact the implementation of the ORMF. To be successful, AHL needs to create greater ownership of risk by line 1 through the implementation of the framework.*

15 So this document, Ms Harris, was from 11 February 2016. What can you say to the Commission about the situation as at today?---So if we have context on this, this was part of the requirements as CBA increased their shareholding.

20 Yes?---So this was a new – the framework, the concepts, was a new framework for us.

25 Yes?---And the ratings that we were given we could understand, but we weren't as aware before. So it was an awareness raising thing as well. So if I were to look at the results of the '17 risk survey, so you asked me what are we seeing now, if I was to look at the results of the '17 survey there were a number of more positive elements. So the results were much higher and actually comparable in many ways with CBA. There was a recognition of greater line 1 ownership, a recognition – an acceptance that it was okay to raise issues, so issues would be addressed. And that was primarily because we had done workshop with every group to get them to look at their area and start self-assessing their risks. So that was a – that was certainly a positive. On the areas of requiring still development, there were things that we have continued to work on since.

30 But is there an equivalent document from 2017, is there?---There was a survey done in 2017, yes.

35 And is there another document that has the findings from – are there risk culture workshops again - - -?---It was not, no, sorry.

40 - - - that were conducted in 2017?---Sorry, it wasn't – it wasn't risk culture workshops, it was a survey that was conducted.

 In 2017?---Yes.

45 Which found, I think you said, that some of this had improved?---That's right. Yes.

And does this document that we have been looking at cover management within Aussie Home Loans?---Yes, it does.

5 Yes. So the head office – we are talking about at the most senior levels of Aussie Home Loans that this survey was directed; is that right?---The 15 workshops - - -

Yes?--- - - - every workshop had a cross-section of people from different areas within it.

10 Including senior management of Aussie Home Loans?---There would have been some senior management involved, yes.

15 So the findings of these risk culture workshops in this document dated 11 February 2016 apply to the senior management of Aussie Home Loans at that time?---There could – there would have been some senior management involved in the workshop, but all the results of the workshop were obviously collated together.

Yes. Thank you. I tender this document, Commissioner.

20 THE COMMISSIONER: Exhibit 1.71. What shall I call it, Ms Orr? Risk survey report.

MS ORR: Perhaps findings from risk culture workshops, dated 11 February 2016.

25 THE COMMISSIONER: Thank you. CBA.0506.0002.0001.

**EXHIBIT #1.71 FINDINGS FROM RISK CULTURE WORKSHOPS DATED
11/02/2016 (CBA.0506.0002.0001)**

30

MS ORR: Those are my questions for Ms Harris, Commissioner.

35 THE COMMISSIONER: Does any party having leave to appear, other than Ms Hogan-Doran, and seek leave to cross-examine Ms Harris? No application. Very well. Ms Hogan-Doran.

MS HOGAN-DORAN: I have nothing for Ms Harris.

40 THE COMMISSIONER: Thank you. Very well. Thank you, Ms Harris. You are excused further attendance.

45 <THE WITNESS WITHDREW [12.32 pm]

MS ORR: The next witness is Mr Giles Boddy, Commissioner.

THE COMMISSIONER: Yes. Is Mr Boddy in the hearing room or waiting outside?

MS DIAS: Commissioner, we are waiting for Mr Boddy.

5

THE COMMISSIONER: It helps to have a witness, Ms Dias.

MS DIAS: It does, I agree.

10 THE COMMISSIONER: Mr Boddy, do come into the witness box, would you.

<GILES EDWARD BODDY, AFFIRMED

[12.33 pm]

15

<EXAMINATION-IN-CHIEF BY MS DIAS

THE COMMISSIONER: Thank you very much Mr Boddy, do sit down. Ms Dias.

20

MS DIAS: Mr Boddy, can you please state your name and occupation and your address?---Giles Edward Boddy; 225 George Street, Sydney; and I'm the CFO 6 Aussie.

25 You have been issued with a summons to appear today?---Yes, I have.

Do you have that summons with you?---Yes.

I tender the summons, Commissioner.

30

THE COMMISSIONER: Exhibit 1.72 summons to Giles Edward Boddy. Yes.

EXHIBIT #1.72 SUMMONS TO GILES EDWARD BODDY

35

MS DIAS: And you have sworn a witness statement dated 5 March 2018?---Yes.

Do you have the original of that signed statement with you today?---Yes.

40

I tender the witness statement, Commissioner.

THE COMMISSIONER: Exhibit 1.73, witness statement Giles Edward Boddy, 5 March 2018.

45

**EXHIBIT #1.73 WITNESS STATEMENT OF GILES EDWARD BODDY
DATED 05/03/2018 (AHL.0008.0020.0053)**

5 MS DIAS: I see a copy that has been brought up on the screen. It is
AHL.0008.0020.0053, for the transcript. And you have mentioned that you are CFO
of AHL Investments, that's otherwise known as Aussie?---That's right. I started
with them in February 2016, so two years as the CFO.

10 You are a trained accountant?---Yes, that's correct.

You are actually employed by CBA; is that right?---When I started two years ago, it
was -Aussie wasn't a wholly owned subsidiary at that stage, so that was the
arrangement with my contract. But now it is a wholly subsidiary, so it's all one
15 group

You've mentioned you are on secondment; is that still the case?---That is the case.

20 And when will the secondment end?---It's indefinite.

Prior to being Aussie CFO you were CFO of corporate financial services, local
business banking, and regional and agribusiness banking at CBA; is that
correct?---That's right.

25 And, before that, financial controller of wealth management; is that correct?---It was
CommSec before that, sorry.

30 CommSec. So all up you have been employed by CBA for approximately 10
years?---That's correct.

And you're also currently a director of Aussie and its subsidiaries?---That's correct.

When were you appointed a director, Mr Boddy?---I think it was March 2016.

35 Yes. And in your role as a director and CFO you have direct reports on a number of
areas, risk and compliance?---That's - that's correct. In my role as CFO I look after
a number of support areas. I look after finance, I look after risk and compliance, the
legal customer dispute team, and also the broker support services area.

40 And regulatory issues?---With the risk and compliance team, and also in the legal
team.

45 And you mentioned broker governance. Is that broker oversight as well, any issues
arising in that regard?---Sorry, in the statement I mentioned just then, I didn't
mention broker governance.

Just then, yes, in your statement, broker oversight. Is that - - -?---I mentioned broker support services.

5 Support?---That is a support line for the brokers, so when the brokers are processing applications in Aussie systems and they have a problem, a password reset or a system issue and a verification or validation issue, they will contact that support team and get advice on how to move forward.

10 I see. And you attend board meetings?---Yes.

You read board papers?---That's correct.

Risk and audit papers?---Yes, I do.

15 In paragraph 7 of your statement, you refer to enhancements to Aussie's risk management framework in 2016?---Yes.

20 Can you describe what those enhancements were?---So if you have the document there, but some of the enhancements were sales conduct risk, adding out to the risk management framework. So we have got a number of risks within Aussie, so operational risks, credit risk as well, but adding sales conduct risk. And then talking about how it was going to be approached. There was a refresher to the risk management framework, the risk appetite statement, we also formalised the risk and control self-assessments which have been rolled out across the business throughout 25 2016 and 2017, and the process of doing standard operating procedures, how we are going to capture reportable incidents, how we are going to report on them up to executive risk committees and up to the board.

30 And why that time, why in 2016, Mr Boddy?---We review it every year, and we refresh the document and enhance our risk management processes every year.

35 So it's taking place in 2017 and will take place again in year?---It gets tabled, and we look at the document, and so if there is enhancements required then the document will be updated.

40 And you also refer to customer excellence policy and enhancements to that policy in your statement?---Yes. So the customer excellence policy is a policy really focused on making sure brokers are putting their customers, our customers, Aussies customers, at the front of everything. So they are looking after their interest, all the NCCP requirements and RG209 in terms of responsible lending, that they have reasonable conversations with their customers about their objectives and their requirements, that they are having reasonable conversations about their financial position, and also reasonable conversations around – or reasonable steps to verify their financial information.

45 And in your statement you also is a Aussie has a program of work to remediate issues in relation to broker misconduct?---Yes.

Which are identified in a particular audit report issued by the CBA group audit and insurance, dated 11 December 2017?---Yes.

5 You don't exhibit a copy of that audit report to your witness statement, do you Mr Boddy?---I don't. I believe it has been submitted.

10 And by "remediate", in that paragraph, do you mean fix those broker misconduct issues. You do not mean remediate at customers?---Not remediate customers, no. Enhance the processes. So in terms of the 2017 audit, so there was a couple of areas that have been called out, so this is an audit by CBAs assurance and governance team, which comes in. They have done two audits. They did one in 2015, January 2015. They did the second audit in December – or July '17 through to December '17, and they have identified a number of issues we need to address. Two of those issues are responsible lending, and improving our processes around responsible 15 lending. The second one is around broker behaviour and governance, and improving our processes around those. Those two issues were raised in the '17 audit issue. They weren't items raised in 2015, but they are definitely items raised in it 2017, and we have got a program of work, looking at what we can do to improve our processes around monitoring broker behaviour. We have got processes in place to detect fraud, 20 to detect broker issues, and conduct issues, but how do we enhance them and use with our information and data analytics to pick up trends.

25 Well, I will take you to the report Mr Boddy, that might assist. So this is the December audit report that you mentioned. It is CBA.0506.0001.0014. I will wait for that to be brought up for you to look at. So you can see at the top there reference to internal audit, Aussie Home Loans, FY18. Does that indicate that it's part of the financial year of 2018?---I'm not sure why it says FY18. So the audit was conducted between July '17 and December '17. The period of information they were looking at was three to four years they were going back and looking at.

30 I see. And you are the accountable executive noted there?---Yes.

35 Did you prepare this report Mr Boddy?---No. So CBA group and assurance and audit prepared the report, and then I am the liaison person, so I am the connection and responsible manager working with the audit team during the audit.

40 But you agree with what is said in the paper? You have read it?---I have read the – that's an audit opinion, and I have read the audit opinion, and they have got some valid points there that we're taking on and we're doing remediation work.

THE COMMISSIONER: It's a bold CFO who says he doesn't agree with audit, isn't it, Mr Boddy?---That's right.

45 Yes. So can we take it that you agree with what audit have told you?---Yes – yes.

Yes.

MS DIAS: So we see in the top left-hand corner a box. Report Rating is the heading there. The first heading in the box is Control Environment. Do you see that, Mr Boddy?---Yes.

5 What does that term refer to?---The control environment. So they are doing a – they give a rating of unsatisfactory, marginal, or satisfactory in terms of the processes that they came in and audited. So they look at a couple of process, or a number of process, and then they give a rating depending on the risks that are been mitigated in those processes. So they look at the controls. If it’s satisfactory they will say, “All
10 the controls are in place, there is no further work required”. Marginal would mean the controls are in place and there are some enhancements that can be made. Unsatisfactory would mean, “With some of the issues or some of the processes we audited, we identified some issues and those issues need immediate remediation.”

15 THE COMMISSIONER: Sorry, so it’s the process that is deficient, is it?---That’s right. They are looking at the process and they are identifying – sorry.

No, you go on?---They are identifying issues with the process. So they are saying, “We have identified some issues in that process, and there is a probability they will
20 default and have an issue. And you need to address those issues immediately. Not the whole process, but parts of your process.”

So an unsatisfactory rating, a red rating like this, is – I was going to say a commentary on, that’s the wrong expression – is a conclusion reached about process
25 and sufficiency of process; is that right?---That’s right.

Yes. Go on.

30 MS DIAS: Can I assist with that, Mr Boddy, by taking you to the final page of that document. 0037?---Yes.

It contains a description of that criteria or criterion. You can see there – I haven’t got it yet. In the box on the left, down the bottom, unsatisfactory denotes:

35 *Controls are not appropriate for the risks being managed. There are significant number of issues that require immediate attention.*

Is that what you intended to summarise before, or to extrapolate on?---I thought – well, what I mentioned before was that – that last sentence. So there are a significant
40 number of issues which need immediate remediation. That’s right.

Yes?---When they are reviewing processes for controls. That’s right.

45 And the rating for – going back to the first page, sorry, 0014, and the rating for a control environment there is unsatisfactory?---That’s right. So that’s the audit team weighing up all the items they reviewed and of the ones that they identified they had

some issues there that need remediation immediately, overall, they are giving a rating of unsatisfactory.

5 And that - - -?---It would be a marginal – sorry, I was going to say, it would be a marginal – if they said the controls are all in place, and there is some opportunity for enhancements.

Yes. But they did not give that rating, did they?---That’s right. No.

10 And that’s also the rating given in 2015?---That’s correct. So in 2015 they identified, from the processes they audited, some issues. There was a couple of high issues. They weren’t the similar issues that are in this paper, so they weren’t around responsible lending, they weren’t around broker behaviour. They were around other items, around supplier governance and security of customer information on our IT
15 systems.

But they were also significant – a significant number of issues to warrant that unsatisfactory rating in 2015?---They were significant issues, yes.

20 And the next line, Management Awareness and Actions. This one is rated marginal. And sorry to jump around, but the definition of marginal on the final page, 0037, is:

Controls are operating but require improvement in the short term to ensure that all risks are being managed appropriately.

25 And that too was marginal in 2015, Mr Boddy.

THE COMMISSIONER: Are we into the management awareness criteria, Ms Dias? I think I’m a little confused. I thought we were into management awareness and
30 actions rating criteria and that we were looking up - - -

MS DIAS: I apologise, Commissioner, you are right. That - - -

THE COMMISSIONER: The orange marginal there.
35

MS DIAS: That is correct.

THE COMMISSIONER: Yes.

40 MS DIAS: So:

Management has shown some understanding of the risks and controls relevant to their business, however they were not performing regular testing of controls and were not fully aware of and taking action to resolve all material issues. Alternatively, management has limited cultural characteristics to manage risk effectively, and/or were not cooperative in the audit.
45

Do you know anything about the details that might have resulted in that rating, Mr Boddy?---Yes. So the rating for marginal, for management awareness, is about the perceived inaction or slow way in which we dealt with those issues that required immediate attention in 2015. So the timeliness of resolving those issues that were
5 identified in the 2015 audit report.

And the overall report rating is red. Which is the same as the report rating that was given in 2015?---Yes. The overall rating is red, so when we talk about marginal management awareness, so the issue there was the timeliness of completing those
10 issues. If that had been done in a timely manner, then the management awareness would have been satisfactory and the overall score would have been amber, but the overall score is red, yes, and it was in 2015 as well.

I see. So it's fair to say that the risk profile of Aussie hasn't changed much in three years; is that correct?---Definitely changed. It has definitely improved, so I think you had a risk profile statement or risk culture survey up a minute ago, and was the 2016 risk culture survey. The 2017 risk culture survey, which this audit team completed, showed a significant improvement in the risk culture in the last two years.
15

We can come to that?---Okay.
20

Okay. So on that first page again, 0014, the first line under the audit conclusion is what you were describing before, is it:

25 *This is our first audit of Aussie Home Loans since 2015 red audit. Work was delayed to allow Aussie to work through previous audit findings and the transfer of full ownership of the business.*

And – to CBA – and then further down, the last paragraph, under that heading is:
30

The culmination of a unsatisfactory control environment and marginal management awareness resulted in our red rating overall. Appendix D benchmarks are audit findings to other aggregators visited by group audit who would be rated similarly.
35

Now, there is another table on the left there, under the title Issues Summary. And on the top row can you describe, Mr Boddy, what those letters stand for, VH, H, M, L?---On the first table, so the first one is the issues summary for AHL rating. And so very high, high, medium, low. And so this is in respect of – the measure we would use is financial impact. So on Aussie's scale, a high rating would be a financial
40 impact of \$650,000 to \$2 million. So being a small, previously privately owned business, we have quite a very low benchmark in terms of financial impact. So a high is a \$650,000 to \$2 million impact.

45 So these are financial impacts on the business. What the loss - - -?---Well, the potential - - -

Is said to be potential loss?--- - - - is of that risk. If that control is not working you potentially are going to have a failure and you might end up being at a high – on a high, it might cost business \$650,000.

5 And there are 103 outstanding issues there?---So in the 2017, there is 103 there. So what you can note is AHL management issues, so they are self-identified issues. 77 self-identified issues in 2017. And the 2015 audit we had 11 self-identified issues. A risk culture that's developing is one that is looking at their processes, identifying issues, and fixing those issues so that that increase from 11 to 77, you know, in
10 partnership with a risk profile of the business, lifting during that time as well. is that the business is taking – you know, Aussie, we are focusing on our processes, we are identifying the risks and we are doing something about it.

15 THE COMMISSIONER: Well, how does that sit with the management awareness and actions rating of marginal?---So in the report - - -

Which is - - -?--- - - - the second paragraph - - -

20 You just let me preface it, so that you can deal with it fully. As I understood the orange rating, it was that in effect management are too slow picking up and dealing with these things. But, with that background, what's your answer?---That – that is correct, though. Management were too slow. We were too slow to pick up and deal with these issues. The second paragraph of the audit report there, I think it's probably almost the second-last sentence of that, talks about – just checking
25 something. Sorry. It was the last sentence. Noticed that our risk culture work also noted improvement in risk management awareness, capability, accountability, in the last assessment. So whilst there was untimeliness in the completion of the audit issues, the risk culture has been improving, it's coming through in the culture statement. We have the risk and control self-assessments occurring, we are
30 identifying issues, and we are reporting those issues. And that's why there is a large number of 77 self-identified issues.

35 MS DIAS: It's not simply a risk culture question, isn't it, Mr Boddy. There's more – there's more going wrong here. I will take you to what is referred to as appendix D, to –which is a reference table commencing at CBA.0506.0001.0035. This is the benchmarking of the audit findings that's referred to in the first page. Now, the letters across the top row, do they designate different mortgage brokers aggregators in the end industry?---Yes.

40 And Aussie is at the end there?---AHL, yes.

45 How do you – how does the risk committee have access to this sort of information? Where is it gathered from?---I think the CBA group audit and assurance team have been looking at other aggregator groups. In terms of AHL or Aussie, they did a six month internal audit and had access to all information. With the other aggregator groups they have looked at there, I think they had a process of submitting requests to those aggregator groups to answer questions and submit some files back. And they

reviewed those, and then compared and made an assessment. So a six month internal audit versus reviewing a number of files for each of the aggregator groups.

I see. And there are a list on the left there, Aspects of a Responsible Lending
5 Compliance Framework, which you would agree are necessary to ensure that the aggregator, or Aussie, complies with its legal obligations under the National Credit Act?---Having a responsible lending – abiding by the responsible lending guidance, yes.

10 Yes. You are familiar with the key provisions of the Act Mr Boddy?---Yes.

You know a broker has an obligation to perform a preliminary assessment as to whether a loan would be unsuitable for a person, and they are required to make reasonable inquiries of the person's financial situation and their needs?---Yes.

15 We see a reference there to scope and approach of file reviews. File review is an important part of an entity's controls, would you agree, to ensure that issues like fraud are monitored and detected early?---Yes.

20 And to ensure brokers are complying with their obligations under the National Credit Act?---Yes.

And you note here the report says that Aussie's scope and approach to file reviews requires improvement?---That was noted in the body of the audit report. They noted
25 that we conduct file reviews, we conduct file reviews for over 3 per cent of all applications that come through and that is the process we use, it's a line 2 defence, and we also do file reviews in line 1, but that picks up items of misconduct and picks up items of fraud as well

30 You mentioned 3 per cent. That's only one per year per broker?---No. 3 per cent, we have 1033 brokers, we would do over 2000 file reviews a year.

Do you mean second or first line file reviews Mr Boddy?---Second line. So the compliance team. I haven't added in line 1, will would be the quality assurance
35 people there as well as the retail business consultant and mobile business leaders also conduct reviews, but I haven't included those in those numbers. Just line 2.

I see. Well, we will come to a page in this document where it says:

40 *The select process is manual and most brokers are subject to only one file review per year.*

I will take you to that, actually. It's on 0015. Do you see there, at the bottom, the title Monitoring and Quality Assurance over Brokers is not Robust. The selection
45 process - - ?---I read that – sorry, I was reading the sentence where it – yes, it just said most - - -

Yes?---Most brokers – so it’s an opinion that most brokers have one file review. So we do over 2000 for 1033 brokers. That’s, on average, more than two.

So one or two?---We have routine and targeted – sorry.

5

One or two, Mr Boddy, is that what you are saying to me? One or two file reviews?---Over two – on average, over two, but it’s more than that for particular brokers. So we look across the broker community, and we do routine reviews, and we do targeted reviews. And a number of situations we will drive to do a targeted review and pull out a whole number of files and go into deep dive, otherwise we just do high level reviews that are conducted.

10

Okay. We may as well finish reading that there. It says:

15

The selection process for line 2 quality assurance file reviews is manual, and most brokers are subject to only one file review per year. This represents less than 3 per cent of broker loans, being captured for review. Results from reviews are not auto-correlated to draw assumptions on broker behaviours, and no other mechanisms for monitoring brokers are available to AHL.

20

Do you agree with that statement?---The reviews are manual and the recommendation coming out of this report is really good in terms of the data analytics. We can look – and you will probably touch on that in a minute – about broker behaviour, but what the manual, there’s not an issue with the manual, it’s just how do you do more. The manual file review, though, is pulling out files, putting out supporting information, looking at the documents and validating those documents. So it’s payslips, it’s gift certificates, it’s all those things which are really hard to detect if they’re real or false documents.

25

30

But there’s no other - - -?---It’s a manual process, though, you’re right.

Yes. There’s no other supporting mechanism next for that, other than what you referred to in your statement as the broker dashboard, which is still in a pilot phase; is that right?---Sorry. Any more supporting information for - - -

35

Any more mechanisms. No other mechanisms as set in the audit report. No other mechanisms for monitoring brokers?---For monitoring brokers, it’s the file reviews that are conducted. So there’s - - -

40

Yes?---We are talking about line 2 file reviews, sorry, but there is line 1 file reviews. And so the sales leader, the retail business consultants, the mobile business leaders, where there is a franchisee, franchisees are conducting file reviews of the loan writers within their stores. So there’s line 1 reviews that are happening as well, but in line 2, that’s right.

45

And further down, there’s a bullet point that says the broker dashboard – well, I will read the preceding sentence:

5 *With the assistance of management, we developed a broker monitoring dashboard to flag suspicious broker behaviour. The dashboard highlighted 586 instances in the last 52 months where broker have submitted their own loans and are earning commissions on these loans. Management have agreed to communicate brokers that they no longer be able to submit their own loan applications via AHL.*

10 Does that still take place?---That's correct. The process is being – the brokers have been advised not to do that anymore, and that's the case, in terms of writing their own loans.

15 When was that changed, Mr Boddy?---Recently. I think it is has been something that has been talked about for a while but it was changed recently. I think it was probably January of this year.

20 I see. You would agree that's not appropriate conduct for a broker to submit their own loan application and earn commission on that loan application?---Yes. The process is there, processing their own home loan, so they are buying a house, processing their own home loan, they put it through a lender, and then because they're a broker they're getting a trial commission on that, so effectively a discount.

25 They are pretending to be their own client Mr Boddy, do you agree with that?---Sorry. They are pretending to be their own client? No, I wouldn't say that. I would say they are just processing their own loan. On the documentation they are including their own information about the income, their expenses, they are doing their own declarations and they're submitting their own home loan, like some people would. Rather than going to a broker, they are submitting their own home loan with the lender, and they are getting a trail commission for that.

30 So do you advise lend that the brokers are acting for themselves when they are submitting the loan. Do the lenders know this?---We – I don't – I mean, Aussie doesn't advise the brokers, but the application form coming from the broker has the broker's details on there. Their employment, what they do for a job, how they earn their income. It's on their application form.

35 I see. Also on that page, actually, it – it mentions that the responsible lending obligations are not always met. There is a title there, you can see that:

40 *AHL do not have a policy or guideline that defines minimum expectation from a broker to verify customer information for a home loan application. This includes verification of income, liabilities, account history, savings and gifts. In all 30 loan files sample tested, the brokers did not capture enough supporting documentation to substantiate that reasonable steps were taken to confirm the product was not unsuitable. For 10 of these files a quality assurance test has been performed. This issue was not identified. For 13 out of 20 files tested, the broker had not retained evidence to support that reasonable steps had been taken to verify the customer's financial situation.*

For example, a customer needs analysis was not completed or signed by the customer.

5 Now, Mr Boddy, I see the time. I will ask the Commissioner if perhaps you can answer the next question or we can take a break at that point

THE COMMISSIONER: No. Ask your question and then - - -

10 MS DIAS: Yes. So the question is, Mr Boddy, you have referred to knowing about brokers' responsible lending obligations?---Yes.

15 You would admit that that is a resulting breach of the responsible lending obligations. Do you agree with that?---No. No, I don't agree with that. I can go through each item, if you would like. So I think maybe let's start with the last one, which is for example a needs analysis isn't complete. That's - to sign a needing analysis is not a NCCP requirement. That is an Aussie requirement, that they complete a needs analysis for the customers, they document the objectives of customers, the financial position, the assets, the liabilities and they do this with this every loan and they sit with the customer and go through that information and then
20 the customer signs it as a declaration that it's accurate. That's one of them. So the fact that it wasn't signed isn't an NCCP requirement. Aussie does it, it hasn't met our quality standards, so that's why that's a concern, that's what we measure. In terms of the 30 loans, and them not selecting the right product, all that there wasn't documentation about the product selection, the challenge for this in terms of audit, so
25 those 30 files there, those 30 loans, were all CBA loans. So they are all CBA loans. The lens that the audit was bringing to that was: was there appropriate documentation around the selection of the brand of the loan, rather than the product? As in, is it an investor loan, is it an owner-occupier loan, is it an interest only loan? So the lens was more, "There's 30 files here, they are all being settled with CBA,
30 why did the broker choose CBA over ANZ or Westpac, or another lender?"

That not what the report says there, Mr Boddy. How is it that you know that that those 30 loan samples are all CBA?---I was involved in the audit. I'm responsible executive, I was involved in the audit. I wanted to see when they - the audit team
35 makes these recommendations, we go through what files they have reviewed. What the output of that review is, and that's their opinion, and that's fine. And it's an independent assurance team, and so we take that on face value, but I like to understand what has happened here, and what the 30 files are, and if it is representative of the whole population of Aussie's applications -
40

But the documents necessary to verify that the right decision has been made have not been retained in 13 out of 20 files. And you were aware that ASIC promulgates regulatory guidance on these sections of the Act. There is a guideline I will take you to, if you would like to see it?---No, that's - - -
45

THE COMMISSIONER: I suspect, Ms - - -?---No, that's a valid point. Sorry.

THE COMMISSIONER: I suspect, Ms Dias, we are about to continue into - - -

MS DIAS: We are, Commissioner.

5 THE COMMISSIONER: I don't know whether they're deeper waters, broader waters or something, but it is 1 o'clock. 2 pm.

10 **ADJOURNED** [1.03 pm]

RESUMED [2.01 pm]

15 THE COMMISSIONER: Yes, Ms Dias.

MS DIAS: Mr Boddy, before the break we were looking at a group audit and assurance report from December. I will call that report up on to the screen now. CBA – there it is. And that paragraph there, under the title Responsible Lending Obligations are Not Always Met. Do you remember we were discussing that and we were talking about the statement there that brokers did not capture enough supporting documentation to substantiate that reasonable steps were taken to confirm the product was not unsuitable. And the further statement in that paragraph:

25 *For 13 out of 20 files tested, the broker had not retained evidence to support that reasonable steps had been taken to verify the customer's financial situation.*

30 And I wanted to take you to a regulatory guide that ASIC promulgates about responsible lending obligations and that is G209. And it's RCD.0021.0001.0088. That's the first page. If I could take you to the page 33, 0120. There's a heading there that says Processes to Ensure that a Preliminary or Final Assessment is Made. And it says there:

35 *As set out above, the National Credit Act requires credit licensees to assess via either a preliminary or final assessment whether a credit contract or consumer lease is not unsuitable for a consumer. In order to meet this obligation we –*

40 ASIC –

expect that you will be able to demonstrate that you have adequate processes in place to assess whether a consumer has the capacity to meet their payment obligations without substantial hardship, and whether the credit contract or consumer lease meets the consumer's requirements and objectives. If you do not have the appropriate processes in place, it will be difficult for you to show that you are meeting your responsible lending obligations.

And there is a note there that refers to a case. Note: in ASIC and – the case is the Cash Store TCS:

5 *In the absence of appropriate records in the customer file, or clear processes for ensuring completion of assessments, Davies J found that the licensees had failed to comply with their obligations to make an assessment.*

10 My question to you is that, having regard to the paragraph in the audit report, you would agree, wouldn't you, that Aussie processes are unable to substantiate that the legislative requirements are being followed?---Sorry, was that in relation to the 13 files and capturing documentation?

15 Not only with the 13 files, but the processes in place that are referred to in – in that report. But specifically those files. What is your first answer on the files, Mr Boddy?---Yes, on the 13 files, I think the point was – and I thought it related to that point as well – there wasn't sufficient documentation on the 13 files out of 20 files, that a valid point. There wasn't sufficient documentation. This was a period of time from early '15 through. What Aussie has done since then is put in place a new scanning system, and it came in early 2017, to automatically pick up customer information – the documents the brokers are collecting – and recording it and keeping it electronically on – on record. But, prior to that, there are files that don't have sufficient documentation. As well as in that, in the 13 items, there is some information that you can't get certification were. So I think some of the cases were where people are verifying their assets and they are self-employed and they're running – they are a plumber or electrician, and they value the truck with the equipment in it. There's not a way of documenting that and verifying that. They generally give you a valuation as to what the truck and the equipment they have is worth, and so some of the items there couldn't be verified for documents, but there is ones that could and there wasn't documentation on record. And there should have been.

30 The paragraph says that Aussie doesn't have a policy or guideline that defines minimum expectations to verify information. That was the case in December. So you referred to some practices in early 2017. Did you mean early this year that things have changed?---In terms – we do have a new policy as well, early this year, which talks about documentation and responsible lending. So we do have that prior to that policy coming in. We had policies and we have contractual arrangement with our brokers that they are to comply with NCCP requirements and RG209.

40 THE COMMISSIONER: I'm lost as to the chronology, I'm sorry, Mr Boddy. You are assuming I'm across a chronology in ways which I am not. (1), does AHL now have a documented set of policies about responsible lending?---Yes.

45 When did it first get that documented set of requirements?---That was coming out of that 2017 audit and that was put in place in early March.

This year?---This year, 2018.

Yes.

MS DIAS: If you can go back to the document - - -

5 THE COMMISSIONER: Just before we leave that, that is something that had been on the audit reports since 2015, is it?---No.

No?---It was only on the 2017 audit report which was finalised in December '17.

10 No reference in the 2015 report to lack of controls to ensure responsible lending; is that the position?---That's correct.

And the fact is there were no sufficient controls to ensure responsible lending in the period '15 to '17, were there?---We have policies and the policies referred to the
15 NCCP Act and in particular regulatory guidance 209, and we have a – contractual arrangements with the brokers to follow that regulatory guidance note, which is responsible lending and how to apply responsible lending. But it's a valid point about having a policy, and that's why we are taking action to put a policy in place and we have completed that.

20 The audit report at '17 was what was then in place was not satisfactory; is that right?---Yes.

25 Yes. And you brought it into play in March this year?---Yes.

Yes.

30 MS DIAS: We will go back to the first page of the audit report, Mr Boddy. Something else – this is 0014 of CBA.0506.0001.0014.

Something else that that the audit committee picked up on there, is controls. Under the heading:

35 *Controls to confirm customer declared information is completely and accurately sent to lenders through Nextgen are not robust. Loan application information from Toolbox automatically feeds through lender through Nextgen intermediary system called Apply Online AOL.*

40 Do you want to describe what Toolbox is for the Commission, Mr Boddy?---Toolbox is an Aussie proprietary system which is used by Aussie brokers when they are completing – or supporting a customer in preparing a home loan application. So they will get all the customer information, and that's set out – in terms of the NCCP guide, in terms of the objectives, they will get the financial information, they will verify the financial information and they put into this system Toolbox and it's a step-
45 by-step process to ensure they capture all that information they are supposed to be capturing for – to do their assessment of the loan and to submit the application. So they will complete it in Toolbox, all the information. Once that's completed they

will do a needs analysis statement, they will sign it with a customer, and on that they will then submit that application. It will go into a third party system, which is called apply online, which is a system that works between mortgage brokers and panel lenders. And then it feeds into the lender effectively and completes the application form for whichever lender it is.

And where does supporting documentation get input into that process, payslips, employment letters, the like?---Right. So that's the -- so there's a new system. There was an old system, but in early 2017 a new system called Aussie DX was created and it's a -- so the broker will capture all the information, and then they will scan it into Aussie DX and it gets stored and it will also get exported through Apply Online to the lender and they will also be able to submit hard copies to the lender.

And that still takes place through the Toolbox?---Yes -- yes. I'm not the Toolbox expert, but yes.

I see?---From my understanding

And the paragraph goes on to say:

We identified 8471, of which 6165 were settled, AHL applications over a four year period where customers' declared dependents may not have flowed correctly from Toolbox to lender systems through apply online. This could be due to a data mapping issue between Toolbox and AOL, or due to multiple users having -- including brokers and support teams -- having access to manipulate customer information in AOL before sending to the lender.

I'm reading over the page now on 0015. Perhaps those two pages can be put next to each other on the screen. And the paragraph goes on to say:

Concerns over data mapping between Toolbox and AOL were raised in the previous audit.

Is that true Mr Boddy, that the concerns were raised in the president audit?---Yes. They were slightly different issues, but they were effectively around data between Toolbox and Apply Online.

And was it a similar issue in that data about dependants was not being captured?---No. It wasn't. It was slightly different. So the old issue in 2015 was more when the brokers are capturing expenses, so declared living expenses, they're capturing in Toolbox and they are sort of breaking it up into components. And it might be travel, entertainment, groceries. So they do that once. When it goes into Apply Online, Apply Online is effectively preparing an application for any of the 22 lenders that are on our panel. All those lenders have different categories for how they like expenses to come in. So where some might want groceries and electricity bills, others group that together. So it becomes an issue when it gets to apply online, and brokers need to go in and then change the components of those expenses. Not the

overall expenses, but the break-up. So the issue back in 2015 was around that anomaly which exists, and is a challenge with – between the two systems now.

5 I see. So this issue about capturing dependants was not picked up in 2015?---No, it wasn't. But it's – yes, it was picked up in 2017, and it relates to 2013, actually, the issue.

10 THE COMMISSIONER: It's important, isn't it, the number of dependants?---It is. It's a good pick-up, absolutely.

And why is it important?---So do you want me to talk through the issue?

15 MS DIAS: Well, it's an important aspect of assessment of suitability, is it not, because the - - -?---It is.

- - - cost a dependant means a person has less money to finance a loan?---Yes, absolutely.

20 THE COMMISSIONER: And if you default to a HEM, an H-E-M, which HEM you enter depends on the number of dependant, doesn't it?---That's correct.

So if you have got the wrong number of dependants recorded an HEM may be taken to account, in assessing serviceability, which is inapposite?---That's correct.

25 It may be understated?---That's right.

The modest living standard recorded by HEM for a couple, surprise, surprise, is less than modest living standard for a couple plus two dependant children?---That's correct.

30 Yes.

35 MS DIAS: So it's possible that where this happened, Mr Boddy, that the loan suitability was not properly assessed and in fact the loan may have been unsuitable for the customer; is that possible?---At the end it's possible. If I walk through it, so Aussie – we are required to do a serviceability calculation, and we do that in Toolbox. So the correct dependants are in toolbox and we run a serviceability calculation for every application. So we do that. And we did a serviceability calc on all these, and we have analysed them all and we have conducted that and they passed
40 the serviceability. But then we passed the information into Apply Online, this is where issue becomes, and Apply Online then goes to the lenders. And there was a glitch in the system, so a system issue when a change occurred, which meant that when dependant information was being put into Toolbox, if I put down that you have two children but don't put the age of the children or the date of birth, then it was
45 wiping out the dependents in Apply Online. So the lenders were receiving electronic feeds saying that application has no dependents on it. So Aussie did the serviceability calculation with two children on it, and that serviceability calculation

was correct. It then went to the lender and they potentially – they had the electronic version without the dependents on it.

That’s incorrect, yes?---That’s right.

5

But you must have – or Aussie must have agreements with these lenders to provide accurate information?---Yes. Contractual agreement, yes.

10 So it has breached those agreements?---So we have been through and analysed the files. So these numbers were early numbers, the audits picked up, so in terms of the files impacted - - -

15 THE COMMISSIONER: What do you mean “early numbers”, Mr Boddy. What do you mean early numbers?---This is while they are conducting the audit. So this is their high level assessment of the potential loans impacted and that was during the period in November 2017, what we did is then went through every file. So we can - - -

20 MS DIAS: It’s a big number, isn’t it Mr Boddy, 8471?---Right. So the correct number is 2657 settled loans where dependant information was not electronically sent to lenders. So 2657. So that’s a lot, yes. We have been through those files, 64 per cent of those files, the brokers – we have done an Aussie serviceability calc, but the brokers have done manual serviceability calculations on manual forms, we just can’t tell if they have been submitted in paper copy to the lenders.

25

THE COMMISSIONER: Where do I find this number of 2675 you’ve just quoted?---It won’t be in the internal audit report, it’s through internal investigations in the business. And so we’ve reported it to ASIC, as good governance reporting, that number. And we have also notified the lenders.

30

Did you tell ASIC that the auditors had found different numbers?---We didn’t talk about the 8000 number, no. We talked about identified settled loans with incorrect dependant information.

35 Yes. I see.

40 MS DIAS: And has this error, this flow through error been corrected now?---It was corrected within two days of the audit team identifying it. It was a technical IT issue, a change that occurred and appropriate testing hadn’t been carried out, and so the glitch was in there. So it was remediated immediately. We have notified ASIC and we have also notified the lenders.

45 Do you know the outcomes of any if know the outcomes of any loan reviews performed in relation to the loans?---We will stay in contact with the lenders on those. So we ran our serviceability on the 65 per cent – or, sorry, 64 per cent of the files that we have reviewed. The manual serviceability calculations which were carried out for each of the lenders by our brokers they passed the serviceability calc

on that. But there is exposure there, and so each of the lenders will review those files and if – I assume if there is a concern they will notify us.

There's also another heading further down on the 0015 page, which is page 2:

5

Risk management activities and capabilities are not sufficient to provide sufficient cover over AHL business processes. Whilst AHL has invested in risk management capabilities since our last audit, this has not been in keeping with the increase in regulator and community expectations.

10

Now, what is the departure from expectations there, Mr Boddy, that happened?---So the feedback there, we have taken on board and we've got a program of work looking at that. We are looking at investing more heavily

15

THE COMMISSIONER: You weren't asked what you had done. You were asked what the departures were. What were the departures?---Sorry, what do you mean by the departures?

20

MS DIAS: How was it not in keeping with the increase in regulator and community expectations. Is it just the investment amount or was there other aspects to that. The capabilities?---I think it's – it's an audit opinion. The compliance and the risk team have grown in – over that period of time from, it was three or four people to over 15 people, so it has been growing. I think regulatory focus has increased during that period, and it's an opinion that we haven't kept up with that. We are looking at investing more heavily in our line 1 and line 2 risk. We are taking this on note and doing it.

25

30

Okay. Well, I will take you to appendix A of that document, which sets out some very high and to medium audit issues. That 0020. You will see the first – this is the one we have just been discussing, I think, that controls about declared information?---That's correct.

35

And that has an issue date – is that the issue date when it's meant to be actioned by, in the penultimate column?---Yes. That's correct.

40

That issue date is – is that a typo there? 30 September 2019?---Well, the completion date is a lot earlier than that. So that's at the beginning of the – as sorry, the close of the audit, and at that stage people try to predict how long it is going to take to close the issue. The target that we have internally is a lot shorter than that. So - - -

45

The first item there is the capturing the customer dependents date of birth, so that the dependents - - -?---Yes. That was the dependant information, so that was corrected in November - - -

I see?--- - - - 2017. Complete the investigation for the findings. So that has been completed, and it says by 30 April. That has been completed, and we notified ASIC and the lenders last Wednesday, which I think was 7 March. It's the investigating

the new control that we are putting in place, we have got that in pilot, and this is a reconciliation of the two systems. So the declared information that going into Toolbox, and Apply Online, and applying a reconciliation that sits across those two systems. That's the challenging piece, that's the piece we are focused on doing at the moment. The expectation is that would be completed by – I think the target date is September 2018.

Okay. And the next set of issues and actions is under the umbrella:

10 *Some key responsible lending requirements have not been met.*

And we see that the date due for that is, again, 30 March 2019. Surely you would want to fix that issue earlier than that, Mr Boddy. Would you agree?---That's right. Sorry, so point 1 there is the responsible lending policy, which the recommendation is to put that in place, and we put that in place. We did that early March of this year. And the other one we are looking at is enhancing Toolbox to put in new fields that will make it easier for brokers to comply. So new fields around requirements and objectives when there is an interest-only loan or around investor loans and items like that. We are looking at putting patches and builds into Toolbox to make sure it is easier to capture that information for the broker.

What about the last one:

25 *Monitoring controls associated to key responsible lending requirements through RCSA cap testing.*

What's that? RCSA cap testing?---These are risk and control self-assessments. So throughout 2016 and 2017 the business focused on assessing risk and processes across their business units. And so once you have done that – we have completed that review, we have identified what the risks and the controls are in place, and some controls are missing, we're going to be putting those in place, and then cap is the cap testing. So that's control assurance programs. So once you identify your processes, you identify the controls, you then have to have a testing regime, that you do on a quarterly, a monthly basis, depending on the process that you are testing and the recommendation is that we could be doing more testing on our control self-assessments.

And there are a number of other issues there that have a high rating - - -

40 THE COMMISSIONER: Just before you depart from that second category, you say that the responsible lending policy has now been created?---Yes.

In March of this year?---That's correct.

45 How big a document is that?---I think, from memory, five pages.

MS DIAS: We will come to it, Mr Boddy, if that assists.

THE COMMISSIONER: Yes.

MS DIAS: Okay. I think that all I wanted to go to on document C1, the group audit and assurance report. I will tend that document, Commissioner.

5

THE COMMISSIONER: That will be exhibit 1.74. It is group audit and assurance internal audit report, CBA.0506.0001.0014. 11 December '17.

10 **EXHIBIT #1.74 GROUP AUDIT AND ASSURANCE INTERNAL AUDIT REPORT DATED 11/12/2017 (CBA.0506.0001.0014)**

MS DIAS: Mr Boddy, you were aware that that document was one of two that was attached to an audit committee report that went to CBA. So that one is marked C1. There was another one marked C2. Were you aware of that?---The two reports that I remember going to the CBA risk and – or the audit committee, are – was the audit report as well as the culture survey, the 2017 risk culture survey.

20 Okay. Well, we will go the culture survey, Mr Boddy. That's CBA.0506.0001.0038. That's dated November 2017 and you are mentioned on the first page. Is that because you prepared document Mr Boddy or are you accountable?---No, that was prepared by the CBA group assurance team. So an independent team, they run – they ran the survey independently. I think they compiled the report in November 25 2017, I received it in January 2018 – is when they gave it to me.

I see. Why is your name on the front of it?---Because I'm the responsible executive from the audit, so I'm the relationship point for the audit. So when they are planning time in the audit, findings of the audit and reporting back to myself and the executive team of Aussie, they do it all through me.

30 So you - - -?---So that's why it's addressed to me and then I distribute it to the executive team.

35 You're familiar with the contents of this document?---Yes – yes.

Okay. On the second page, which is 0039, take a look at that. Do you want to explain to us firstly what you understand risk culture to mean. What is that in lay terms?---Risk culture is across our organisation we have 280 people, approximately. 40 What's their awareness of risk, what is their awareness of the processes we have in place, what are those processes in place for, are they working effectively, and are they mitigating the risk and reducing the business, our brokers being exposed to potential financial loss or reputational impact?

45 A few comment boxes there. At the top it says:

During October 2017 all Aussie Home Loans staff were invited to complete a risk culture survey. 131 staff participated in the assessment and 64 staff gave written excellent.

5 By staff, does that include brokers, Mr Boddy?---It doesn't include brokers, no.

It doesn't. Okay. So there is one comment there, in the centre, saying that they found substantial improvement. But, as well as areas of concerning behaviour that need to be addressed, the box to the right there, numbered 6, says:

10

52 per cent of participants agree that sometimes they need to bend the rules to get things done. Some say they were poor at following implemented procedures. Causes of this may be lengthy processes that cause inconvenience to a customer where a shortcut will work just as well, but isn't the official process; pressure from other staff members for something urgent; and broker satisfaction and broker pressure to achieve sales.

15

Now, the reference to bending the rules, do you think that staff think that the Credit Act or the credit legislation are rules that are – that can be bent or – to get things done? Is that one of those rules?---I mean my interpretation of that, and – so one is the concern that people are cutting corners. And so, you know, as an executive team we are keen to understand why people feel the need to cut corners. The other one is then what's the risk or what's the exposure of that? Are they cutting corners because it's an inefficient process? If that is, it's a great idea, let's do something about it to make it more efficient. But if they are cutting the corner on a formal standard operating procedure that we have, that has been set up that way, that will expose the business as a potential risk of loss. So we need to be able to track that and report that. So – and there's two interesting findings comes out of that.

20

25

30 What about the pressure to achieve sales? Sales here, does that refer to home loan applications submitted on behalf of a customer?---Look, all I can do is interpret the people that made that response. I think there would be no doubt, when a broker has a customer at their door and they are trying to process an application, and the customer wants to settle the house next weekend because it's going to auction, it's urgent, that they're ringing Aussie head office and saying, "Why can't you get you help me get this application through to the lender so I can get it approved and get the house settled?" I think that – I think that pressure exists. I don't think that's potentially an issue. That just more around the feedback from employees, because it's in employee surveys that they feel that they are under pressure by brokers, but I think brokers are trying to help the customer settle the home as quickly as possible. So that's the way I interpret it, and I see some of that pressure exist in the business.

35

40

And is it something that management is encouraging, this speed? They are telling staff, "Look, we want these things done quickly, we want customers to be happy, so push them through as quickly as you can"?---I think there's definitely to make sure the customer is happy. There is also an opportunity just to make the process a hell of a lot easier, I think, or more efficient. Sorry.

45

Okay. There is another box there, 7:

5 *Staff believe favouritism exists when applying consequence management. Only
taking, and only 60 per cent that appropriate consequences are applied for
noncompliance with procedures. Currently, there appears to be leniency
10 across different teams, and particularly across brokers. High performing
brokers are protected. When not complying or a breach occurs, action needs
to take place so others in the network understand we take our risk more
seriously. It is possible that high levels of mutual voting reflect this
inconsistency.*

15 What does it mean to say the person's comment there, high performing brokers are
protected. What's that a reference to?---I'm not sure what that's a reference to. In
terms of misconduct, I haven't seen anyone being given favouritism in terms of
brokers. It could be in terms of brokers have a lot of administration they need to do,
they are running – they are independent contractors running their own businesses,
they have insurance policies they need to renew on an annual basis, they have
memberships they need to do. Employees, Aussie staff members have to remind
20 them to renew their memberships on a regular basis. And I know there is frustrations
when people haven't done it in a timely basis and there is constant follow up that
required for some brokers. That may be an interpretation as to why some of those
brokers feel protected or the employees feel they are protected, that they don't have
to serve renew their insurance policy in a timely manner. But I haven't seen it in
25 relation to misconduct at all.

30 But the high performing brokers, are they the ones that bring in the higher percentage
of commissions or higher volume of commissions compared with others?---I would
say it's probably a more successful broker. So a well-established business.

35 What do you mean by "more successful". Do you mean more loan applications
brought in?---I would say the customer – or sorry, the broker has a larger customer
base.

40 And on page 0041 we see some comparisons with CBAs organisation as a whole.
Do you see there the top – so the top line compares the better items where Aussie's
performed better than the CBA Group as a whole. The bottom line is the worst
items. So:

45 *Our tools and systems allow us to manage a risk effectively, and people have
generally answered below the norm in the CBA Group.*

Other items like that are:

50 *Appropriate consequences are applied consistently for noncompliance with
procedures.*

Item 6:

I am told how risk management helps us meet helps us meet the needs of customers.

5

And item 11:

Sometimes we bend the rules to get things done.

10 So we are seeing a trend, aren't we Mr Boddy, people are taking shortcuts and bending the rules. You – have you observed that yourself?---No, I haven't observed people cutting corners and cutting rules.

15 Why is it do you think that people are answering these questions that that's their impression?---If – my comment on the trend, so I mean there was a comment on the first page about the trend that did a comparison to the 2016 culture survey, so the comparison was the 2016 culture survey was well below CBA standard, well below CBA standards. The 2017 is on par with CBA culture survey. I mean the first item you mentioned there, item 15, which is:

20

Our tools and our systems, aren't effective to manage risk or aren't as effective to manage risk being lower than the CBAs.

25 Which is highly advanced in terms of technology, the CBA is. I – you know, I think that's probably a reflective comment on some of the systems we have in Aussie, both from our staff members and our brokers, that they could be more efficient and they could be lifted. I think that's probably a fair difference between the CBA and Aussie Home Loans.

30 Okay. And what about over the page, we go to 0044. There are some voting results on the organisation as a whole. And the survey response is colour coded, so where we have got green, it's a very positive response to the question. So affirming the question, if I can put it that way. And there is a couple down there along the left that I wanted to ask you about. One is:

35

Unethical behave exists in my area.

We have got quite a strong response across there. What do you have to say about that?---Sorry, which question was that? Question 5.

40

Question 17:

Unethical behaviour exists in my area.

45 ?---Sorry. That's just not on the screen.

Sorry, Mr Boddy. There it is?---Sorry, I don't have an – I'm just – I'm familiar with the report, but that question just doesn't – it just doesn't make sense to me. That's all.

5 You don't think it is reflective of - - -?---No.

- - - what's occurring at Aussie? You don't think that there is any evidence of that? You don't see that?---No, I don't. Is that the 2017 report?

10 It is from November 2017.

THE COMMISSIONER: As I read it, it is 85 per cent of respondents saying that, "Yes, unethical response – unethical behaviour exists in my area." And my eyebrows shoot through the forehead at that response, but am I misreading it?---I feel
15 I'm misreading it, because sort of the table down the bottom, green means very positive. So, like, green indicates good scores. Red indicates bad scores. There is a lot of green on that bar, but the label attached to the question just doesn't seem to align with the colour coding coming through, that it's so green, yet the comments talk about unethical behaviour.

20

In the hands of the uninformed third party it reads as though a huge majority of the organisation says yes, there is unethical behaviour. Now, that I would have thought, would be attracting more red flags than you can find in certain squares on certain days?---Yes. So I – it looks wrong to me. I mean, it wasn't even a callout on the
25 front page. It looks like the information is incorrect. It wasn't a callout. In terms of the development areas on the front page of the 2017 report, unethical behaviour wasn't a callout. There was a minor call out about favouritism to brokers, but there's no sort of callout around that, so that looks like that question is mislabelled.

30 MS DIAS: The question is mislabelled or do you think people have answered incorrectly?---I think potentially the report is incorrect, that label on it, yes. My view, but - - -

THE COMMISSIONER: Let's assume it is so, and assume that 85 per cent are in effect saying, "No, there is no unethical behaviour in my area." If – if that's the
35 proper construction of it?---That's right.

We are still left with about 15 per cent giving neutral or negative responses, aren't we?---Yes.

40

What are we to make of that? It's not insignificant, I would have thought, 15 out of 100 employees think that there is unethical things happening in their work area?---Yes, that's concerning.

45 MS DIAS: What about over the page, Mr Boddy. There are some other results that maybe are a bit more straightforward. 0045. I don't think they can all contain that error. The first one:

Raising an issue is more trouble than it's worth.

And here people have answered positively. And we have seen reference to this earlier. That's troubling isn't it, that people think - - -?---That a concern, absolutely.
5 I think, you know, in the environment we want them to raise those concerns and look at those processes and improve those processes, because if people have issues with processes, we would be trying to fix them as quickly as possible.

10 Further down, question 26 is similar:

There is a reluctance to share bad news.

15 And that's troubling as well, isn't it, that consistency between these categories of answers?---It is. However, on the front page, the summary of what was good and what needs to be developed, there was a key callout around the transparent open culture and that people felt comfortable escalating and raising issues. I think that was a good takeout. So I think if people have these issues they feel comfortable raising those issues with executive teams or with management.

20 THE COMMISSIONER: Can I come away from the particular numbers we see in the bar charts and just look for a moment at questions of culture in an organisation more generally. Would you accept that culture in an organisation depends on what employees or members of the organisation think is rewarded?---Yes.

25 And so, for example, if you have a mythical organisation, a hypothetical organisation, where employees are paid only according to the numbers of sales of widgets that they make, they – the values of the organisation will be driven by sales, won't they?---Potentially. Yes.

30 Yes. And another important element of culture of an organisation is the sense that those with grievances can raise them and have them dealt with fairly?---Yes.

35 Any other large contributors of the kind I have just indicated that go, in your view, to making up the culture of an organisation?---I think that ability to escalate issues and raise concerns is a key – is a key part of a culture.

But a central element is what the employee thinks that the organisation values?---Yes.

40 And what the employee thinks the organisation values is often affected, even moulded, by what they see the organisation as rewarding; is that right?---Yes.

45 Yes. And that's why questions of volume based remuneration and issues of that kind are matters that at least are relevant to issues about the culture of an organisation?---Yes – yes.

Now, when you came into Aussie how would you describe the culture of the organisation as you came into it?---So I would say it's a very dynamic, fast sort of growing culture. It has been a very successful business over time and it still is. The brokers are extremely customer focused. That's their lifeline. The independent
5 contractors, they are – so they are running small businesses – are purely focused on their customers and building their customer base. There is a passion around the customer, obviously. In terms of risk and compliance, a developing culture. So definitely not a mature risk culture, but a developing risk culture that has been moving forward and it's getting better each year and it's enhancing its processes.

10 THE COMMISSIONER: Sorry, Ms Dias.

MS DIAS: I will tender that - - -

15 THE COMMISSIONER: It's Friday afternoon, I am obviously off the leash. I will be quiet for a millisecond.

MS DIAS: I will tender the risk culture summary, Commissioner, from November 2017?---

20 THE COMMISSIONER: That will be exhibit 1.75. CBA.0506.0001.0038.

25 **EXHIBIT #1.75 RISK CULTURE SUMMARY DATED NOVEMBER 2017
(CBA.0506.0001.0038)**

MS DIAS: Now, Mr Boddy, that was the second document that was attached to the group audit and assurance report sent to the audit committee in February this year. 5
30 February. I will take you to that very briefly. It summarises what we have been speaking about. It is CBA.0506.0001.0001. There's redactions in the bottom part, so it does look a bit strange Mr Boddy, I apologise. But that second part of the page has been redacted. Have you seen this document before?---I have, yes.

35 So the first, at 3.2, it mentions that red rated Aussie Home Loans audit, again rated red:

40 *Significant issues from our prior audit remain. New issues relating to information technology, security, and compliance with responsible lending obligations, some of which require ASIC notification, could impact on AHLs reputation. Management are awaiting formal legal advice on whether an ASIC notification is required. Our findings stress the need for the group to strengthen its oversight of AHL and the risk culture at AHL.*

45 Now, that reference to ASIC notification, is that what you were referring to before?---That's correct. The independent issue that we did a good – we weren't

required to legally, to notify ASIC, but we did good governance notification to ASIC.

5 When you say you weren't required to legally, are you saying you were told by a lawyer - -?---Yes. The advice was, because Aussie has done a serviceability calculation – so we have the application, we carried out a serviceability calc as a credit – a credit service provider, we have completed what we were supposed to do. However, contractually, we have an obligation to our lenders so we notified them, but good governance just notified ASIC as well.

10 Okay. And, over the page, under Retail Banking Services there is a bit of a history about Aussie there. And the follow-up order being delayed. And it refers then at 4.23 to the Toolbox and the failure to reconcile the Toolbox and AOL, the system used by the lenders to make credit assessments:

15 *Despite this issue being closed by management, we found over 8000 loan applications, of which 6000 were funded, where dependant information was not sent from Toolbox to AOL.*

20 This is this is what we talked about before, but this is February now and you mentioned some figures that were a lot lower. Why are they not the figures in here?---The figures that are submitted here are submitted by CBA group audit and assurance. So they submit their numbers and I don't get a say in what is submitted to the board audit committee. So they do a separate independent submission and then
25 present that. So I think the key difference there is they are talking about 8000 applications, whereas based on our analysis we went through to actual settled loans, so where a settlement had occurred. So that sort of dropped it significantly.

I see. And over the page at 4.2.4:

30 *Fundamental broker agency policy and procedures –*

have you got that –

35 *to ensure compliance with responsible lending obligations have also not been established. Without this, there is an increased risk of compliance issues in the AHL business. The quality assurance program in place that subjects each broker to just one file review per year on average requires strengthening to meet rising regulatory expectations.*

40

And we discussed this before and I mentioned that one file review?---Yes.

45 And you would admit that that committee is saying again here in February, a few weeks ago, that this is still not satisfactory to ensure that the responsible lending obligations are being complied with. Do you agree with that?---I agree that we can do more in terms of the file reviews and we can do more in terms of controls around monitoring broker behaviour, and so that was those pieces of work that we are doing.

So we talked about the number of file reviews, and we sort of 3 per cent – it was one of these strings, we are looking at adding more resources in line 1, and so we are looking to double that, the manual file review process, but in addition to that we are also doing or preparing the broker governance dashboard. So the broker behaviour dashboard, which is in pilot at the moment, it's being used, sort of tracking those metrics patterns, and monitoring behaviours of brokers and their applications is helping direct where we do these manual file reviews as well.

10 In your statement you say at paragraph 22 that the broker monitoring dashboard will potentially prompt for review of a greater number of files for that particular broker. Perhaps we can show you that. That AHL.0008.0020.0053. And at paragraph 22 of the statement you refer to the dashboard. Or 11, sorry. And Ms Harris today, I don't know if you heard her evidence, but she said it's in the pilot phase. And that's going to - - -?---Yes. Sorry.

15 Yes. And it's potentially going to allow you to prompt greater review of files?---Yes.

20 How is it going to do that? How are you going to - - -?---So we have access to it now, the executives, and we are looking at it. And some of the risk and compliance team are looking at it as well. What we haven't done is rolled it out across the business, so it's there. What it does for each broker, so it's a system called Power BI sitting over the Aussie system, so Toolbox and Apply Online and it's pulling up information about every application a broker is doing. So it will look at things like the amount of – I think Lynda mentioned the amount of rework, so – as in a lender is coming back asking for more information about the application that was submitted. And it will show statistics on how many times that broker is getting asked for more information about file reviews, and it will look at a number of metrics. It will do number of file – number of requests for additional information around application, 30 LVRs greater than 80 per cent, so what percentage of applications does broker A settle that are over that. Investor – interest only loans that they are settling. Concentration risk as well, that was mentioned a little bit earlier about, you know, is 80 per cent of the loans going to one lender. So it is not going to tell us there is an issue, but what it's going to do is indicate areas for us to zero in on. So if a broker has high concentration list to one lender, well, then, some of those points. Let's pull a number of files, and let's go through, let's check the documentation and see why they are doing that. Have they got the objectives and requirements of the customer right? Is that why they are picking that? And then let's pull that information. Why we say it's in pilot is we're looking at it, but we're learning. So there was a number of cases today talking about gift certificates and letters of employment. We don't have it on there yet, but we should be adding those as metrics. We should be saying, "How many loans did broker A submit that had a gift certificate on it?" And if the percentages are high, let's start looking at those files, and the gift certificates are on there, and are they fraudulent or not?

45 At the moment it is not rolled out completely. Completely, so you are relying on the file reviews of the 1 or 3 per cent?---Yes. It's not rolled out, but we definitely look

at the information, and it's – and it's telling us stuff already. So – and there was a point made earlier around brokers settling loans in two different states, and the statistics were quite high, that – how can a broker settle loans in Queensland, in New South Wales? And as we drilled into those we found that the broker is living
5 practically on the borderline, and so it is showing us information like that. We are using it now, but we haven't rolled it out to line 1, you're right. Line 2 aren't using it every day yet, but we are – we're using it, learning from it, and then we will roll it out. But it came out of the audit report, it's a – it's a good idea and we – we are doing it

10 So if I could go back to - - -

THE COMMISSIONER: It necessary for to you comply with your statutory obligations, isn't it?---It is – yes, it's another tool that's enhancing our opportunity to
15 detect fraud and other misconduct, absolutely.

Well, to comply with your obligations under the Credit Act - - -?---Yes.

- - - about responsible lending and about running your business honestly, efficiently,
20 etcetera; is that right?---Yes.

MS DIAS: You heard Ms Harris talk today about the compliance certificates that have to be produced every year, and some of the categories in that certificate, and the Commissioner has referred to one of them. And there a number of categories that
25 seem to be deficient, would you agree with that, in terms of proving you have adequate arrangements and systems in place to ensure that you do all things necessary that to ensure that credit activities are engaged in efficiently honestly and fairly?---No, I don't agree with that. I think we have adequate systems in place. Are they the best systems and can they continue to improve, yes.

30 Do you have – you don't have adequate systems in place to detect fraud, do you, Mr Boddy?---We do have processes in place to detect fraud. So we have the manual file reviews that are occurring, both in line one and line two. Will they detect every case of fraud? Fraud is extremely hard to identify. Multiple group certificates from
35 different companies, but in the same font, is very hard to detect. So we won't get every case. But we have adequate systems to detect processes and issues and pick them up and do something about it. But we won't get every case. The four we heard about this morning, they are hard to detect and we are getting better at it, and what we do is we work – also we work closely with the lenders. So what can we learn
40 from the lender and what can we share with the lender about a potential file or a broker or a customer's file as well?

At the moment the full extent of the process, as I understand, is just the file review process; is that right?---Of – assurance process in terms of broker conduct?

45 Of detecting fraud?---Of detecting fraud. I mean, there's a range of different things and I can go through them. I don't want to go into too much – but, you know, from

the contractual obligations when a broker starts that they sign up to comply with NCC.

That's not going to detect fraud is it, Mr Boddy, a contract?---Sorry, prevent fraud.
5 But sorry, yes, detect. In terms of detect, it will be the file reviews that we are
conducting, so we conduct file reviews at line 1, line 2. Other things we do is so
every customer on the first appointment on settlement and a one year anniversary
gets an email from Aussie requiring feedback on the broker and though how they are
performing as well. So if there is any suspected fraud there is an opportunity for
10 customers to raise that as well. So line 1, line 2 and conducting the customers.

So you are relying on the customer to come back to you when they've themselves
detected fraud?---It's another – it's another tool, and then a third one would be all of
15 the brokers, Aussie brokers, complete needs analysis for their customers. So they
capture all the information that's required in the NCCP Act, and then they sit down
with the customer and they go through that. They go through the objectives, they go
through the income, the expenses that are declared, the assets and liabilities and then
together the customer signs off and makes a declaration there as well. And that's
20 another process to pick up that, you know, false payslips aren't being provided, false
gift certificates aren't being provided. There's that conversation that happening with
the broker and customer and they are going through that needs analysis. That's
another preventative - - -

It's the fraudulent broker, Mr Boddy, is that – that's correct, the fraudulent broker,
25 the broker that engaged in misconduct that you are relying to have that conversation
with the customer?---Yes, both. The fraudulent and non-fraudulent brokers have that
conversation, and the customer is in that conversation, so there is an opportunity for
the customer to say, "That isn't my income, that isn't my payslip," and so on. I
mean, there is declaration on there as well. There's just an – it's not foolproof, but
30 we have the file review, we have the needs analysis, we have a number of things.

THE COMMISSIONER: Well, needs analysis is just telling me that, if the system
parade operated properly by people getting honest information, I get an honest
35 outcome. Is it any more than that, Mr Boddy?---That's correct. If the customer is
giving honest information, and the broker has got the honest information, it will get
the right outcome. Yes.

We are talking about detecting the case where someone in the process is less than
honest?---That's right. So - - -
40

Are you telling me that the system, if it works perfectly – works perfectly doesn't
seem to advance matters terribly far. What I'm fussed about is there seem to have
been events - - -?---Yes.

- - - of misconduct. What is there now to prevent these things happening again?---So
45 now we have the broker monitoring dashboard, so in addition to the line 2 and line 1
file reviews.

MS DIAS: Commissioner, I think I will tender that report and assurance report.

THE COMMISSIONER: Exhibit 1.76. CBA audit committee report paper number 12. 5 February 2018.

5

MS DIAS: Before I leave it, I am not sure if I referred to 4.2.5, but that also refers to the - - -

10 THE COMMISSIONER: CBA.0506.0001.0001, which I should have included in the designation of the exhibit.

**EXHIBIT #1.76 CBA AUDIT COMMITTEE REPORT PAPER NUMBER 12
DATED 05/02/2018 (CBA.0506.0001.0001)**

15

MS DIAS: And at 0003 there is reference to this issue with the AOL system access:

20 *Allowing multiple users, including brokers, to make direct changes to applications without detection, increasing the risk that a loan could be manipulated at a later stage to obtain funding approval. We further found loan applications where contact details were either the broker's mobile phone number, 464 loans, or email address, 1645 loans, instead of the customer's details, further increasing the potential for fraud.*

25

Has that been fixed? That a problem, isn't it? You were saying people are going – the customers are going to be contacting and having that contact, but they are not even the people that are being listed in the loans?---Yes. That hasn't been fixed. That – that's a challenge I mentioned a little bit earlier around Toolbox, in terms of say capturing the expenses, that they components, but then when it goes to Apply Online, depending on the lender, you need to manually change the expense categories. So Apply Online will send the application to a different lender. So CBA, Westpac and Macquarie have different categorisations of their expenses so a broker needs to go into Apply Online to change those components.

30

35 Has it been fixed for the 464 loans or what, 1600-plus loans referred to here?---It hasn't been fixed, but communications rolled out – a policy has rolled out about not putting broker information, their own contact details in those apply online systems.

40 THE COMMISSIONER: That's telling them to follow the form, but what's being done to check they are following the form?---Well, as part of the file review process, there is a comparison of Toolbox to Apply Online and they will go through all this information and that gets detected in our reporting that we do.

45 MS DIAS: Will the broker dashboard pick this up as well?---This is around customers having – in Apply Online having broker contact details, no, it won't pick this up.

THE COMMISSIONER: We spoke earlier about culture and rewards. Does Aussie do anything to reward people for meeting responsible lending requirements?---So the people that are obliged to meet the responsible lending requirements are independent contract, the brokers, so if they don't – they are contractually obliged to meet
5 responsible lending requirements and following the NCCP Act and regulatory guidance 209, and if they don't we can review and terminate the contract with them.

And Aussie has its own obligations under the NCCP Act; does it not?---True, yes –
10 yes.

It has to ensure that its credit representatives obey the law?---That's right. Yes.

Does Aussie do anything to reward anyone for obeying the law?---I'm not sure.

15 I think the answer is no, Mr Boddy. And unless you point out to me - - -?---Yes. I'm not aware of anything.

- - - what I'm missing, I think the answer is no?---No.

20 Yes. Do go on.

MS DIAS: The last paragraph there that is unredacted is 4.2.7:

25 *CBA has had executives involved in AHL as directors in recent years and has gradually been placing senior lenders in the business to achieve greater alignment with the bank's practices. However, in our view, this requires further enhancement to ensure consistency of governance and leadership with respect to risk and controls. In short, AHLs risk culture needs to lift.*

30 That reference to placing directors and senior lenders, is that a reference to people such as yourself? Are you one of those people?---I may be seen to be one of those people. I'm not too sure if that's what there were referring to. There's other CBA people involved in being directors in the past from different parts of CBA.

35 The only other document I think I wanted – there's two documents I will take you to, Mr Boddy, before we finish up. The responsible lending policy, I will just – I will tender it. I think it's attachment to Ms Harris' statement and exhibit to that, but I will tender it nonetheless.

40 THE COMMISSIONER: Whose – it's an attachment to which?

MS DIAS: Well, I will call out the ID number, I think, Commissioner. It is
45 AHL.0009.0002.0030. And that policy, you can see from the first page – perhaps the first two pages can be put on the screen. So that came into effect 2 March, a few weeks ago. And on page 4 we see that the purpose of the policy is:

To describe the procedures that Australia has put in place to ensure compliance with its responsible lending obligations under the NCCP laws, including requirements set out in regulatory guide 209, credit licensing responsible lending conduct.

5

So before this document a few weeks ago, that came into effect, you didn't have anything that described procedures that you had in place to ensure compliance with responsible lending obligations; is that correct?---We had – this – for our brokers, we had training requirements, contractual arrangements, where – when they are signing up be an Aussie broker, to comply with NCCP and the regulatory – and the responsible lending Act. But we didn't have a formal document called a responsible lending policy, and this came out of the audit, and that's we put it in place to further clarify the requirements meet responsible lending.

15 I will tender the policy, Commissioner

THE COMMISSIONER: Exhibit 1.77. AHL.0009.0002.0030. AHL responsible lending policy. How long is the document, Ms Dias?

20

**EXHIBIT #1.77 AHL RESPONSIBLE LENDING POLICY
(AHL.0009.0002.0030)**

25 MS DIAS: It extends all the way to page 0041, Commissioner, I believe.

THE COMMISSIONER: 12 pages.

MS DIAS: Yes.

30

THE COMMISSIONER: Perhaps put up two pages at a time. I have looked at most documents, but this is one that slipped me by. Just have a look at it. Yes. So we've got a table of contents. Contents, purpose, scope of definitions. Yes. Go over a page. In effect the executive summary in 4. 5, what's to be done in a preliminary assessment, yes. Now, perhaps unsurprisingly, it is not an especially prescriptive document. It is cast in terms of "The objective is to verify this", verify that, and examples are given rather than a list of prescriptive, "Thou shalt do this, this or this"; is that right?---Yes.

40 Pages 7 and 8, then. Can I look at 9 and 10. And then we've got 11 and 12, haven't we?

MS DIAS: Yes.

45 THE COMMISSIONER: Thank you.

MS DIAS: On page 11 there's a clause there about supervision and compliance, clause 8, Mr Boddy. 8.1:

5 *Aussie's responsible managers are responsible for supervision of Aussie representatives and compliance with this policy. Responsible managers will ensure that regular audits and spot checks are conducted to test compliance.*

10 Is that new, is that something that just started taking place now, these spot checks and regular audits?---Well, the spot checks are – it's a form of the file checks. The file reviews that we are doing. So regular or routine, as well as targeted, file reviews.

It is what you were discussing before?---Yes.

15 So it's not an improvement on that, it's just the same again?---No – no, that's right. Okay?---It's just that will linked to the – the broker dashboard.

20 The last thing I wanted to ask you about is a document that was shown to one of CBAs witnesses yesterday. It is CBA.0001.0038.0929. That a letter dated 10 February 2017 from Mr Narev, then CEO of CBA to Mr Stephen Sedgwick, the independent reviewer of the retail banking remuneration review. Have you ever seen this before, Mr Boddy?---No.

25 THE COMMISSIONER: This is exhibit 1.37. Yes.

MS DIAS: We can see from the first line it's written on behalf of Commonwealth Bank of Australia Group. Now, at this stage I understand that Aussie wasn't wholly owned by CBA. So this is February?---No. Yes, that was in August – August 2017.

30 But 80 per cent. So it will be representative of Aussie's views this paper do you think?---I'm not sure about that.

Okay. Well, we will go through it.

35 THE COMMISSIONER: Once again the group purported to speak for the subsidiaries, did it, Mr Boddy?---It may have.

It did.

40 MS DIAS: If you go to page 0930 – or both can be shown up – I can see they are. There is a mention of paragraph 3 which we have referred to in the hearings, the need for greater consistency in mortgage sales remuneration:

45 *We agree with the reviewers observations that while brokers provide a service that many potential mortgagees value, the use of loan size linked with upfront and trailing commissions for third parties can potentially lead to poor customer outcomes. Mortgages also sit outside the financial advice framework,*

5 *even though buying a home and taking out a mortgage is one of the most important financial decisions an Australian consumer would make. We would support elevated controls and measures on incentives related to mortgages that are consistent with their importance and the nature of the guidance that is provided. For example, the delinking of incentives from the value of the loan across the industry and the potential extension of regulations such as future of financial advice, FOFA, to mortgages in retail banking.*

10 There is a number of things that are mentioned here. I wanted to see if you agree with all of these statements. You would agree that buying a home and taking out a mortgage is one of the most important financial decisions an Australian consumer will make. Do you agree with that statement?---Yes. It's a pretty big decision.

15 And would you agree the statement:

We would support elevated controls and measures on incentives that are consistent with their importance in nature of the guidance provided by brokers.

20 ?---Me personally?

Or you in your role as a director of Aussie?---Of Aussie.

25 And CFO?---I think if this is getting to trail in terms of trail and should trail – if that's the – is that the question?

Well, do you agree with the proposition that there need to be controls on how incentives are linked to the guidance that's being provided by or the job that's being provided by the mortgage broker in this – in this – in the taking out of a loan?---Controls, yes. Yes, there should be controls.

30 What about the delinking of incentives from the value of the loan across the industry?---I think that's something that they can have multiple effects, and so it's something to – something that would need to be considered.

35 THE COMMISSIONER: That's sitting pretty firmly on the fence, Mr Boddy, if that's where you want to remain. But - - - ?---Is around trail. So I can talk further around - - -

40 MS DIAS: Well, we can talk to the specific page that details some of the practices or the suggestions. We will go to pay 14, which is the 0944. So this paragraph was also looked at yesterday:

45 *Is there sufficient evidence to support a case for banks discontinuing the practice of volume-based commissions to third parties –*

I interpolate there to say brokers –

in respect of new and increased mortgages? As the review identifies, the use of upfront and trailing commissions linked to volume can potentially lead to poor customer outcomes

5 I will stop there. Do you agree with that, Mr Boddy? With that statement there, that Mr Narev is putting to Mr Sedgwick. Do you agree with that?---That may potentially lead to poor outcomes. Yes.

Continuing:

10

Our analysis of loans applied for through the proprietary versus broker channel shows that, (1), broker loans are reliably associated with higher leverage. This finding is robust after allowing for all major descriptors of borrower circumstances, circumstances, not only channel but first home buyer status, owner-occupied status, fixed or variable loan choice, and major demographic factors of location, age and income.

15

That first sentence there, do you agree with that? Broker loans are reliably associated with a higher leverage?---I don't believe so, not in Aussie's case. I haven't looked at the industry.

20

What about the second proposition:

25

Even for customers with an identical estimate of ex ante risks, loans through the broker channel have higher leverage.

Same answer again, Mr Boddy, that you don't agree with that for Aussie specifically?---Yes, I don't see higher leverage in the Aussie portfolio.

30

Are you aware across the industry? You referred to in some of the reports others aggregators, research in that area. Do you know about - - -?---Not about this, no. The – I don't see the reporting on other aggregators in terms of their exposure, no.

And the third bullet point:

35

Loans written through the broker channel have a higher incidence of interest-only repayments meaning customers pay down their loans more slowly. Broker loans have higher total debt to income levels, higher loan to value ratios and higher incurred interest costs compared to the proprietary channel.

40

Are you able to speak about whether that is something that you have seen and observed. Do you agree with that statement?---Not in Aussie's case. So I don't see higher loans going to interest only in Aussie's case, and we have currently got the broker tool there to start monitoring and keeping an eye on it, but I don't see that.

45

That may be mortgage broker industry impact, but not at Aussie.

Aussie submits a - - -

THE COMMISSIONER: Well, Mr Narev here was talking about CBAs experience, I think, in distinguishing between the proprietary channel and the broker channel. You are saying Aussie stood apart from the balance of the broker channel?---I'm not sure, unless it's the CBA view of all the third party brokering that they are seeing, I don't see that. In Aussie, I'm not aware of that information.

MS DIAS: And the last statement there:

Over time higher leverage means broker customers have an increased likelihood of falling into arrears, pay down their loans more slowly, and on average pay more in interest than proprietary customers.

What would you say to that statement?---Would say across our portfolio, I would say most banks' arrears are around the 1 per cent mark. I would say ours are probably, on average, in line with that. Our arrears rate – I don't see it being higher than a banking arrears rate.

THE COMMISSIONER: Are you familiar with the fact that I think – I think it is ASIC has done some work which would point in the same general directions as are recorded here?---Yes.

MS DIAS: So Aussie is an outlier, were you saying?---Talking about our arrears rate. Our arrears rate is running around the 1 per cent mark. So that's in line with banks.

Further down there is a suggestion about a move to flat fee payments. And Mr Narev say there's, in the penultimate bullet point:

A move to a flat fee payment would enable brokers to be more agnostic towards loan size and leverage. However, consideration is needed on the payment amount on how to link the fixed payment to an underlying security rather than a product.

Do you – would you agree, Mr Boddy, that it is desirable to move to a flat fee broker remuneration if up front and trailing commissions are driving poorer customer outcomes. Would you agree with something - - -?---I think you need to be careful making the move. Aussie's view is that trail, or moving to a flat fee, one would impact the customer – so it would make affordability of seeing a mortgage broker challenging for some people. So I think that the current structure being a trail, the customer is not paying. Other things around the trail that Aussie sees and - - -

THE COMMISSIONER: Sorry, the customer is not paying?---In this case, moving to a flat fee.

With a trail - - -?--- I'm not too sure who is paying - - -

What, the customer is not paying for it?---Who is paying for the flat fee there?

Well, and who is paying for the trail?

MS DIAS: It's defrayed, is it not, Mr Boddy? All the customers pay – the bank is not paying it and not passing it on, it's being paid by the customer base; is it not?---Right. I haven't read that whole document. But it – so assuming the lender is paying for the flat fee, then it's – so it just doesn't impact the customer then, if that's the assumption, that that – I will make that - - -

THE COMMISSIONER: The lender is not paying for it out of its own pocket, and out of the goodness of its heart. It's going to recover the cost somewhere, isn't it, Mr Boddy? The notion that a trail commission doesn't ultimately impact on the customer is a rather large proposition, isn't it?---Yes. Well, I'm not – I haven't read the whole document, so at what point does the fee gets paid? So if you think about a customer's journey, they – you know, there's 20, 30 somethings who will come in for the first meeting to talk about the savings plan with a mortgage broker. I'm not too sure if they are paying a fee at that point. And then when they are ready to purchase and have saved enough they start talking about it going preapproval before they find the house they want. I'm not sure if you are paying the fee at that point, which is where trail supports the customer the whole way through the mortgage brokering or the home loan journey. So I'm not too sure at what stage the fee is being recommended to be charged, at that point, and then there is the ongoing maintenance of the loan and talking about the interest rates in two years time, three years time, the health of the loan as well.

MS DIAS: But the commissions that are being paid by customers, or – I apologise, I withdraw that, the commissions that are being paid by lenders to – being paid by lenders to brokers are passed on to the borrowers. The banks pass those costs on. They are costs that are passed on?---Right. They are costs that are incurred by the bank and then the bank would make pricing decisions and they would either incorporate those costs in those pricing decisions.

What service is provided by the mortgage broker over the life of a 30 year loan that would justify the trailing commissions across the life of the 30 year loan?---Right. There is a lot of things that are happening along that journey with the mortgage broker from that first meeting they are having, which – you know, might be just a discussion around, “You don't have enough savings to apply for a home loan, you need to take two years saving.” And they will start the conversation, the journey will start there. They will then come back some time later, or someone may be ready to have a – acquire a home now and look for pre-approval. They haven't found the exact house, and so the mortgage broker will spend time with them seeking a preapproval so they can purchase a house when it comes through. They may not purchase the house, they may not get a home loan. Then there is the settlement, when they find a house, they buy the house, and they need to settle the home loan, and then the continuing journey every year, and every anniversary is a discussion around the health of the loan. So are they happy with the interest rate, do they need to split the loan into fixed and variable, are they now married, do they need to add

someone else to the loan? All that administrative work the brokers are doing over the life of the journey, over the home loan.

5 So a phone call once a year, do you think, going forward for 30 years justifies the trailing commission?---I think it depends on what those conversations are. I think you look back in the last couple of years interest rates have been coming down and there has been a lot of conversations with Aussie brokers with customers about, “Maybe now is the time to look at the loan, look at the interest rate you have, and challenge that with your existing lender or potentially another lender.”

10 Some customers won’t change their loan. They will be perfectly happy to say, “Look, I don’t need anything from you Mr Broker, goodbye. Thanks”?---That’s correct. They may.

15 But the commissions are still being paid?---That’s right. They are. So there’s the supporting of the loan over the journey, then there’s the other view which is the mortgage brokers. They’re independent contractors, they’re running small businesses, and so as part of running a small business – if it’s a retail store they have got a store, they have got rent, they have got electricity, and that outlay of time and effort at the beginning before they settle the loan and the ongoing support, I mean, the trail supports that small business with their cash flow as well. So I think there’s sort of that lender – that mortgage broker lends on – on trail.

25 THE COMMISSIONER: So is the bottom line you see no occasion to change the current remuneration of brokers?---Aussie’s view is no.

MS DIAS: No further questions of this witness, Commissioner. I think I can tender that.

30 THE COMMISSIONER: It’s already – it’s exhibit 1.37.

MS DIAS: It has already been tendered. That’s exactly right. Thank you.

35 THE COMMISSIONER: Yes. Thank you, Ms Dias. Does any party, other than who has leave to appear, seek leave to cross-examine Mr Boddy? No. Ms Hogan-Doran.

40 <RE-EXAMINATION BY MS HOGAN-DORAN [3.17 pm]

MS HOGAN-DORAN: Mr Boddy, you were asked some questions at transcript 412, by the Commissioner as to your and his interpretation of the results of the risk culture survey. Could the witness be shown CBA.0506.001.0038. And if you could just go to the – across three pages. And the next. To the question 17, I’m sorry, I haven’t got the internal reference. Thank you. Just pausing there.

THE COMMISSIONER: 44. Yes.

MS HOGAN-DORAN: So it's .0044. Question 17. You were asked a question by the Commissioner concerning that. Could I have you go back to – could the witness
5 be shown 0039. The Commissioner put to you, Mr Boddy, that as he read it 85% of respondents thought that “unethical behaviour existed in my area”. Could I have you look at the first box. And the heading?---Yes.

10 There is support for ethical and fair behaviour:

Very few staff, 13 per cent, believe that unethical behaviour exists within Aussie.

15 Question 17. And:

Only 11 felt policy and procedures are unfair to the customer.

20 Question 18. Does that accord with your understanding of the risk culture survey result?---That's – that's correct. Whereas that other question looked incorrect.

25 Thank you. And what is incorrect in the reporting perhaps is the colour-coding or the absence of indicating how to interpret the survey.

THE COMMISSIONER: It's whether the red flags were out.

30 MS HOGAN-DORAN: Yes. You were also asked some questions at transcript 420 by the Commissioner as to what does Aussie do – or does Aussie do anything to reward compliance with responsible lending requirements. Aussie has – you have given some evidence about having mobile business lenders and retail business consultants. They are employees of Aussie?---Yes.

35 Yes. And are you aware of those employees being rewarded in relation to the efforts that they take in monitoring and supervising the respective franchisees or mobile brokers under their supervision?---Yes.

40 And what are they?---They get rewarded for supporting and monitoring those brokers.

All right.

THE COMMISSIONER: That's their job.

45 MS HOGAN-DORAN: And are you aware of them being paid any bonuses in respect of the undertaking of particular aspects of their role?---I'm not, no.

You yourself can't assist that, but somebody else may be able to?---Yes, Lynda would be able to.

Thank you. Exhibit 1.41 is Ms Harris' statement. And I just provide that as a reference to you, Commissioner.

THE COMMISSIONER: Yes.

5

MS HOGAN-DORAN: Are you aware that there are penalties imposed by Aussie on its mobile brokers for failing to comply with particular requirements?---Yes.

10 And are you able to assist the Commissioner by identifying an example of one of those penalties?---Penalties they may incur would be – they may get a breach notice, if there was a customer complaint and there was a compensation they would be involved in paying part of that compensation, or all of it, as well.

15 And one of the requirements of our – Aussie's brokers, are to retain and upload into Toolbox particular documents; are you aware of that?---Yes.

And they are required to scan particular documents; are you aware of that?---That's right.

20 And are you aware of any penalties that Aussie imposes for failure to comply with those requirements?---Yes. So previously they would get penalised in terms of trail commission, they have commission withheld, and now they get actually get turned off in term terms of writing any loans until they get their scanning up to state.

25 And do you understand the intention of those penalties? What was the purpose of those penalties being imposed by Aussie?---Yes, it's a financial impact so they do something about it and get their scanning up to scratch as soon as possible.

In order to comply with the Act themselves?---Yes.

30

And to enable Aussie to comply with the Act?---That's right.

Right. No additional questions, thank you, Commissioner.

35 THE COMMISSIONER: Yes. Thank you very much. You may step down. Thank you very much, Mr Boddy. Thank you.

<THE WITNESS WITHDREW

[3.22 pm]

40

MS DIAS: I believe that completes the evidence for that case study. I withdraw that. My learned leader has something else.

45 THE COMMISSIONER: They never tell you anything, Ms Dias.

MS ORR: That's right in one sense, Commissioner, in that there are no more witnesses to of being called to give evidence in this case study, but there is a further witness statement that we wish to tender. And that's a witness statement in Mr David Lee Smith, dated 6 March 2018. Which is AHL.0011.0001.0001. I tender the original statement

THE COMMISSIONER: Exhibit 1.78, statement David Lee Smith, 6 March '18. AHL.0011.0001.0001.

10

EXHIBIT #1.78 STATEMENT OF DAVID LEE SMITH DATED 06/03/2018 (AHL.0011.0001.0001)

MS HOGAN-DORAN: Commissioner, that is a witness statement that Mr Smith signed on 6 March. It hasn't been verified. He is available, but if there's any – don't understand there to be any issue, but - - -

THE COMMISSIONER: If there's no challenge to it – I assume you don't want to challenge it, do you, Ms Hogan-Doran.

MS HOGAN-DORAN: Not at all.

THE COMMISSIONER: No. Didn't think so.

25

MS ORR: I think it will be prudent, Commissioner, if I tender the summons that Mr Smith received as well.

THE COMMISSIONER: Well, probably for his protection more than anything else - - -

30

MS ORR: That's right.

THE COMMISSIONER: I would have thought.

35

MS ORR: That's right.

MS HOGAN-DORAN: He is present, and he – but I understand he is not in fact required.

40

THE COMMISSIONER: Yes. Exhibit 1.79 - - -

MS HOGAN-DORAN: I understand it's in the folder.

MS ORR: I'm told it is in the folder, Commissioner.

45

THE COMMISSIONER: Well, it should be marketed separately. Exhibit 1.79, summons to David Lee Smith. Yes.

5 **EXHIBIT #1.79 SUMMONS TO DAVID LEE SMITH**

MS ORR: One other matter, Commissioner, which is that I said incorrectly before that a document I referred to in the cross-examination of Ms Harris had been
10 tendered and it had not. That was the CBA submission to you, Commissioner, dated 29 January 2018. RCD.0001.0003.0004. I referred to two pages of that submission, pages 0034 and 0035, and I referred to paragraphs 170 to 177 on those pages. And it is those paragraphs on those pages that I will tender.

15 THE COMMISSIONER: Yes. Exhibit 1.80, paragraphs 170 to 177 of CBA submission RCD.0001.0003.0034 to 0035.

20 **EXHIBIT #1.80 PARAGRAPHS 170 TO 177 OF CBA SUBMISSION (RCD.0001.0003.0034 TO 0035)**

MS ORR: If the Commission pleases. The next witness is Mr Robert Regan. Mr Robert Regan involves a different financial services entity, represented by different
25 counsel. So - - -

THE COMMISSIONER: So do you want me to take break while everybody orders their papers.

30 MS ORR: A very brief break would be helpful.

THE COMMISSIONER: I have a little after 25 past. If I come back at half past 3.

MS ORR: Thank you, Commissioner.
35

ADJOURNED [3.25 pm]

40 **RESUMED** [3.30 pm]

MS ORR: If the Commission pleases, I call Robert Regan. Mr Regan is in the witness box.
45

THE COMMISSIONER: Mr Regan, do you mind standing just for a moment. Mr Regan, would you like to take an oath or would you prefer to make an affirmation?---Oath, thank you.

5

<ROBERT EMMETT REGAN, SWORN

[3.30 pm]

<EXAMINATION-IN-CHIEF BY MS ORR

10

THE COMMISSIONER: Thank you very much, Mr Regan. Do sit down. Yes, Ms Orr.

15 MS ORR: Mr Regan, could you please state your full name?---Robert Emmett Regan.

And, Mr Regan, you have provided your address to the Royal Commission?---I did.

20 And what is your occupation Mr Regan?---Retired.

I'm sorry?---Retired.

Retired. Thank you.

25

THE COMMISSIONER: I'm sorry, Mr Regan. You are going to have to bellow for my benefit?---Okay. Sorry about that.

MS ORR: Perhaps the microphone could be directed towards Mr Regan as well.

30 Mr Regan, did you receive a summons to attend and give evidence before the Royal Commission?---Yes.

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

35 I tender that summons, Commissioner.

THE COMMISSIONER: Exhibit 1.81, summons Robert Emmett Regan.

40 **EXHIBIT #1.81 SUMMONS FOR ROBERT EMMETT REGAN**

MS ORR: Someone will collect that summons from you, Mr Regan. And, Mr Regan, did you make a statement to the Royal Commission on 8 March 2018?---Yes.

45

Have you read through that statement?---I have.

Are the contents of that statement true and correct?---They are.

Yes. I tender the statement, Commissioner.

5 THE COMMISSIONER: Exhibit 1.82, statement Robert Emmett Regan of 8 March 2018.

10 **EXHIBIT #1.82 STATEMENT OF ROBERT EMMETT REGAN DATED 08/03/2018**

MS ORR: Mr Regan what did you do before you retired?---I had a series of three jobs, driving school bus for handicapped children, cutting grass and lawn maintenance, and cleaning at night.

And cleaning - - -?---Cleaning at night-time for the past 30 years.

20 Cleaning at night time. Thank you. And do you sometimes have issues with your memory, Mr Regan?---I do, yes.

And can you explain why?---I had a fractured skull some time ago.

25 Yes. And how old are you now Mr Regan?---72.

Thank you.

30 THE COMMISSIONER: Man in young middle age. Say after me, Mr Regan: a man of young middle age?---Yes. That's all we are.

MS ORR: Mr Regan, in February last year did you decide to take out a loan?---Yes.

And how much money did you decide you wanted to borrow?---50,000.

35 And why did you want to borrow that money?---I required money to pay some people in London who I later found out to be fraudsters.

40 Right. And what was the nature of the fraud?---Well, they – they believed or they led me to believe that they had a quantity of gold which they had been seized by customs in Heathrow airport and the supposed person bringing the gold to Australia to sell was – was kept in custody there and the money to get the gold released was 20,000 pound. And after I – I did send that money to them and following that they required another 7,500 pound and I just decided I would take that money to England and confront them.

45 Was this your gold or someone else's gold?---Not my gold.

Why were you assisting with these payments?---I was led to believe that these – this person needed the money and she – or supposedly a woman, decided that it was a better option to sell gold in Australia than England and she wished to bring it here.

5 So do I understand your evidence to be that you wanted to assist this person?---Yes.

You wanted to provide the money to them?---Yes.

And you subsequently found out that this was a fraud?---Yes.

10

Yes. But at the time that you decided you wanted a loan, in February 2017, you did not know that?---No.

And you wanted to borrow \$50,000 to give to these people - - -?---Yes.

15

- - - to assist them?---Yes.

All right. And what was your income at this time?---My income was about 12,000 – yes, about – no, sorry, I just have to look at that.

20

You deal with this, if it assists, Mr Regan, in paragraph 4 I think of your statement?---Paragraph 4. That the final drawdown there.

Do you see there in paragraph 4, Mr Regan?---Sorry, I'm in the wrong area.

25

On the first page?---Yes.

You give an estimate of your current fortnightly income of approximately \$1,260?---That's correct.

30

Yes. And that's your current fortnightly income. What would your current fortnightly income have been approximately in February last year?---That was - - -

THE COMMISSIONER: I think you give it in the first line over the next page, Mr Regan, at 1,229; is that right?---Yes. That's correct. Yes.

35

\$1229 in February 2017?---Yes.

MS ORR: Thank you, Commissioner.

40

Did you intend to use your home to secure this loan Mr Regan?---I did.

And did you own your home without a mortgage at that time?---Yes.

45 And did you speak with someone about obtaining a loan?---Yes, I – I spoke to a broker.

Right. And approximately how many times did you speak with the broker?---Four or five.

Yes. And did you tell the broker what size loan you wanted?---Yes.

5

And did you tell the broker why you wanted the loan?---Yes, for personal reasons.

For personal ruins?---Yes.

10 And did the broker ask you for any documents?---He did.

And what sorts of documents did the broker seek from you?---Proof of my income, which was a combination of aged pension and a part superannuation. Bank statements and copies of my utility bills. Also a rate notice, a rate notice and a title.

15

And did you give documents - - -?---Yes.

- - - showing those things to the broker?---I did, yes.

20 And what did you understand that the broker did with those documents?---He took copies as far as I was concerned.

I think you said in that answer – did you say there were bank statements as well?---Yes.

25

Yes. Okay. Did the broker ask you questions about your income?---No.

What was your understanding of how the broker informed himself about your income?---That it would be satisfactory for the loan. And that \$50,000 was easy.

30

Yes. And what did you understand about where and how the broker was finding out about what your income was and where it was coming from?---From my bank statements.

35 Yes. And did the broker ask you questions about your expenses, your living expenses?---No.

And did the broker talk to you about the contents of your bank statements?---No.

40 Now, could I show you an exhibit to your witness statement, which is RER 2?---Yes.

Thank you. Are these – is this a copy of the bank statements that you provided to the broker?---Yes.

45 And do we see there that you were banking with CUA, Credit Union Australia?---That's correct

And was this the only entity you were banking with at this time?---Yes.

And you had a number of accounts that are listed in the first part of this document?---Yes.

5

And if we are able to zoom in on that, we will see that you had an everyday 55-plus account?---Yes.

A platinum plus account?---Yes.

10

Another platinum plus account?---Yes.

An E saver reward account, a term deposit, and a fixed personal loan?---Yes.

15

And these bank statements started on 1 February 2017 and went through to 28 February 2017?---Yes.

20 So we have one month of your bank statements. Do we see in these bank statements any money that you were paying to the people who you subsequently found out in your words were fraudsters?---Yes, we do.

Can you – do you have that document there?---I do.

25 And can you indicate on this first page which of these amounts you paid to the people you described as the fraudsters?---Yes.

Can you identify the figures?---Yes, I can.

30 Yes. Thank you?---Do you want me to go through them.

Yes?---Okay. 3 February, a thousand. 5 February, 2,000. 7 February, 200.

35 Yes. We may need to move to the next page of your bank statements on the screen. There is a page after that, 0034?---Yes. 13 February.

I'm sorry, just wait one moment Mr Regan for us to follow along?---I'm sorry.

What was the date you just mentioned?---13 February.

40 Yes. How much did you pay on 13 February?---200.

Thank you?---17 February, 200.

45 And could I pause there. We see next to a lot of these the letters – we see card purchase visa, WU?---That Western Union.

Western Union. Were you making transfers, international money transfers?---Yes.

Yes, I see. So 17 February, 1,530?---Yes. Yes. That's right.

Yes?---Have I been reading the wrong ones? I think - - -

5 Well, not to my knowledge, Mr Regan?---Okay. Okay.

If you keep going and identifying the ones that you think you have paid to these people?---Yes. And next one is 18 February, 1,530.

10 Yes?---19 February, 1,020. 20 February, 1,020. 23 February, 314. Twenty – that's the same one. 25 February, 515.

Now, have you done a tally at all of the amounts of money over the course of this month that - - -?---Yes, I have.

15

- - - you paid out of this account to the people you have described as the fraudsters?---Yes.

And how much money was it?---Well, it's at least 13,500.

20

Thank you. Now, this is a document you provided to the broker, and did the broker ask you about any of these withdrawals from your account?---No.

25 And if we could go back to the first page of your bank statements, to the list of accounts there?---Yes.

This bank statement that we have just been looking at, the detail of, is for your – your everyday 55-plus account?---Yes.

30 So we can see from this statement that at the start of the month you had approximately 1500 in that account?---Yes.

And by the end of the month you had just over \$5,000 in that account?---Yes.

35 But within the course of the same month your platinum-plus account on the third line down, went from negative \$3?---Yes.

To negative \$5,000?---Yes.

40 And your E Saver Reward account went from 15,465 down to \$473?---Yes.

Is that because you were transferring money from - - -?---I was. From - - -

45 - - - other accounts?---Those accounts into the 55-plus account.

Yes. I see. And did the broker ask you about any of these other accounts and the amounts of money that had left your account in that month?---No.

Now, do you recall the broker showing you a document called preliminary assessment and product recommendation?---Yes.

5 You have annexed to your statement at RER3 a copy of that document, which is RCD.0014.0001.0040. And if we could turn to 0043. Do you recall seeing this part of the document?---Yes.

10 Do you see in appendix A consumer requirements needs analysis responses, 1.7, renovation/home improvements - - -?---Yes.
- - - true?---Mmm.

15 Did you ever tell the broker that the purpose of the loan was for renovation or home improvements?---No. No.

Were you aware that the broker had described your loan as being for renovation or home improvements?---At a later date I did. He suggested that he had to put something better than personal loan.

20 Right?---Whether that's better than personal loan, I don't know.

And was this after the loan was approved you became aware of that, or before?---No, before the loan was approved.

25 Right. I see. And could I then take you to 0046?---Yes.

Do you see at 8.6 of this document that your food, groceries, meat fruit and vegetables is listed as \$300?---Yes.

30 Was that estimate of your monthly expenditure on food correct?---No.

Was that more or less than - - -?---That's less than I would spend.

35 Thank you?---At that time.

And your transport expenses were listed as \$100 a month. Was that estimate correct?---No.

40 And over the page, at 8.8 – was your transport, I should ask, lower or higher than what it should have been?---The transport was higher.

Higher?---It should be higher than - - -

45 It should be higher. Thank you, Mr Regan?---Right. Yes.

And at 8.8, listed for medical private health insurance and ongoing medical bills. An estimate of \$90 a month. Was that estimate correct?---No.

Should that have been higher or lower?---It should be higher.

And at 8.9, we see an estimate of \$0 for insurances and voluntary super. Was that estimate correct?---No.

5

Should there have been a figure there?---There should have been.

And at the categories that follow, including entertainment and dining out, and sports hobbies and memberships, and other regular expenditure, we see that zero is recorded for each of those. Were those estimates correct?---No.

10

Should there have been figurers reported for those?---There should have been for each, yes.

Did the broker had asked you about whether you had other regular expenditure, what would you have said?---Well, I would have said yes and a lot of that would have been clear on my bank statement.

15

Yes?---A lot of my expenditure went through direct debit.

20

Yes?---And what wasn't direct debit would have been withdrawals.

All right. Can I show you another document which is an exhibit to a statement that we will tender shortly. But for now I will use the document ID, which is ANZ.8001413020. Do you recall seeing this document before, Mr Regan?---Yes, I do.

25

A personal statement of financial position?---Yes.

Who completed this document?---Bernie Meehan.

30

Was – so was this a document that was prepared at the time that you were dealing with the broker or later?---No. Later.

I will just ask you to look at it carefully, Mr Regan. It's an ANZ mortgage broker distribution document?---I'm sorry, I'm looking at the wrong one.

35

I'm sorry, it's not in your witness statement?---Okay. Okay.

Mr Regan, you will just need to look at the one on the screen?---Yes. Righto.

40

Just let you have a chance to look through it?---Mmm.

It's called a personal statement of financial position?---Yes.

45

An ANZ document?---Yes.

And do you have the entirety of the document on the screen or just a portion of it, Mr Regan?---A portion.

5 Could we expand so that we can see the entirety of it?---Yes, that's right now, thanks.

And we see here, figures – we see your name at the top and the date of 6 March 2017, and we see figures for your income and for your expenditure?---Yes.

10 And the figure for your income is government benefits and pension of \$2,663.14?---Yes.

And the figures for your expenditure on the other side, total living expenses of \$1,140?---Yes.

15 Per month?---Yes.

Did you ever provide that figure to the broker?---No.

20 And was it an accurate reflection of your total living expenses?---No. No.

Are your monthly expenses more or less – are they much the same now as they were at this time in March 2017?---Well that – that's not an accurate representative.

25 Yes. Yes?---Of what I was spending.

No. And to understand what should have been there, what I want to ask you to consider is whether your monthly expenses now are roughly the same as your monthly expenses were at this time?---Yes – yes.

30 Is that right?---Yes.

And you have exhibited to your statement at RER4 a document that I think you were looking at and referring to earlier, a document prepared by a financial counsellor?---Yes. That's correct.

35 That is an estimate of your current fortnightly income and expenditure; is that right?---That's right.

40 And your current fortnightly expenditure is listed on that document as 1386. Is that a fair estimate of your current expenditure?---That is.

And is it a fair estimate of your fortnightly expenditure back in March 2017?---It is.

45 But instead on the personal statement of financial position, your monthly living expenses were given as 1140?---Yes.

Yes. Now, did you talk to the broker about who you should get your loan from?---Yes.

And what did he say to you?---His recommendation was the ANZ.

5

Right. And did you apply for a loan with the ANZ?---I did.

And was that application for a loan in the sum of \$50,000 as you had intended?---It was. Yes.

10

And did you hear directly from ANZ about that loan?---Yes.

Did you ever go to an ANZ branch?---Yes.

15

What do you recall about going to an ANZ branch and any conversations you had within the ANZ branch?---I – I – I had about four visits. The first two were with female representatives, until the loan was approved, and that's when I saw the bank manager. And he signed the loan off. Or opened an account for me with the loan money.

20

And what do you recall about your discussion with the bank manager?---Well, when I saw the statement from him, and how much I would be repaying and what age I would be, I asked him would he still be here when I'm 102, making my last payment.

25

And what did he say to that?---Nothing.

Now, the loan was approved? Your application for a loan was approved?---Yes.

30

And what happened after the loan was approved. Did you seek to use the funds?---I did.

And can you explain how you did that?---Yes. I – I – I saw the bank manager again and he electronically transferred the equivalent of 20,000 pound to the said people in London, which is about A\$35,000.

35

And did the bank manager discuss with you what you were using the money for?---No, not at all.

40

Yes. And what did you do with the remainder of the money?---The remainder of the money I bought an air ticket and accommodation and expenses in London whilst I was there.

45

Yes. Now, it was in London that you discovered, I think you said earlier, that the people you had been dealing with - - ?---It was about two days before I left.

I see. Could you explain how that happened?---Yes. I – I checked an address that one of these people had given me and found it was an empty premises, that there was

nobody living there and hadn't been for some time. Hadn't been in the operation for some time. That was – that was the final thing for me. So I went to London and showed what evidence I had to Customs and they called their officer and then in turn called the police and we staked out the hotel where I was staying and I was on the
5 phone to these – these people in London and we – the police managed to catch the courier who had mobile phones with information on the rest of the group and they were in turn caught and they're now in prison.

10 And when you came back to Australia after that, did you make the repayments under your ANZ loan?---Yes, I did. Yes.

Did you find it difficult - - -?---I did.

15 - - - to make your repayments?---Yes.

How quickly did you find it difficult to make your repayments?---Immediately.

I'm sorry?---Immediately.

20 Immediately. And did you ever contact ANZ about your difficulties in making repayments?---I did.

25 And did you speak to any other organisation about your difficulties in making repayments?---Yes, I did. Yes, I have been assisted by charities for food and vouchers.

30 Yes. And can you recall what happened when you first spoke to ANZ seeking assistance, or discussing with them that you were having difficulties making the repayments?---Yes – well, they – they simply put it down to the – the first statement that was submitted to them by the broker and they claimed that – you know, according to that I can – I can continue to pay without any – without any trouble.

And did you engage lawyers to assist you with this?---I did.

35 Yes. And did you authorise those lawyers to talk to ANZ on your behalf?---Yes.

And do you recall that in late February your lawyers wrote to ANZ - - -?---Yes.

40 - - - about your situation. And I will show you another document which is ANZ.800.282.0600. So this is a letter of 21 February written by the Consumer Action Law Centre directed to ANZ requesting a moratorium. Do you see that in paragraph 3?---Yes, I do. Yes.

45 On your repayments?---Yes.

And advising the ANZ that you are in financial hardship. and you can't afford basic living expenses in addition to the ANZ loan repayments. and you are relying on

charities to supply you with food parcels. Now, by this point you had been in contact with ANZ - - -?---Yes.

5 - - - about your difficulties before, but assistance had not been provided?---I had – I had been in touch with them two times – two or three times.

And as a result that – those communications, did ANZ assist you?---No.

10 And when I say assist you, I’m asking about assistance in the form of relief on your loan?---No, no relief at all.

15 So then your lawyers, on 21 February this year, write to ANZ – and this is the letter written – and are you aware that last Friday ANZ contacted your lawyers in response to this letter?---Yes.

And are you aware that ANZ advised your lawyers last Friday that they would provide you with a three month moratorium on your loan repayments?---Yes.

20 Now, could I ask if you could identify a document which is RCD.0014.0002.0001?---Thank you.

So this as a document – an email from last Friday sent by a person at ANZ to your lawyers, Consumer Action:

25 *We are still looking into Mr Regan’s concerns, we will provide a written response before 16 March 2018. I can confirm that ANZ will provide the requested three month moratorium on repayments. Our letter will provide formal confirmation of this.*

30 So this was the communication to your lawyers advising of the three month moratorium?---Yes.

Yes. I tender that document, Commissioner.

35 THE COMMISSIONER: Exhibit 1.81. Email ANZ, 9 March ’18, RCD.0014.0002.0001.

MS ORR: And are you aware, Mr Regan, that yesterday your lawyers received a further letter from ANZ?---Yes.

40 Could I ask that you look at RCD.0014.0002.0002. And if we could have 0002 and 0005, the last page of the letter on the screen. Is this a letter, Mr Regan, to your solicitors of yesterday’s date, dealing with the request for a moratorium and hardship assistance for your loan?---Yes.

45 Yes. And do you see, on page 0004 of that letter, a proposed resolution made by ANZ?---Yes.

Which is made on a without prejudice basis, but ANZ have consented to us advising the Commission of this, the offer that was made to you yesterday was that ANZ would reverse all fees and interest applied to the home loan since drawdown, stop the accrual of future fees and interest on the home loan, apply a goodwill credit of \$1500
5 to the home loan balance, and that you would make minimum monthly repayments of at least \$150 until the loan is paid in full. And if you disposed of your home you would immediately repay the remaining balance in full. and you would release and discharge ANZ from all actions and claims related to your home loan. This only – I understand this letter only went to your lawyers yesterday - - -?---Yes.

10 Mr Regan, but have you yet formed a view on what your response to this offer will be?---Yes, I reject it. I would like to know how old I will be when I pay it at \$150 a week. A month, sorry.

15 Yes. And have you at any time put your home on the market?---I did have my home on the market, yes.

And why did you put your home on the market?---To pay off this debt.

20 Yes. And is your home still on the market?---No.

And why is it not on the market?---Well, with the money I would have left after selling and refinancing this loan, and putting a surety away for myself, there was nothing worthwhile buying from the money left.

25 In the sense of another home; is that what you mean Mr Regan?---Yes. Yes, that's right. Yes.

Thank you. I tender this letter, Commissioner.

30 THE COMMISSIONER: Exhibit 1.82 ANZ to CALC, 15 March '18.
RCD.0014.0002.0002.

35 MS ORR: I'm sorry, would the Commissioner just excuse me for a moment. My junior is querying your exhibit numbers, Commissioner - - -

THE COMMISSIONER: I'm sure she is right and I'm wrong.

40 MS ORR: - - - and suggesting to me that perhaps the email of 9 March should be exhibit 1.83. The summons was 1.81, and the statement was 1.82.

THE COMMISSIONER: I never could count, could I. 183 – 1.83 will be the email of 9 March, 1.84 will be the ANZ to CALC of 15 March 2018.

45

EXHIBIT #1.83 EMAIL DATED 09/03/2018 (RCD.0014.0002.0001)

5 **EXHIBIT #1.84 EMAIL FROM ANZ TO CALC DATED 15/03/2018
(RCD.0014.0002.0002)**

MS ORR: I have no further questions for Mr Regan. Thank you, Commissioner.

10 THE COMMISSIONER: Is any party having leave to appear seek to cross-examine
Mr Regan, other than you Dr Collins? No. Dr Collins.

15 **<CROSS-EXAMINATION BY DR COLLINS** **[4.03 pm]**

DR COLLINS: Just a very short matter, if I could, Commissioner. I wonder if the
operator could display ANZ.800.141.3020. Mr Regan, Ms Orr asked you some
20 questions about that document you see on the screen. Had you seen that document
before you came to give evidence today?---Yes.

And can you see there are two black boxes on the screen. Have you seen a copy of
that document without the black boxes on it?---Yes, I have.

25 And at the bottom of the screen one of the black boxes has blanked out a
signature?---Yes.

If we were to look under the black box, would we see your signature?---Yes.

30 And did you sign that document on 6 March 2017?---Yes.

And had – had you read the document before you signed it?---Yes.

35 And do you see it says, immediately above the signature box:

*I/we declare that the details contained within this personal statement of
financial position are true and correct.*

40 ?---Yes.

Had you read that before you signed it?---I had.

45 And – but your evidence to the Commission is that the figures on that form in fact
are not true and correct?---That's true.

Thank you, Mr Regan. No further questions.

THE COMMISSIONER: Anything, Ms Orr?

MS ORR: No, Commissioner.

5 THE COMMISSIONER: Mr Regan, thank you very much?---Thank you very much, Commissioner.

You are excused from further attendance.

10

<THE WITNESS WITHDREW

[4.04 pm]

15 MS ORR: Commissioner, the next witness is Mr William Rankine from ANZ. It's 4 o'clock already, and although I was initially keen to sit on and try and do Mr Rankine's evidence, I think it would require sitting on for an hour, which doesn't seem realistic. So in that event Mr Regan is our last witness for the day.

20 THE COMMISSIONER: I will adjourn until 9.45 on – before I do that, Dr Collins, there is no difficulty, is in, about that witness coming back on Monday, is there?

DR COLLINS: Not at all.

25 THE COMMISSIONER: No. I should have checked whether there was difficulty. It's been a long week. I will adjourn until 9.45 on Monday morning next.

MATTER ADJOURNED at 4.05 pm UNTIL MONDAY, 19 MARCH 2018

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