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TRANSCRIPT OF PROCEEDINGS

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THE HONOURABLE K. HAYNE AC QC, Commissioner

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

SYDNEY

10.00 AM, MONDAY, 19 NOVEMBER 2018

Continued from 21.9.18

DAY 60

MS R. ORR QC and MR M. HODGE QC appear with MR M. COSTELLO, MS E. DIAS, MR A. DINELLI, MR T. FARHALL, MR M. HOSKING and MS S. ZELEZNIKOW as Counsel Assisting
MR S.G. FINCH SC appears with MR P. KULEVSKI for CBA

THE COMMISSIONER: Ms Orr.

MS ORR: Commissioner, today we commence the seventh and final round of public hearings. The first six rounds of public hearings explored instances of misconduct by financial services entities and conduct that fell below community standards and expectations. This round is different. Our focus is not on identifying further instances of misconduct. Our focus is on understanding why misconduct has occurred and on what can be done to prevent future misconduct. The misconduct that has been acknowledged and examined during the work of the Commission is the foundation from which this round of public hearings will proceed. Our work in the public hearings to date has proceeded by way of case studies. It was not possible to investigate every instance of conduct by financial services entities that may have amounted to misconduct or conduct that fell below community standards and expectations.

A great deal of further misconduct and conduct that fell below community standards and expectations was acknowledged in submissions to the Commission, including those received in January and February at the start of the Commission's work. These submissions are now available on the Commission's website. Throughout the year, we selected particular case studies to be the subject of public hearings. Those case studies were selected because they allowed identification and exploration of broader issues. After each round of public hearings, the Commission received submissions about what those case studies showed, both in respect of the particular conduct that was examined, and the broader issues raised by that conduct.

Commissioner, in your interim report, you identified particular issues and policy questions that arose from the case studies examined in the first four rounds of public hearings. Submissions were invited in response to these issues and policy questions. Following the fifth and sixth rounds of public hearings, submissions on issues and policy questions arising from the case studies examined in those hearings were also invited. The Commission received a very large number of policy submissions in response to those invitations. Close to 2000 policy submissions were received in total. The submissions came from financial services entities, consumer advocacy groups, regulators, government, academics, industry organisations, community organisations, and members of the public. We will say more about these policy submissions later.

Throughout the year, many financial services entities have offered public apologies or expressions of regret for conduct that has been examined by this Commission and other acknowledged misconduct. Those sentiments have often be accompanied by promises that the entity will do better in the future. They have sometimes been accompanied by announcements about changes to the entity's product offering, structure, or business practices. The purpose of this round of hearings is not to hear further apologies, or expressions of regret. We do not think that will assist you in fulfilling your task. As I have said, these hearings are focused on seeking to understand two things. The first is what caused the conduct that has been examined. Put simply, why did these things happen.

Was it because of particular practices of financial services entities, such as their risk management, recruitment, or remuneration practices? Was it because of the culture of financial services entities or their governance practices? Was it because of practices common to the financial services industry or to specific parts of that industry? The second thing we are seeking to understand is what can be done to prevent misconduct in the future. Of course, our exploration of ways to prevent misconduct must be informed by our understanding of what has caused misconduct in the past. Are changes needed to the culture of financial services entities? Or to the way they manage risks or remunerate their staff and executives? Are new accountability structures needed?

Should the law be changed? If so, how should it be changed? Do the practices of regulators need to change? Do we need new mechanisms for oversight of our regulators? Are there barriers or impediments to financial services entities and regulators improving their own practices? If so, how can those barriers be removed? It is to questions like these that we will direct our attention in this round of hearings. As we've noted throughout the year, in addition to the public hearings, a great deal of the Commission's work is conducted outside of the hearings. For example, before each round of hearings, the Commission has consulted with experts and stakeholders, created and commissioned research papers, and received and reviewed large numbers of documents from financial services entities, from regulators, from consumer agencies, and from members of the public. This round is no different.

The public hearings that will take place over the next two weeks represent only a portion of the Commission's work on the issues that we will be examining. The work that has been undertaken in preparation for this round of hearings has included consideration of international experiences, practices, and reforms. The Commission has examined a range of relevant overseas developments. We've consulted with a number of experts, including academics, regulators, and industry participants in other jurisdictions, including the United States, the United Kingdom and the Netherlands. The Commission has also reviewed a wide range of international publications relevant to the policy issues that have arisen during the year. Those publications included academic research, reports of overseas and transnational bodies, and regulatory guidelines and evaluations.

As with each previous round of hearings, the Commission has also consulted with various stakeholders within Australia, including academics and former and current industry participants. The Commission has published two papers on its website ahead of this round of hearings. The first is a background paper dealing with selected aspects of the regulation of financial services in other jurisdictions. This paper helps place Australia's current regime and potential reform proposals in an international context. The second is a research paper dealing with conflicts of interest and disclosure. This research paper helps inform consideration of these important areas which have been recurring themes throughout the Commission's work.

As we've mentioned, the Commission has received a large number of policy submissions. More than 1000 submissions were received in response to the interim report and hundreds of policy submissions were received in response to each of the fifth and sixth rounds of hearings. Each of those submissions has been read and considered. They have informed the planning of and preparation for this round of hearings. They will continue to be considered in the Commission's work after the public hearings are complete. Across the submissions, there is considerable divergence in views about the need for reform and the manner in which any reforms should occur. However, there are a number of areas in which there was substantial agreement and we wish to highlight ten particular examples of this.

First, there was widespread support for simplification of the law. A large number of submissions suggested that current laws and regulations could be simplified or clarified to at least some extent. Some submissions suggested that the current level of complexity causes difficulties in risk management, compliance and enforcement. That said, some submissions said that significant change would bring its own costs and disadvantages, including a period of uncertainty until the application of the new laws had been tested. Second, there was substantial agreement that the duty owed by a mortgage broker to their clients would benefit from clarification. Views were divided about the precise ways in which the duty should be clarified. Third, there was very strong support for ending grandfathered commission payments to financial advisers and from superannuation accounts. Each of the major banks has already announced steps to reduce or eliminate payments of grandfathered commissions in their financial advice businesses.

Each of them, along with other industry participants supports legislation to repeal the grandfathering provisions under the Corporations Act. Of the industry submissions received by the Commission, only the association of financial advisers was wholly opposed to ending grandfathered commissions. Fourth, there was broad support for further simplification of disclosure requirements. Some submissions suggested that the current extensive and complex disclosure requirements may make it difficult for consumers to properly understand the disclosure made to them. However, some consumer groups warned that simplification should not result in consumer protections being watered down. Some consumer groups also emphasised that disclosure alone would not prevent most of the types of misconduct examined by the Commission.

Fifth, there was strong support across the major banks for a number of measures to assist those in regional and remote areas and to improve the accessibility of banking services. These included use of dedicated staff to assist Aboriginal and Torres Strait Islander customers, ceasing any practice of charging a dishonour fee on a no fee or low fee account, ceasing the practice of charging default interest on loans in drought declared areas or in areas where some other natural disaster had occurred, and introducing a national farm debt mediation scheme. As the Commission has heard, farm debt mediation schemes which require banks and other creditors to offer mediation to farmers before taking enforcement action against farm property already exist in New South Wales, Queensland and Victoria.

There was widespread support for a national scheme to be modelled on the existing New South Wales scheme, although some suggested that creating a national system would offer an opportunity to identify the best practice components of the existing Acts and consider alternative approaches. Sixth, among the entities that made submissions about funeral insurance, there was almost universal support to bring expenses only funeral insurance within chapter 7 of the Corporations Act and the consumer protection provisions under division 2 of part II of the ASIC Act. Seventh, there was widespread support for legislative changes to impose civil penalties for a breach of the requirements in the SIS Act that the trustee of a superannuation fund or directors of the trustee perform their duties and exercise their powers in the best interests of beneficiaries.

Eighth, there was support from several major banks and industry groups for certain forms of add-on insurance to be sold only through a deferred sales model. Ninth, there was broad support for extending the unfair contracts terms provisions to insurance contracts, including from ASIC a number of consumer bodies, and most insurers. Tenth, there was substantial support for the introduction of a compensation scheme of last resort, which would provide compensation where consumers had a valid claim against a financial services provider but could not get the claim paid, for example because an advice firm had become insolvent.

We now say something about the witnesses selected to appear during this round of public hearings. It is not possible to call executives from every entity that has been the subject of a case study in the Commission's public hearings. As a result, the Commission will call a selection of representatives from a selection of entities. The Commission will hear evidence from the chief executive officers of each of the major banks. Shayne Elliot from ANZ, Matthew Comyn from CBA, Andrew Thorburn from NAB and Bryan Hartzer from Westpac. These four institutions hold approximately three-quarters of the total assets held by authorised deposit-taking institutions in Australia. One way or another, the operations of these institutions affect the lives of most Australians.

The leaders of these institutions play a pivotal role in identifying, addressing and preventing misconduct in the Australian financial services industry. The views of these four witnesses will inform the Commission's consideration of policy issues. As the Commission has heard throughout the year, the major banks are not the only important players in the financial services industry. In recognition of that fact, the Commission will also hear evidence from the leaders of two other significant financial services companies in Australia. Mr Nicholas Moore, the CEO of Macquarie Group, and Mike Wilkins the acting CEO of AMP. Both of these institutions provide services both directly and indirectly to many Australians. And beyond that, the operations and business models of both these institutions differ in many ways from those of the major banks. These leaders will provide an important additional perspective.

The operations of a financial services organisation are not influenced only by the CEO. The board of an institution also plays a pivotal role. The board is responsible for setting the strategic direction of the entity and shapes its governance, culture and accountability structures. In these hearings, we will hear from the chairs of the boards of three major financial institutions. We will call evidence from Catherine Livingstone, chair of the board of CBA, Ken Henry, chair of the board of NAB, and Robert Johanson, chair of the board of Bendigo and Adelaide Bank. Finally, the Commission will also hear evidence from the chairs of each of the regulators of the banking, superannuation, regulation and financial services industries, James Shipton of ASIC and Wayne Byres of APRA.

As we said at the outset the purpose of calling these witnesses is not to go over old ground or to seek more apologies or expressions of regret. The purpose is to explore the causes of the misconduct examined and acknowledged throughout the year and to explore how similar misconduct can be prevented in future. Commissioner, that concludes our opening statement. The first witness will be Mr Matthew Comyn from CBA. Perhaps if we could have a brief adjournment to allow Mr Comyn to come into the witness box and his representatives to join us at the bar table.

THE COMMISSIONER: If I come back at 10. 20.

MS ORR: Yes. Thank you, Commissioner.

THE COMMISSIONER: 10. 20.

ADJOURNED **[10.17 am]**

RESUMED **[10.21 am]**

THE COMMISSIONER: Mr Comyn, just before you sit down, if you wouldn't mind standing again. Could I begin by asking whether you'd prefer to make an oath or make an affirmation.

MR COMYN: An oath, Commissioner.

THE COMMISSIONER: Yes. Swear the witness, please.

<MATTHEW PETER COMYN, SWORN **[10.21 am]**

<EXAMINATION-IN-CHIEF BY MR FINCH

THE COMMISSIONER: Thank you very much, Mr Comyn. Do sit down. Yes, Mr Finch.

MR FINCH: Thank you, Commissioner. So I think your full name is Matthew Comyn?---Matthew Peter Comyn.

And your business address is 201 Sussex Street in Sydney?---Yes, it is.

And you're the managing director and chief executive officer of the CBA?---Yes, I am.

I think you're here pursuant to a summons dated 11 November 2018?---Yes, that's correct.

Do you have a copy of the summons there with you?---Yes, I do.

Commissioner, I tender the summons.

THE COMMISSIONER: Exhibit 7.1, the summons to Mr Comyn.

EXHIBIT #7.1 SUMMONS TO MR COMYN DATED 11/11/2018

MR FINCH: Thank you, Commissioner.

I think you've also made a statement dated 14 November 2018?---Yes, I have.

Document CBA.9000.0124.1000, to which you've exhibited nine documents?---Yes, that's right.

Are the contents of that statement true and correct?---Yes, it is.

Commissioner, I tender the statements and its exhibits.

THE COMMISSIONER: Exhibit 7.2, the statement of Mr Comyn and its exhibits.

EXHIBIT #7.2 STATEMENT OF MR COMYN AND ITS EXHIBITS DATED 14/11/2018

MR FINCH: Nothing further, Commissioner.

THE COMMISSIONER: Thank you, Mr Finch. Yes, Ms Orr.

<CROSS-EXAMINATION BY MS ORR [10.23 am]

MS ORR: Mr Comyn, you were appointed to the role of managing director and chief executive officer of CBA at the end of January this year?---It was announced on – at the end of January, yes, Ms Orr.

When were you appointed, then, Mr Comyn?---Sorry. Yes, and I started on the 9th of April.

That's right. So you were appointed at the end of January and you commenced in the role in April. Is that right?---Yes, it is.

And putting to one side a period at Morgan Stanley, you've worked at CBA since 1999?---Yes, that's right.

And between 2006 and 2010 you were the managing director of CommSec?---Yes, that's right.

And between 2012 and April this year when you took up the position of CEO you were the group executive of Retail Banking Services?---Yes, that's right.

Now, CBA has acknowledged to the Commission that in recent years it's engaged in a range of misconduct and conduct that fell below community standards and expectations?---Yes, that's right.

And in CBAs submissions in response to the interim report, CBA made some observations about the causes of this conduct?---Yes.

What was your involvement in the preparation of that submission, Mr Comyn?---The original submission going - - -

No, the submission in response to the interim report?---Yes. I was involved in that, Ms Orr.

Yes. Did you write parts of that, Mr Comyn?---Parts of it but I certainly read all of it.

Yes. And which parts are you responsible for personally?---Well, I'm responsible ultimately for the entire submission, so I certainly read, made changes to and ultimately approved the submission of that document.

All right. And you've also made your own observations about the causes of a number of failings at CBA in your statement to the Commission?---Yes, I have.

And I want to start with an overview of what you identified in your statement as the causes of failings across CBA before looking at some of those causes in more detail?---Yes.

Now, in your statement, you identified two categories of root causes?---Yes.

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

And the first relates to what you describe as customer and culture?---Yes.

And the customer and culture causes, you tell us in your statement, played out in four different ways. Do you recall this?---Yes.

And the first is that you say that CBA has not consistently prioritised customer interests, nor properly appreciated the duties owed to and the impact of actions on your customers?---Yes, that's right.

And you say that whether consciously or unconsciously, it has also led to decisions that have resulted in financial gain at the expense of customer interest?---Yes, that's right.

Now, I'm going to return to this theme, particularly when I ask you about CBAs mis-selling of consumer credit insurance policies, but it's a theme that's common across a number of the failings that you deal with in your statement. Do you agree with that?---Yes, I do.

Including the charging of fees to customers without providing services?---Yes.

And the use of an outdated definition of "heart attack" in CommInsure's trauma insurance policies?---Yes.

Now, the second part of the customer and culture causes that you identify in your statement is that CBA has been, in your words, complacent and lacked appreciation of non-financial risk?---Yes, that's right.

And you say that this has led to reactive rather than proactive management of risk and compliance issues, as well as tolerance for poor execution and slow customer remediation?---Yes.

And you say that CBA has only imposed limited consequences in response to this, especially on those at the senior levels in your organisation?---Yes.

Now, I'm going to return to this as well, particularly the poor handling of non-financial risk at the senior executive level in connection with CBAs contraventions of the Anti-Money Laundering and Counter-Terrorism Financing Act. Now, the third part of the customer and culture causes that you identify in your statement is CBAs problematic relationship with regulators?---Yes.

And you say that CBAs relationship with regulators has, in your words, not been what it should have been?---Yes, that's right.

And that in many instances, CBA failed to recognise the importance of regulators and was legalistic and defensive in its dealings with regulators?---Yes, that's right.

I will come back to that as well, but the final part of the customer and cultural causes that you've identified in your statement is that CBA has been insular. Can you explain what you meant by that?---Not sufficiently listening to external voices and appropriately considering that in the way we run our business.

And this has led to customer detriment?---Yes, it has.

Now, the second category of root cause that you describe in your statement relates to CBAs accountability, governance and capabilities?---Yes, that's right.

And, again, you say that that played out in four distinct ways, and the first of those was that in some cases CBA had a lack of understanding of its obligations and did not properly appreciate the gravity of its failures to comply with those obligations?---Yes, that's right.

And this was one of the causes of CBAs contraventions of the Anti-Money Laundering and Counter-Terrorism Financing legislation. Do you agree?---Yes, I do.

And the second aspect of the accountability, governance and capabilities root causes that you identify was that CBA had unclear accountabilities which contributed to weak issue escalation and resolution?---Yes, that's right.

Again, this was particularly apparent in connection with the breaches of the Anti-Money Laundering and Counter-Terrorism financing legislation. Do you agree?---I do.

And in CBAs mis-selling of consumer credit insurance?---Yes.

The third problem was that CBA had inadequate capability in what you describe as critical areas, particularly operational risk and compliance?---Yes.

Now, how did that happen, Mr Comyn? How does an organisation of CBAs size have inadequate capability in critical areas?---Well, I don't have an adequate explanation for that. It's certainly my reflection looking back across a number of matters including, for example, the AUSTRAC AML area. If I look at a number of our failings, unfortunately, as is also identified in the prudential inquiry report, we were weak in the management of operational and compliance risk, and I don't attribute that solely to weak capability but I certainly see that as a contributing factor.

So you didn't have the people you needed with the skills you needed?---At various points in time, no, we did not.

Now, the fourth part of your accountability, governance and capabilities root cause is CBAs remuneration and incentive structures. You acknowledge in your statement that these were, in some instances, not aligned to good customer outcomes?---Yes, I do.

And that they placed too much emphasis on financial measures instead of promoting accountability and encouraging employees to ensure that your organisation was delivering good outcomes for customers?---Yes, I hope we have more appropriately struck that balance currently but certainly historically that has not been the case.

Now, I want to come back and talk to you about remuneration in some detail, but having set out these two categories of root causes in your statement with the four different ways that each of them played out, you tell us in your statement that all of these problems created an environment where CBA could not prevent, immediately identify, resolve, and remediate misconduct when it occurred?---Yes, that's right. We did not.

And as a result, you say that CBA has been caught in an escalating cycle of funding remediation, resolution and rectification, rather than prevention and simplification of systems and processes?---Yes, that is my view.

Now, Mr Comyn, what do you regard as the primary cause of CBAs failings in recent years?---Well, I think the primary cause may differ across the seven matters that I examined inside my witness statement. And so I would say the – the primary cause as it relates to, say, the AML/CTF breaches is quite different to fees for no service, for example.

Well, across all of those matters that you've dealt with in your witness statement, and beyond those to other failings of CBA that CBA has acknowledged throughout the year, what do you personally regard as the most concerning?---Certainly, as I've prepared for my appearance, one of the things in addition to the work that was identified through the prudential inquiry, and particularly as it relates to misconduct and harm to customers, I think is because in too many instances we did not understand the relationship that we – the various relationships which do differ depending on what we are providing for our customers, and, therefore, a clear understanding of the duties and obligations associated with that.

You didn't understand the relationship. What relationship are you referring to there, Mr Comyn?---Well, I would, perhaps, provide a couple of different examples.

Yes?---So simply to say the – let's – in a lending relationship where, in effect, I'm in a debtor relationship with a customer, insofar as I'm – in this particular case I may be advancing debt, of course I have responsible lending under the NCCP, I have a number of different obligations, but ultimately, I'm also trying to ensure that I'm providing an appropriate credit facility for the customer. But I'm also advancing the depositors – our depositors' funds, in effect. And so that relationship is quite different to, say, a relationship of a financial adviser where a customer comes to the

Commonwealth Bank and the nature of that relationship is one of dependence, they are giving us their money and we need to really clearly understand the obligations that then flow from that relationship, and I think a proper appreciation of that, so in the case of fees for no service, you will see that I pointed out one of the examples of being – I think the primary failure was we – we did not – and I associate that to the – with the use of the word culture, but I use that word to broadly explain over a period that dates back to at least the early 2000s, where there is evidence that certainly cannot be attributed to a small number of rogue advisers. I think there are a range of different contributing factors, and primarily a lack of understanding in that particular case of the relationship that we had with our customers and the obligations that we then owed them would have meant that we would have never charged or even contemplated charging a customer for a service unless we had appropriate systems in place, ability to monitor and oversee advisers, an ability to supervise and monitor those advisers.

So you mentioned two relationships in particular, I think, in that answer. The relationship between CBA as lender and the customer as borrower - - -?---Yes.

- - - and the relationship between CBA as financial adviser - - -?---Yes.

- - - and the customer receiving financial advice. What are the key things that you say CBA did not understand about each of those relationships?---Well, I think that we didn't appreciate the different obligations that we owe to our customers - - -

I see?--- - - - in each of those different relationships. And if I was to, to the extent that it's helpful, extend it even further in the context of, let's say, a superannuation trustee - - -

Yes?--- - - - then ultimately that is a fiduciary relationship and one in which we need to ensure that we are always acting in our members' best interests.

And why didn't CBA understand and appreciate the obligations attached to each of those relationships?---I think we should have, Ms Orr.

And why didn't you?---I - - -

What do you put that down to, Mr Comyn?---Well, a culture of us not learning from issues of misconduct in the past. What – what has become clear, and certainly, I – I tried to highlight some of those commonalities during my witness statement – when you look alongside the various case studies that I was asked to prepare as part of my witness statement, as you said, there are a number of recurring themes. And ultimately, that's why I say we get into a – a period of ongoing remediation without actually fundamentally understanding the root cause in each of those matters and making demonstrable steps to ensure that they don't reoccur.

What do you think is going to be the hardest cause for CBA to fix?---Well, I actually think the hardest cause for me personally is – and it's related to – and I – I know the

Commissioner has had access to the work that's underway in response to the prudential inquiry. There are many elements to that. As some of that is constrained by the lack of capability even available in the Australian market, and I think we may explore that in the context of AML/CTF, we have an enormous amount of work to do to improve our management of non-financial risk. But as the chief executive, of course, my – one of my primary issues is ensuring that we have a culture which has learned from the areas and issues of misconduct and we are a very different organisation for our customers going forward. And an exercise such as that, which is, of course, a complex interplay of various factors, will take time. And there are many ways which I, with the support of my leadership team and, of course, working closely with the board, will need to make sure that that transition is successful.

So is it that management of non-financial risk that you think will be the most difficult thing to fix?---I actually think the larger change around the culture of the organisation. That is, in some ways, harder to measure. And obviously the management of non-financial risk has been a clear – a clear failing in a number of different matters, but that is something I – I feel will be more readily observable and measurable. And, of course, some of those other factors – and they're laid out in the context of the prudential inquiry response. That's why we have an independent expert to oversee that progress and to report on that transparently, because I – I do not expect that the external community would simply take mine or any other person's word for it. I think our actions need to demonstrate how we've learned from this period.

I want to come back to you and talk about what you are doing to change the culture within CBA?---Mmm.

But you've mentioned already in your evidence a number of times the prudential review, the APRA prudential review. Can I start by asking you what were the key things that you learnt from the APRA prudential review into CBA?---Well, there was 35 different recommendations, but if I had to break those down, broadly between culture, governance, accountability and consequences and the management of non-financial risk, which are not inconsistent to some of the points that you made earlier, Ms Orr.

But what did you learn about those things, Mr Comyn?---Well, in – in – in each of those, and, of course, as you said, having been in the organisation for a – for a long time, understanding how those manifested, and in – and certainly in some of those cases, what happened in the context of what – what may become an organisational strength for an organisation actually over a period of time becomes a weakness. An example may be we had a big focus since probably 2006 on something we referred to as collaboration which was largely to drive a better engagement across the organisation, and – and it was intended to drive better problem solving. But actually, what happened over a period of time is it led to more consensus, compromise and inability to resolve difficult issues, and at least one of the case studies that you have mentioned this morning, I think that's one of the factors.

Which one, Mr Comyn?---Consumer credit insurance.

Yes. Thank you. Now, after you received the report of the APRA prudential review, you wrote to each of your senior executives and sent them a copy of the report. Is that right?---Yes, the top 500. I sent them a – a hard copy accompanied by a letter, and, of course, the report was made broadly available electronically to the whole organisation.

So you sent it to your top 500 executives?---Yes.

And in the letter that you attached the hardcopy to, you said to them that some of them might think that the report was unfair?---Yes.

And you said that some of them might think it was true but it didn't apply to them?---Yes.

And you said that:

> *The report describes the bank. It describes me and it describes each one of us, its senior leaders.*

?---Yes.

You told each of them that over the course of the next 10 days you wanted them to lead a discussion with their team about the report and to write back to you with their one-page reflections on that discussion?---Yes, that's right.

And you said you wanted to hear from them about what resonated with their team, where there was resistance, and how the team would be working differently to address the report's findings?---Yes, that's right.

Now, could we bring up that letter. It's CBA.0001.0591.0178. Now, this is a copy of the letter that you sent to your senior executives?---Yes, it is.

Dated 1 May this year?---Yes.

I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 7.3 will be letter, 1 May 2018, Comyn to senior executives CBA, CBA.0001.0591.0178. Exhibit 7.3.

EXHIBIT #7.3 LETTER, COMYN TO SENIOR EXECUTIVES CBA, CBA.001.0591.0178 DATED 01/05/2018

MS ORR: Now, did everyone you sent that letter to respond, Mr Comyn?---Yes, they did.

Yes. And what were the key things that you learnt from those 500 responses?---Well, there was a rich set of learnings which I have referred to. I read all of those letters in full at that time but I've also referred to those at various points in time in the opportunities I've had now to address more than 4000 people inside the organisation in a face-to-face context. I often reference some of the learnings and what people have written back to me in the way I address our people in various leadership team forums. I mean, the – and from my perspective, the primary purpose of issuing the letter was to make sure that nobody thought that it didn't apply to them. And so I wanted their personal reflections, and I found those very helpful. And in my view, almost without exception, people were not defensive inside the organisation, which I thought was a very good start, and, of course, that was the tone at least I was trying to strike in the letter that I sent to them. Some of them I found incredibly insightful. As you expect, I – I meet with a number of the senior executives directly, and I would also refer to some of the things that they have raised in their letters when I'm preparing for one of those meetings, and I wanted to use those 500 letters over time to ensure that I've addressed the issues that – not just from my perspective but from others, as we proceed with the program of work that's underway at CBA.

So are you able to answer my question about - - -?---Sure.

- - - the key things that you learnt?---Not dissimilar to what we've already discussed, Ms Orr. So everything from – I mean, a feeling, obviously, of disappointment, embarrassment, very much an acceptance of some of the key issues that were there, in terms of our inability to escalate/resolve conflict. Too much of a focus on things like collaboration which had unfortunately become, I believe, a real weakness inside the organisation. Not enough capability in the management of non-financial risk, particularly in operational risk and in – in compliance. A focus on how they would lead a much more constructive and challenging – constructive raising of issues and also issue closure, and a lot of acceptance around the sorts of investment that will be required to ensure that we not only meet our compliance and legal obligations, but we're also in line and exceed in many areas the broader community and regulatory expectations, which I totally accept is some distance from where we are today.

Can I ask you to look at one of the responses to your letter, which is a response from your group auditor, Mr Mark Worthington?---Yes.

That's CBA.0001.0591.0179. Now, this is Mr Worthington's one-page response to you, Mr Comyn?---Yes, it is.

And we see under the heading My Reflections, High-Level Thoughts, that Mr Worthington said to you:

Firstly, I must say that I agree that the report was well-written and fair. There are many references in the report to findings made by my team over recent years and references to us uncovering many of the control weaknesses that were used to substantiate the APRA conclusions. This is a double-edged sword for it lends credibility to our work but has now led to much public criticism of the organisation.

And what did you think when you read that reflection from your group auditor?---I thought that he was calling out that he felt, on behalf of his team, that a number of the issues that are referenced in the APRA report were actually raised, and in many cases they were, perhaps not completely, but certainly there are a number of them that were. And I think he is addressing that in the context of a – I mean, a sense of that the team were picking up issues and, of course, like all of us, wondering whether there was more that we could have done to ensure that they were – that they were acted upon. I'm not exactly sure what he means by the "much public criticism of the organisation". I think it would be wrong, of course, to associate his – I think there was more than 100 executives that were interviewed as part of the prudential inquiry. I didn't pay close attention to that because that – the role – and the role of the group auditor is actually quite important. It's an independent function. It reports through to the chair of the audit committee.

Yes?---And whilst that has a structure inside the organisation, there is complete independence in the context of I would – when I see audit reports and findings, they are never altered. He has an independent voice.

Yes. And I think he's raising concerns in this email to you about whether that independent voice has been heard and responded to in recent years. Do you accept that?---Yes, I do.

Yes. And we see further down under the heading What Does it Mean for Audit, which will come up on the screen in a minute:

Frankly, there is not much in the APRA report that audit has not said before, but perhaps we need to improve in the area of articulating our views.

You see that, Mr Comyn?---I do.

I tender this document, Commissioner.

THE COMMISSIONER: Email, Worthington to Comyn, 2 May '18, CBA.0001.0591.0179, exhibit 7.4.

EXHIBIT #7.4 EMAIL, WORTHINGTON TO COMYN, CBA.0001.0591.0179 DATED 02/05/2018

MS ORR: Now, can I ask you to look at a second response to your letter, Mr Comyn. And that's from Ms Marianne Perkovic, who's the executive general manager of Commonwealth Private, and that is at CBA.0001.0591.0553. Now, we see from the bottom that this is from Marianne Perkovic, the 11th of May 2018. Ms Perkovic gave evidence in the second round of public hearings about fees that had been charged to CBAs customers for services that they hadn't been provided?---Yes, that's right.

Now, if we look at Ms Perkovic's note to you, we see at the top of the page, towards the end of the second line:

> *My time at CBA has been leading businesses through transformation. I moved to Commonwealth Private as an opportunity to lead growth, but much of that has been shadowed by transformation. My drive and motivation to lead these challenging opportunities where I put my brand and reputation in the firing line for CBA has always been a personal commitment to putting things right for our clients. I am proud that this is how I operate, but I also feel disappointed as I know I have let some of our clients, people and the community down by not speaking up loud enough to stand up to behaviours that I knew were not right.*

Now, Mr Comyn, was that a theme of the feedback that you received that your executives were disappointed that they had let customers down by not standing up to behaviours that they knew were not right?---That – there were certainly some examples like that but they would be more in the minority. I wouldn't say that Ms Perkovic's comments there are reflective. Certainly, a sense of – for just about all of the responses, a sense of what they personally could or should have done differently. I think that was a very common theme.

Did you find it troubling that Ms Perkovic told you that she wanted to do the right thing but she wasn't able to speak up loud enough to make that happen?---Yes, I did.

And then if we move down to the heading What Resonated With Your Team, we see that Ms Perkovic said:

> *We have relied too much on legal, finance and consultant's views on how to run our business at the expense of customer and community expectations. We are too reactive and only increase our sense of urgency to fix things if issues become mandatory compliance, it is a regulatory change, gets raised at the CBA board or becomes a media or reputational risk. We apply cost stretches to businesses without speaking up the actual investment needed to businesses to set up controls right.*

Now, were these themes that you saw across other responses?---To – to varying degrees, Ms Orr. Certainly – and you may know the report speaks about the strength of the finance function, and certainly relative to a weakness of the voice of risk, as it's referred to, that is a relatively common theme. I think the – where – the point where she goes on to make that there's not enough – yes, there's not enough sense of urgency, and only fix things where they become mandatory compliance. That is a common theme. And consistent with the discussion you and I were having earlier about not investing in prevention. We seemed to be caught reacting, responding, remediating, in an ever increasing cycle of that without actually truly understanding the root cause, making the appropriate investments to actually prevent issues from recurring.

We see underneath that that Ms Perkovic identified a number of factors in the dot points that she and her team believed contributed to this situation. And they included in the first dot point:

> *Too much trust in peers and a lack of healthy challenge.*

In the second dot point:

> *Lack of urgency to resolve issues.*

And in the third dot point:

> *Too frequent excuse of good intentions to do the right thing versus difficult discussions and holding people accountable.*

Now, did those points resonate with you, Mr Comyn?---Yes, they do.

Now, I will tender that document, Commissioner.

THE COMMISSIONER: Letter Perkovic to Comyn 11 May '18, CBA.0001.0591.0553 exhibit 7.5.

EXHIBIT #7.5 LETTER PERKOVIC TO COMYN DATED 11/05/2018 (CBA.0001.0591.0553)

MS ORR: And the last response I want to take you to at this stage, Mr Comyn, was from Larissa Shafir, who is the general manager of compliance within retail banking services. That is at CBA.0001.0591.0949. We see at the top of the page that Ms Shafir said:

> *Both I personally and my team agree that the report is an accurate reflection of problems in our organisation. We are committed to implementing APRAs recommendations and we have many ideas about how this can be achieved. The RBS compliance team, both in our team meeting and in one on one discussions expressed the following thoughts and feelings upon reading the report: vindicated and relieved in relation to comments concerning risk management and culture, which reflected what the team was feeling and saying for some time now. In particular, this relates to the lack of clarity regarding*

line 2's role and the constraints preventing the voice of risk from being equal to the voice of finance. The team reflected that challenge is not always welcomed or well received.

Now, these are troubling observations from the head of compliance within retail bank. Do you agree with that, Mr Comyn?---Yes, I do.

And we see that further down in the second dot point, Ms Shafir referred to:

> *... the lack of authority of the compliance function which she said was rooted in senior management's lack of appreciation of the regulatory environment, and the legitimate expectations of good conduct the community place on an organisation of CBAs size, scale and history.*

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

And in the third dot point, Ms Shafir spoke of the need to:

> *establish an RBS compliance committee to provide an additional opportunity for the voice of compliance to be heard.*

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

And at the end of the final dot point, which starts Developing a Compliance Advice Process. Ms Shafir talked about:

> *... opportunities for compliance to partner with the business earlier to ensure that decisions are made on the basis of an understanding of compliance risk, and that compliance is not viewed as a blocker or a rubber stamp function.*

?---Yes, I see that.

Mr Comyn, Ms Shafir's comments are an indictment of the culture within CBA in relation to treatment of compliance risk, and operational risk, more generally. Do you agree?---Yes, I do.

How are you going to ensure that the voice of risk, including risk related to poor customer outcomes, is not subordinated to the voice of finance?---One of the practical steps, just as an example, has been the creation of a – you would see it as a theme throughout my witness statement, the creation of a specific management of non-financial risk which is specifically designed to deal with operational risk and compliance risk throughout the organisation in each of the business units, the support units, and ultimately the executive leadership team. Too often the risk committees that function inside the organisation, even though compliance are often regular attendees, they were also melded together with credit risk, for example, which I think the organisation spent too much time on certain risk types and not enough time. I would say – and I've known Ms Shafir for many years. She is a very diligent and capable executive. There were sort of two types of views that were expressed, at least from my recollection, out of the compliance function. One was something similar to Ms Shafir's which was more of a feeling of vindication. The other contrast to that was where they felt there was more that should have or could have been done within the compliance function. But there is little doubt that in terms of resourcing and funding specifically of the compliance team, that has been one of the larger areas of investment over the last 12 months, in terms of just number of people. And I accept that number of people is quite a distinct issue from voice, and presence, and the ability to influence senior decision-makers and, for example, non-financial risk committee, the head of compliance, which I chair, sits on that committee. We meet monthly. The head of compliance goes to the board every month and gives an update. The head of group audit gives an independent update every month.

I'm sorry -?---No, I was happy to finish on that point.

I want to put to you that it's not, Mr Comyn, about more people, it's about listening to the people that you have, about listening to people like Ms Shafir when they are speaking up for the voice of the customer in opposition to a decision that's being made for financial reasons within the business?---I absolutely agree with that.

And you accept that that is not what has occurred?---That is certainly not what has consistently occurred, no.

And Ms Shafir, also in this response to you, expressed dismay about what the prudential review revealed about CBAs most senior leaders. Do you agree with that?---Yes, I do.

She said that her team felt aggrieved:

> *...aggrieved that the board and the executive committee did not adequately challenge each other and hold themselves and each other accountable.*

?---Yes, that's right.

And what did you think when you read those comments from Ms Shafir?---Well, I was pleased that Ms Shafir is, as you would see in the tone of this email, strident in her views, and I thought that was a good sign. The – the sense of disappointment in the most senior executives across the 500 letters was a theme that was both well held and I thought appropriate.

And what are you doing about that? What are you doing to make sure that your most senior leaders adequately challenge each other and hold themselves and each other accountable moving forward?---Well, there's a number of steps that are underway at the board level but I will leave the chair to deal with those, because they're principally at the executive leadership team. One of the principal steps has been making seven appointments, so I came into the role. Trying to set a completely new tone. One of the issues that we dealt with, again, the 500 most senior leaders specifically, was around constructively challenging. I think it's a capability, it may sound strange, that is not well implemented inside the organisation. I think at one point maybe in my witness statement I make the point that there was too much focus on not just collaboration but also – actually it's in the prudential inquiry interview – there's too much of a sense of relationship at all costs. And so we – we need to bring much more sharpness and a willingness to listen, and in the past I think there has been too much fragility of – on the part of individuals to – to hear criticism.

You mention your seven new appointments. Have you removed senior leaders who did not adequately challenge each other and hold themselves and each other accountable and replace them with people who you think will do that?---Certainly one of the primary reasons of the people I have selected is not just their capability but also their ability to work as a team, and particularly to understand the collective accountability and responsibilities for the leadership of the Commonwealth Bank and to work both constructively and effectively together.

And what about challenging each other?---Well, yes.

How are you going to ensure they do that, particularly given that you've brought seven new people into that executive level?---Yes.

How could you be confident that they will do the necessary challenging of each other's positions?---Yes. Some of that is a view on the personal characteristics of the individuals, and some people are, by definition, much more willing and likely to do that. Secondly, it's obviously something that I need to encourage, and role model. It's something that we need to turn our – our minds to, specifically in the – let's say the management of our non-financial risk committee, in things like investment prioritisation, which inside a large organisation is often one that can be contentious. The overall management of risk, listening and hearing from both our regulators, community groups, getting multiple voices. It's something that in the context of one of the things that when will I be satisfied that we've got the right tone, possibly never. It's one of those things that we're going to be working on. I've got a full team off site in early December and we're spending half a day on some of the characteristics that you just spoke about. My most recent addition to the leadership team only started on 5 November of this year. So we are a team that is still coming together, but, clearly, spending time reflecting and understanding what went wrong and lead to both the prudential inquiry and why I'm sitting here today is – is a critical requirement of the leadership of the Commonwealth Bank.

Commissioner, I tender this document.

THE COMMISSIONER: That's the letter Shafir to Comyn 11 May '18, CBA.0001.0591.0949, exhibit 7.6.

EXHIBIT #7.6 LETTER SHAFIR TO COMYN DATED 11/05/2018 (CBA.0001.0591.0949)

MS ORR: Mr Comyn, I said I was going to return in more detail to a number of things. One of those – I want to do this by reference to the root causes that you've identified in your statement. And I want to start with remuneration?---Yes.

Which you had in your second category of root causes relating to accountability and governance. I want to ask you some questions about the way in which CBA has historically remunerated and now remunerates its frontline staff?---Yes.

Now, CBA frontline staff are remunerated by a combination of fixed remuneration, which is base pay and superannuation, and short-term variable remuneration, or STVR as it's referred to?---Yes, that's right.

Short-term variable remuneration is what many people would think of as an annual bonus, is that right?---It is. But we specifically do not refer to it in that context but yes, it's often referred to as a bonus.

And why is that? Why do you not refer to it in that way?---Because I think it sends the wrong message, that it's something in addition to or part of just coming to work. We tend to think about both the combination of fixed remuneration and short-term variable reward as total remuneration, and there are some principles about why we think short-term variable remuneration is appropriate. Notwithstanding, we have made numerous changes over the last five years to try and better rely on and reflect with our priorities going forward and particularly to ensure that customer outcomes are improved.

Well, let's talk about those principles. Why does CBA use short-term variable remuneration for its frontline staff?---We believe that it's important – and I accept that this is a contentious question – we believe that it's important to have an element of remuneration which is not fixed. We believe if it's well designed – and that's – I accept that that's a big if – but if it's a well-designed set of metrics or the way for people to earn their short-term variable remuneration, it is both a way of eliciting discretionary effort. It is also a way of beyond termination as a form of consequences. It's also a way to make clear consequences to individuals. So it both, if done well, which I certainly would not accept – would not suggest has been the case in all instances, I think it sends alignment and elicits discretionary effort from our people as well as, where used appropriately, it can be used as a form of consequence management. I would also say the proportion of short-term variable reward varies quite significantly across different roles inside the organisation.

I want to pick up on a number of things that you said in that answer - - -?---Yes.

- - - Mr Comyn. Firstly, I want to ask you about what you said about a short-term variable reward eliciting discretionary effort?---Yes.

Discretionary effort is a term that we see across a number of the documents. What does that mean? What is – what is the discretionary effort that you are looking for in your frontline staff?---Well, depending on how their – their performance is measured, but obviously there's a – both a performance along risk and often more increasingly in our customer outcomes, we generally evaluate our people based on what we now refer to as values, expectations. There is a very substantial proportion – again, depending on the role – so for the example of a teller all of their performance – sorry, a teller in a branch environment – all of their performance is evaluated on customer advocacy or net promoter score. So we want to ensure that we're setting an environment where people are striving to – to do their best, and to ensure that their performance is as well balanced and as appropriate. And clearly the design of performance management systems routines are very important in terms of ensuring that you do not drive or we do not drive perverse outcomes from either incentive design or financial motivation.

So what part of the answer that you just gave then about striving to do their best, what part of that is discretionary effort?---Well, I - - -

What does that mean?---From my perspective, it's the difference between what they might have otherwise done, if – if they were paid a fixed remuneration, versus if they had at least a proportion of their remuneration that was in addition to what they could earn from their fixed remuneration and provided, again, that that's well aligned, I don't think that's inappropriate.

Why does not paying an adequate and appropriate level of fixed remuneration adequately motivate and incentivise your staff?---Well, I accept that for the vast majority of people it may be hard to understand why a fixed component wouldn't – would not be sufficient. But for – for the reasons that I - - -

Try and explain it to me, Mr Comyn?---Well, perhaps I can – I can give a – I can give a practical example, and I will – I will use a – I will use an experience or an example that I used from offshore. So, for example, in the United Kingdom, one of the banks there, entirely removed their short-term variable reward. In effect, as at least I understand it, and I'm talking specifically here about a home lender in this – in this case. They – what they were in effect paid was 98 and a half per cent of their prior year's fixed remuneration and short-term variable reward. So they were guaranteed that remuneration. When I asked her about whether she would – still works the same, what has changed, her answer was simply, "I probably work 30 per cent less." And it's not just about hours of work. It's also just an alignment between, in her view, "I was going to get paid – I'm basically getting paid the same as I was previously". She was one of their best performing lenders. "I'm now getting paid the same. And I'm doing 30 per cent less work". There is, of course, a very fine balance and where you set the amount of variable remuneration is very important. In the vast majority of – and this is a question that we've asked ourselves and I've seen some of the emails that I've written about this topic in my tender bundle – there is a question, even at a – let's say for customer-facing staff that have a variable reward of no more than 10 per cent of their fixed remuneration. Often, the dollars actually seem insignificant. So why – why bother. I mean, we've grappled with that issue, Ms Orr, and what we've tried to do is create consistency through the organisation. We've tried to create alignment. And over time, one of the major changes that we've made is, of course, reducing financial weightings and outcomes. So for my role now my short-term variable remuneration is only 30 per cent. My predecessors it would have been 60 per cent. We've tried to adopt that principle right through the organisation to have alignment. I do accept that it's an open discussion, and I do not sit here today saying that there are no further opportunities to improve remuneration. I think - - -

THE COMMISSIONER: Can I?---It's still an open issue, in my mind.

Can I go back to the example you gave. You said that the employee said she was doing 30 per cent less work. Selling 30 per cent less or doing 30 per cent less work. There's a real and radical distinction?---I would say both, Commissioner. Of course, there's an assumption in that, each of those loans are appropriate, that she's fulfilling her role and duties appropriately. And the reason why in this instance she felt comfortable doing that is because she was still in the sort of top 50, top 100 lenders. And this is why – appropriately there's a lot of focus around incentives and variable remuneration but certainly in my experience I have found that there are many elements that also impact behaviour. Everything from target setting, performance management routines, the culture that's set inside the organisation in the branch and in the individual team. But I do believe in that particular instance from the lender that I was referring to, it was both a function of hours worked and, yes, that lender would have written a lower volume of loans during that time too.

Yes.

MS ORR: Do you accept, Mr Comyn, that there are lots of other ways to motivate behaviour of your frontline staff apart from a short-term variable component of their remuneration. Can I give you some and see if you accept - - -?---Yes.

- - - that these are additional ways to motivate your staff: positive feedback for their performance?---Yes.

Encouraging them to take pride in their work?---Yes.

Encouraging them to have a sense of satisfaction from helping one of your customers?---Yes.

Giving them additional responsibilities as a reward for performance?---Yes.

Promotion?---Yes.

A higher base salary?---Yes.

So all of those things are ways that you could motivate your staff to perform well in their roles?---Yes, they are.

But do you maintain that it is necessary to have another form of motivator which is short-term variable remuneration?---I would suggest that all of the elements that you raised are appropriate, and things that we, of course, do. I mean, I hosted the chief executive awards in Melbourne last week. I would suspect that for the people who were there and had won awards, that's a huge source of motivation and nothing to do with financial. So I do totally accept that there are multiple ways to motivate and drive a sense of purpose and conviction within the organisation. But to date, yes, we have maintained an approach where the – the use of variable remuneration is part of our overall approach to our employees.

Do you recall writing a paper in – or sending a paper in August last year to Sir David Higgins, the chair of your remuneration committee at CBA?---Yes.

Do you recall that paper that you sent - - -?---If it's the one I'm thinking of, which then led to a meeting that I had with Mr Higgins, yes.

It may have. I don't know about your meeting, Mr Comyn?---Right.

But perhaps if we bring it up on the screen. CBA.0002.0630.7452. 7452 is an email from you to Sir David Higgins. And the paper is attached at 7455?---Could I have a copy of that paper?

Yes, hopefully that will come up. It's CBA.0002.0630.7455?---Ms Orr, I think it's five or six pages. Would it be okay if I have a hardcopy whilst you are bringing it up as well.

Yes. I only want to take you to one part of it, Mr Comyn?---Okay. Sure.

Perhaps if I take you to that part and you can tell me if you need any more?---Yes.

That part is at page 7456. Can I ask you, firstly, was it you who wrote this paper?---I would have worked on it – someone would have been assisting me with it but certainly I would have read it, edited it – the final version and sent it to Mr Higgins, which it did lead to a meeting to discuss with him.

And the part I want to direct your attention to is at 3.2, which is under the heading Our Perspectives On Incentives And Performance Management. Do you see 3.2:

> *We have to focus on holistic motivation, not just formal incentives.*

?---Yes, I do.

Do you see towards the bottom of that paragraph:

> *At its most fundamental, our people care about job security, personal growth, a positive environment, and career advancement. CBA has a strong service*

culture and our people are intrinsically motivated by feeling that they are helping customers and playing their part in a winning team.

?---Yes, that - - -

Do you agree with that, Mr Comyn?---Yes, I do. We did research and actually asked our people about what motivates them and that was - - -

And this is what motivates them?---In addition to – and the point I'm trying to make is it's of course not just variable incentives and depending on the role actually some of those factors play a much larger source of motivation for people.

But given these factors, I want to put squarely to you again, why do you need variable remuneration for your frontline staff?---And this is the – in particular, this example is the one that we grappled with for the vast majority of our customer-facing people in branches where the variable incentive, as this makes clear, is 10 per cent, which in – in round dollars, I think the average payment is something like $1500. Is it necessary, given all of those elements are both a source of motivation – and I go on I think in the paper to also talk about – it may not be in this paper but there's one that looks like it or an email that I sent to the chief executive officer, a number of things that we need to manage to ensure that we get good customer outcomes, not just the incentive design which was all around target setting, performance management routines, culture. Because people – this point around being – playing their part in a winning team, I – I've seen examples where people have done the wrong thing for no financial incentive but they wanted to play their part. So it's this sort of combination. And this is my point at times I feel that there's too much focus on formal incentives and the holistic motivation overall is very important.

Because you believe, do you not, that at its most fundamental, the people at CBA care about job security, personal growth, a positive environment, and career advancement?---Yes. Particularly as – in my role there I'm referring to the customer-facing staff and the retail bank. Yes.

Yes. And I am talking about frontline staff at the moment. All right. Could I tender that email and paper, Commissioner.

THE COMMISSIONER: Email Comyn to Higgins of 10 August '17, together with its attached paper, CBA.0002.0630.7452 and CBA.0002.0630.7455 become exhibit 7.7.

EXHIBIT #7.7 EMAIL COMYN TO HIGGINS DATED 10/08/2017, TOGETHER WITH ITS ATTACHED PAPER (CBA.0002.0630.7452 & CBA.0002.0630.7455)

MS ORR: Another part of the answer you gave some time ago now, Mr Comyn, about why CBA has short-term variable remuneration related to consequence management. Do you recall that?---Yes, I do.

And I assume you meant by that that withholding that part of a person's remuneration could be used as a consequence for poor behaviour?---Yes, everything including 100 per cent of that, yes.

Yes. But you have many other ways of demonstrating disapproval of your frontline staff's behaviour. Do you agree with that?---Yes.

You could withhold a promotion?---Yes.

You could actively demote someone?---I can't think of any instances where – I'm not sure - - -

You don't do that in CBA?---Well, I think in there – I think there's a requirement where someone role changes substantially. I think that may be a trigger contractually, but I would need to – it's certainly not a common practice to actively demote staff.

What about removing some of their duties?---Yes, that would be – that would be possible.

There's a whole range of disciplinary action that you could take?---Yes, everything from a letter, first and final, ultimately termination, yes.

So there's a wide range of tools available to you within CBA in your consequence management framework other than withholding of a person's short-term variable remuneration?---Yes, that's right. And I don't see the categories as mutually exclusive.

Do you think that there are inherent risks in incentivising people with variable remuneration?---Inherent risks, yes, I do.

And what do you see as those inherent risks?---Well, a lot of what we've already discussed, Ms Orr. So often the proportion of the variable remuneration, the way the variable remuneration is designed. So what are the different elements that are contributing to a successful performance. So, for example, if that was a 100 per cent weighting on financial performance, depending on the slope of the payout curve. So I think in the context of something like the Sedgwick report, you might be familiar with the concept of accelerator, so I get over a certain target, it's not a linear relationship beyond that. In the case of, at least in my view, observing something like Wells Fargo. Actually my view is the main contributing factor there was less incentives, it was more around target setting and performance management routines. So what I mean by that is setting very aggressive targets for people to be required to reach – to be successful and, of course, consistent with the email we just discussed, people worry about personal job security, quite understandably. Yes, I very much accept there are a number of inherent risks.

Do you accept that one of the risks of variable remuneration is that your staff will do the wrong thing by the customer in order to secure their variable remuneration?---There have been examples of that, yes.

And do you accept that that - - -?---I do.

- - - is an inherent risk - - -?---I do.

- - - of short-term variable remuneration?---I do.

And we've seen in your statement instances of that risk eventuating. Do you agree with that?---Yes.

And one example of that risk eventuating is the conduct of your branch staff in relation to the Youthsaver or Dollarmites product. You address that in your statement?---Yes, I do.

And you tell us that in 2013 it was discovered that staff in a number of your branches had been making small deposits into Youthsaver accounts in circumstances where the account had been opened for a child but no deposit had yet been made?---Yes, that's right.

And by depositing an amount into that account, the branch staff transformed the account into what is referred to in CBA as an active account?---Yes.

And each branch had targets for the number of active accounts?---Yes. Perhaps I could explain. One of the other controls to what we were talking about is something – particularly to counter – let's say the example of Wells Fargo where there were unauthorised accounts being opened. One of the ways we try to mitigate that risk is to ensure that there's no incentive that's not tied to the account actually actively being used. And one of our failures at that point in time was that we hadn't actually considered that people would deposit money into someone's account to achieve activation.

But you accept that at that time each branch had targets for the number of active accounts?---Yes. It was at that point in time structured by categories of products. So transaction accounts, savings accounts, and the – the only way that either of those are measured is on what we call a quality account which is an active account. We can use that interchangeably.

Well, those activation targets contributed to something called the branch performance rating, didn't they?---Branch performance reporting, yes.

And that fed into the amount of variable remuneration that the branch staff then received?---Yes.

So staff deposited amounts of money, small amounts of money into children's accounts in order to maximise their bonus?---Yes, provided a number of other elements were met, it was a – there's a probability of a pay-off resulting from that conduct, ie, there are reasons why if you don't hit various risk value assessments, but, yes, ultimately, I understand that that was one of the – the reasons that may have motivated - - -

But that was why they were doing it, wasn't it, Mr Comyn?---As you notice in my witness statement we didn't do as thorough an investigation as we should have, but I think it's reasonable to assume that that is certainly one of the primary reasons.

And what does that say to you about the role that targets and bonuses can play in driving poor conduct by your staff?---Yes, they can drive perverse outcomes.

Does variable remuneration help you to sell the bank's products?---It's not designed in that way but for the – to the – insofar as – from a principle perspective but I certainly accept that where there is a element of financial contribution to someone's variable rewards, then that is – that is generally aligned with the sale or provision of a product or service to a customer, yes.

So do you accept that it does help you to sell the bank's products?---Yes.

Yes.

THE COMMISSIONER: Isn't that the discretionary effort that you're looking for?---Not – not - - -

Go on?---Not exclusively, Commissioner, but it is certainly - - -

What other content has it got, Mr Comyn? Discretionary effort I can understand as by reference to the lender you mentioned earlier. What other elements has it?---So in the vast majority of roles now there would be a 50 per cent weighting on customer advocacy, which is a measure that we call for net promoter score. So it drives discretionary effort to improve that. And each – each week, every branch in this example in the retail bank would get their overall score, they get observations. The leader is then to sit down with the individual and say, "Here's the feedback that we got from the customers that you served." It's de-identified. But what can we learn from those observations. It is designed to elicit discretionary effort across a range of different measures and outcomes but I do accept that one of those is attributed to financial performance.

Yes.

MS ORR: Now, Mr Comyn, on 1 January this year when you were in the process of being considered for appointment as CEO of CBA, you sent an email to Ms Livingstone, the chair of the CBA board, in which you raised the risk of poor conduct as a result of incentives. Do you recall that?---Yes.

Can I take you to that email, which is CBA.1004.0158.0019. Now, this is a copy of the email that you sent to Ms Livingstone on 1 January this year?---Yes, it is.

And in this email, you provided Ms Livingstone with some reflections on four topics that you had discussed with her, being what you expected would come out of the Royal Commission, how you would handle the pressure and scrutiny associated with the role of CEO, how you would make changes to the composition and operation of CBAs executive committee and your perspectives on the board. Is that right?---Yes, I had spent approximately three hours with Ms Livingstone on the 29th, and I sent this email on a flight to the US with my daughter.

Yes. And you agree that you dealt with those topics - - -?---Yes, I did.

- - - in this email. And on the first page, the page that's on the screen at the moment, you dealt with what you expected would come out of the Royal Commission. Do you see that there?---Yes, I do.

And on this page and the following page which we will have brought up side by side to assist you, 0020, you identified three categories of issue, being those that CBA had addressed proactively with regulators over the last few years. Do you see that?---Yes, I do.

Issues that predated your time leading retail banking services, including Storm Financial and CBAs lending standards around that time?---Yes, I do.

And issues that CBA had been aware of and debated but had not acted on, which could come in for new scrutiny and criticism?---Yes.

Now, here you referred to things like CBAs consumer credit insurance product which was the subject of a case study in the first round of hearings?---Yes.

Now, if we turn back to the first category of issue on the first page there, that's what you described as issues that CBA had already proactively addressed. You said:

> *For example, reward and incentive arrangements for staff and residential lending standards.*

Do you see that in the second and third lines of that paragraph?---Yes, I do.

And further down, we see, a few lines down:

During this time we have also invested in greater monitoring of sales practices and have found a number of instances where our people were acting inappropriately, often as a result of real or perceived incentives. For example, direct bank in 2014.

?---Yes, that's right.

What happened at direct bank in 2014, Mr Comyn?---We found examples where our staff were acting inappropriately, and I certainly put one of the reasons for that because of the incentives that were in place that led to a number of staff being terminated.

And in what way were those staff acting inappropriately?---From memory, it was related to the sale of certain products, including consumer credit insurance.

They were misselling those products?---Yes.

And you linked that with the incentives that were in place for them to sell those products?---I think that was certainly one of the contributing factors, and based on, as I recall, the number of staff that were terminated, they were interviewed and whilst I didn't sit on those interviews, I was briefed about some of the responses that people gave for why they had engaged in that conduct.

So given those sorts of links that you were aware of between poor conduct and variable remuneration, have you considered moving away from a remuneration model that incentivises people through variable remuneration?---Yes, I have.

And you've decided not to?---To date, yes, Ms Orr.

And why is that?---For all of the reasons that we discussed, I - - -

And is that decision still under consideration?---In – yes. I think incentives is one of the issues that should be regularly considered and discussed, and the paper that you referred to earlier, to the rem committee, it's something that we discussed with both the leadership team and the board, from executive remuneration right the way through the organisation.

And what would need to happen for you to move away from variable remuneration for your frontline staff?---Well, I – I would – nothing would need to happen other than for me to make a decision. Certainly for more senior executives, there are, of course, shareholder consequences in the – in the way that they're getting engaged but as it relates to roles where they're not key management personnel, those decisions would ultimately be mine.

So nothing would need to happen other than you making that decision?---Yes.

And you're aware of the links between variable remuneration and poor customer outcomes?---Yes, I'm trying to be as transparent as possible to Ms Livingstone in this email and yes, I am.

But you decided not to respond to those links by removing variable remuneration?---We've made a number of changes to variable remuneration. More – most recently, of course, in the response to Sedgwick recommendations which are quite a comprehensive overhaul. I would certainly be committed to, if they are not completely successful, then it may – and it probably will be – necessary to take further steps.

Do you think that there's any problem with being the first person to make this sort of change in your industry, Mr Comyn, if you were the first bank to remove variable remuneration from your frontline staff?---I'm speaking specifically about the retail bank or more broadly because they will differ across. But in the retail bank, for example, for the vast majority of roles, I don't see an impediment. The lending job family is one that I would cause – I do think there would be implications.

Is that because traditionally, for quite a long time, your lenders and lenders across the industry have been remunerated by reference to the achievement of sales targets?---Yes. It's also in reference to other job opportunities for a lender, principally in the mortgage broking - - -

Yes?--- - - - market. And I'm happy to provide my observations on exactly what happened in the United Kingdom about – so what happened in the UK was the removal of incentives within the major banks and quite an uneven playing field between the major banks and intermediaries. And what occurred was, broadly, 55 per cent of mortgages that were being originated in the UK through brokers then went to, the last time I was there, about 75 per cent. And that is a problem for a number of different reasons, not just withstanding, perhaps, quality, perhaps risk metrics, but there are second and third order effects from that. And I say that because the origination of mortgages fundamentally underpin the economics of things like the branch network. So if you look into the UK you will see all of the major banks there are shutting branches because, in effect, what is happening is more and more of their customers are dealing with intermediaries, which is putting more financial pressure on their branch network. They close their branches, it helps the intermediaries any more and you get into a precipitative cycle down. So I would be conscious of an even playing field across the financial institutions, and key intermediaries such as mortgage brokers. Those sorts of concerns would not exist for – for many other roles.

I want to come to talking to you in a bit more detail about the home lending situation, and the need, as I think you've described it in documents that we have for channel neutrality between your direct lending through your proprietary channel, and third party lending through your mortgage broker channel. So leaving home lending to one side for now, did I understand your answer to be that there was no first mover problem to removing variable remuneration for frontline staff other than lenders?---It would, of course, depend on where I – if I compensated them for – sorry, increased their fixed remuneration - - -

Yes?--- - - - such that so if - - -

Of course?---Yes. Then I think that that would not be problematic for many, if not all other roles in – certainly in the retail bank. I would need to turn my mind to it a little more in some of the other roles, in terms of business and institution, of course, their duties and their performance is quite different. But in the vast majority of those roles, if people were effectively achieving substantially or all of their remuneration and fixed without any variable component that was tied to performance, no, there wouldn't be a first mover disadvantage other than – and this probably goes to the Commissioner's question – whether I thought that may also correlate with a loss of performance.

And do you?---I think it probably would, but it's not to say that it's – obviously a topic we've done considerable work on. I mean, the experience in the UK has been that – and I think this is referenced in one of the – some of the papers that I – you have in my tender bundle. Certainly, the experience there was there were a number of sales that reduced, but a number of those sales were low quality sales, in my perspective and from my experience. So they both come with attendant risks and add little if any economic value to the institution as well. So - - -

So when you're speaking of loss of performance there, you're speaking of loss of sales of the bank's products?---Yes. Specifically to address that question. If I was going to go down that path I would more likely step into it in various job families and understand the impacts. It has also – one other observation has been my experience with other international organisations, it has been – it's quite a substantial change. And so sometimes that loss of performance is not because incentives are removed but actually, it's just the effect of the change. And so particularly for people who are used to measuring performance have all of their performance management routines the way they lead – and it's quite a – it's quite a structured environment. And that structure has helped us to try and improve the customer outcomes because we effectively try and make the processes that we ask our leaders to be quite prescriptive and to band, for example, leader boards, etcetera. So it's certainly not something that I would be unwilling to do in the future.

All right. Commissioner, could I tender this email from Mr Comyn to Ms Livingstone.

THE COMMISSIONER: Email Comyn to Livingstone 1 January '18 CBA.1004.0158.0019, exhibit 7.8.

EXHIBIT #7.8 EMAIL COMYN TO LIVINGSTONE DATED 01/01/2018 (CBA.1004.0158.0019)

MS ORR: Mr Comyn I just want to stick with these incentive issues for a little bit longer because we see from the documents that incentive structures are something that you have been thinking about at CBA for a number of years?---Yes.

Is that right?---Yes, it is. I had one other thought to the previous question, if I may, Ms Orr.

Yes. Yes, Mr Comyn?---The other part that would concern me is then the lack of – depending on how far up the organisation, there's a, in my view, an alignment issue that would need to be addressed. So it would be quite easy for me, for example, to remove variable compensation for a range of roles. But for that – for that to stop at branch manager or area manager level, but actually if the – if the people further up in the organisation are measured in a completely different way, actually, at least in my experience that I've seen in other institutions, it – it isn't as effective as it otherwise could be because, of course, there's a top down which drives again a performance management routine which also does the effectiveness otherwise of the incentive. You are quite right, I have spent a lot of time on this particular topic over the last few years and it's - - -

Why not - - -?---I think - - -

Why not make the change further up, then, Mr Comyn? Why not fix that problem that way?---Well, I – I think – as it relates to my remuneration, I think our shareholders – and this is obviously quite a vexed debate in the Australian context as it is in many markets about – and my views about remuneration are, of course, just mine. The board and the board remuneration committee ultimately set my remuneration.

Yes?---And, of course, the structure in – in the Australian context is shareholders effectively vote on that remuneration report, and if they're not happy with it they can strike and spill a board.

Yes?---So – and generally, shareholders are, at least in my experience to date, very reluctant to remove financial performance from executives of any listed company.

THE COMMISSIONER: Well, shareholders or institutional shareholders?---Good – that's a very important distinction. Institutional shareholders, Commissioner.

And particular kinds of institutional shareholders or institutions generally?---No, institutions generally. And their – their approach actually does differ in terms of their preferred models. The only thing I would say – and I say this from recent experience, having attended our annual general meeting – of course, our customers – our shareholders – we have about 800,000 families who hold shares directly and millions more indirectly. They – they care enormously about the dividend. And, of course, that's one of the main reasons why our shareholders have retained their interest in the Commonwealth Bank. But there were a number of shareholders who came up to me last week and said, "It's really important that – I really care about my dividend but I only care about that dividend if it's earned in an ethical way."

Well – and there comes an important point about length of the horizon, does there not? That is, do you take a short-term view, do you take this year's report, do you take this half-year's report, or do you look longer term? And is there any appetite in the institutions, institutional shareholders, to look beyond the next year's result?---It does vary quite a bit. So we – we're fortunate to have, so far as we have more than 50 per cent of our shareholder base would be owned by retail households. Another 30 per cent broadly would be domestic institutions, and about 11 per cent from the US, foreign, and nine per cent from the UK. Their horizons differ quite dramatically. And in my experience, we – I would spend time meeting with investors who are long, so they're interested in holding the stock for many years. I'm not as interested in meeting for – let's say with hedge funds who may be coming in and out of the stock rapidly. I've met with investors who have held the stock for 13 or 14 years and, in my view, a very long-term horizon. I've met with other and have a very good understanding of the importance of balance performance over the long term. I've had meetings with investors where the only thing they've asked about is the culture, the changes that are underway. I've also had meetings with investors where they've said, "Your only job, Mr Comyn," in quite a forceful tone, "is maximise the value of the firm." So I think the – there are quite divergent issues.

Well, the – maximise the value of the firm has a suppressed premise about over what term, doesn't it?---It – it does. It does. But – yes, striking the right balance is, of course, critical for – for – for me and, of course, the board.

And what horizon should I take to account? What should be my horizon?---Long-term, Commissioner. That – that is certainly – that is certainly mine in respect of the tenure of – of my time as leading the Commonwealth Bank. I have to be thinking in 10 plus years.

Yes. Yes.

MS ORR: Mr Comyn, can I take you to an email exchange between you and the former CEO, Mr Narev back in October 2016 about some of the matters we've been discussing. That's CBA.0002.0066.3257. Are you familiar with this email chain? You've had a look at it before - - -?---Yes.

- - - coming to court today - - -?---Yes, I have.

- - - Mr Comyn?---Yes.

And you know it's an email chain between you and Mr Narev that Mr Cohen, your now deputy CEO, was copied on as well?---Yes.

And it consists of three emails between yourself and Mr Narev. And the first is one that was sent by you to Mr Narev on 7 October 2016. Can I ask you to look at that email, which commences at 3259?---I have 3257 here.

You should have 3259 very shortly?---Yes.

Now, we see halfway down the page the start of your email to Mr Narev, and we see from the first paragraph that you were outlining what you described as your current thinking regarding incentives. And in the second paragraph, you said that your email:

> *…builds upon discussions that we have been having for the last three years and includes our strategy and context, current incentive arrangements, observations from international markets, risks, and our recommended changes.*

Now, over the page at 3260, in the first paragraph you express the view that:

> *Our incentives will continue to play an important role in attracting, retaining, motivating and rewarding our people to meet our customers' needs and realise the potential of our vision.*

You see that?---Yes.

And the rest of your email provided a strategic roadmap, if you like, for how CBA could reform the incentives that it provided to its staff?---Yes.

And if we go about a third of the way down the page, we see that you started from the premise that CBAs frontline incentive schemes already comprise a number of elements that ensure CBA delivers good customer outcomes?---Yes.

And you noted that at the time CBA was the only major bank that did not have individual sales targets built into incentive schemes?---That was my view, yes.

You said:

> *Our view is that our incentive schemes are most closely aligned with good customer outcomes, followed by Westpac, ANZ and NAB.*

?---Yes.

But you recognised that CBA would need to do more to retain its favourable position as against those competitors?---Yes.

And that comment seemed to be particularly prompted by a statement from Westpac that it would remove sales incentives for tellers, which you considered to be vague, yet powerful in the marketplace. What did you mean by that, Mr Comyn?---Well, it was my understanding at the time – and I'll apologise to my competitor if this is incorrect – but it was actually accompanied by still referral targets. And so I think I go on somewhere in this email to say it's not just what we say, but it's actually all of the other elements that go around that. So it's – it's easy to actually demonstrate a positive change at a headline level, but unless you actually make sure that the results align with both the intent and you deal with some of the things you and I have been discussing around alignment, routines, practices, actually practically the changes are not as successful as - - -

Has CBA now removed sales incentives for its tellers?---Yes, but we have no referrals or there's – there's no other element to it.

And when did that happen, Mr Comyn?---I do not recall the specific date. Perhaps last in 2017. During the course of the Sedgwick implementation. I've got a feeling it's October 2017 but I'd need to double-check.

That's all right. Why did you do that?---Well, as you – I think you'll see there's a number of recommendations. I don't think at this point in time we were contemplating it, but I – I changed my view.

This is pre-Sedgwick?---Yes.

And did you remove sales incentives for tellers in response to the Sedgwick report?---I recall it went further than Sedgwick, but as you see, we had done at this point a lot of work and we continued to do work. And we made the decision to remove them from tellers and that was well-received by us – people.

Why did you do that? Why did you remove sales incentives for your tellers?---I don't recall the specific catalyst. It was more we were trying to continue to improve it.

Did you think that that would lead to better customer outcomes if you removed those sales incentives for your tellers?---I certainly hoped it would, yes.

And was that the reason you did it or - - -?---Yes.

- - - did it have nothing to do with that?---No, of course.

Yes?---But we were continuing to and consistent with my answer earlier, it was more stepping in and seeing – to and then this particular role I thought that was relatively straightforward to redesign that – their remuneration and structure, and to the point that you and I have already been discussing, how is that received by our people, did that lead to good customer outcomes, did it do anything to impact or affect their motivation and performance.

And what did you observe?---I have not observed a deterioration in their performance to date.

Have you observed an improvement in customer outcomes?---I'd need to – that's obviously – customer outcomes, of course, is a broad term. And I certainly hope throughout the recent years – and I know we will discuss some matters where we've fallen well short – I think our customer outcomes have improved. Certainly our – our people would consistently say, if I went and wrote out to all of them, do you prefer in that environment, they would say they – they do.

Prefer in what environment, sorry?---Sorry. An environment where there are no links to financial performance.

Your people prefer that?---Yes.

All right. Then sticking with your email to Mr Narev - - -

THE COMMISSIONER: Sorry. Can you tell me why – what's your understanding of why your people prefer no link to financial outcome?---Because there's a very strong sense of customer in our customer-facing teams, who actually take a lot of pride in doing a good job for their customers, and having their performance solely evaluated on their advocacy as opposed to an element of financial performance, I would say certainly for many, if – if not the majority, would be their preference.

And coming from their supervisors, as well as those who are actually facing the customer. That is, is it an attitude that you would think is reflected throughout the branch, say, if that's the relevant segment to consider?---I'd need to double-check with my head of retail. Not as close as I was 12 or 18 months ago, but I certainly haven't heard any negative feedback and I have spent time in branches with – with – with retail staff.

Yes.

MS ORR: Now, Mr Comyn, if we come back to your email to Mr Narev, we see the next part of the email you entitled International Experience, and you made some observations in the part that follows to a number of developments overseas. And if we turn to 3261, you referred to the fact that Wells Fargo – and you mentioned Wells Fargo earlier – which had been at the centre of a product mis-selling scandal in the US, had removed incentives for its employees, but that at this point no other American banks had done that?---Yes, that's my understanding.

And you also said on this page that several significant steps had been taken to reshape remuneration and incentives in the Netherlands after the regulator did work to review mortgage lending practices of the banks and identified what you described as significant challenges to good customer outcomes?---Yes, that's right.

What were those significant challenges that you were referring to there, Mr Comyn?---I just need to – well, I had the – as it goes on in that paragraph, I had the opportunity to meet with the – the chairman of the G20 taskforce into financial consumer protection in the Netherlands. And they had – instructed me they had done a lot of work on incentives. And I think I spent most of my time in that meeting discussing particularly what they had done in the mortgage industry. And they had made from – some, at least at that point in time, quite radical changes relative to what I observed in other markets.

So I want to come to those changes, the things that they had done in the Netherlands, but before we get to that, you referred to the significant challenges to good customer outcomes that were identified by the regulator in the Netherlands. Are you able to explain more about that?---Well, as I specifically recall, one of the first steps that the regulator did – and ultimately they led to those recommendations – was they did, effectively, a file review as the regulator of both lending practices in financial institutions and across the intermediaries. I can't recall all of the issues that were – that were raised but it's fair to say that those files reviews did not meet the expectations of the regulator. And - - -

In terms of how customers were dealt with?---Yes.

Yes?---And I – I – I don't recall specifically but I would say it would be highly likely that – that – in the context of a lending family, also linked specifically to borrowing capacity or – or the appropriateness of the loans and the loan files for the individual customers.

So they saw customers receiving inappropriate loans?---Yes. I don't recall the specifics exactly of the conversation. I – the part I do recall is them saying they were not at all impressed with the quality of the files that they had reviewed, but I can't recall the specifics of the – the sampling that was undertaken but I – I did spend some time, as I go on in this paragraph, to talk about some of the changes.

You went on to tell Mr Narev about some of the steps that the regulator in the Netherlands had taken to deal with those challenges to good customer outcomes, and they included a cap on variable pay, the introduction of balance score cards, removing inducements, and a ban on payments from banks to brokers. Is that right?---Yes.

I want to come back to the ban on payments from banks to brokers when I ask you some questions about the mortgage broking channel. So I want to focus for now on mortgages sold directly by banks through the proprietary channel. You went on to tell Mr Narev that the impact of those changes in the Netherlands had been viewed as positive for customers?---Yes. That was certainly the view of the chairman of the taskforce.

This had worked?---Yes. In his view, absolutely.

And were you aware of the quantum of the cap on variable pay that had been fixed in the Netherlands?---No. I – I mean, I am most specifically talking about the changes that they are dealing with, which I know you want to come back to on – on brokers in particular, because that was quite a – quite a radical shift. I don't actually recall the specifics about the cap on variable.

Are you aware of the 20 per cent cap on – of base pay that's been imposed in the Netherlands?---I saw that come through in my tender bundle over the weekend, but I - - -

Yes?---I wasn't specifically aware of that - - -

I see?--- - - - prior to that.

Are you aware of any other jurisdictions where the regulator has set a cap on the variable pay of bank staff?---I'm not current in the UK. I know there's a – I think there's a seven year deferral but I'm not sure if there's a – I think there is some form of cap. There are also, certainly in the context of the UK, in my view, some distortions in the way that remuneration has evolved in that market for senior executives, ie, the – it's a much higher fixed level of remuneration. Their KMP disclosure is much less than in the Australian context. It's a bit - - -

Are you aware that the UK has adopted 100 per cent for some bank employees as a cap on variable pay, 100 per cent of base pay?---I wasn't aware that it was specifically 100 per cent.

And the EU has also dealt with this through the capital requirements directive. Are you familiar with that?---Not specifically, Ms Orr, sorry.

All right. Now, does CBA have caps for variable pay for its frontline roles?---Yes.

And do your home lenders have caps on their variable pay?---Yes.

And what are they?---For home lenders specifically?

Yes?---So I think the amount that – for lenders at the moment is approximately 30 per cent of their fixed remuneration. There would be in the implementation of – in our – in the implementation of our Sedgwick, there would be a very small number – I think, from memory, it's about two per cent of our best lenders who would have a higher proportion of variable pay. So I think it might be up to 100 per cent. And we've retained that transitional arrangement for the – for the time being, because we are worried that if we shift that too much they will just leave and become a mortgage broker.

So how long do you think that transition period can last when you give this top two per cent of performing home lenders 100 per cent cap rather than the 30 per cent cap that applies to all the others?---Again, it will depend a little on where we set the fixed remuneration, but one of the ways that we've dealt with that is creating more gradation in terms of fixed remuneration. So it's something that myself and certainly my head of the retail bank will return to during the course of this financial year so that we have a clear view for the start of the financial year on 1 July. So it's certainly something we're looking to address. And there may be a specific date of implemented change that I'm not aware of, but that's my last recollection of – of what we had agreed.

Now, coming back to your email to Mr Narev, if we pan back to the next paragraph, we see that you also gave Mr Narev some information about incentives in the UK. Do you see that underneath the Netherlands?---Yes. Yes.

There we have – you told him that the FCA, which is the Financial Services Conduct regulator in the UK, had responded to a series of mis-selling scandals by publishing regulatory guidance discouraging banks from incentivising staff on product-based sales performance in 2012 and '13?---Yes.

And that the FCA had provided refined guidance and had fined noncompliant banks in 2015?---Yes.

And you say that:

> *As a result of that, the large banks redesigned their sales incentives and increased their emphasis on customer-centricity.*

?---Yes.

Now, if we go back to the email, we see that following this explanation of international experiences, you then identified and explained four differences that you perceived between Australia and the other markets. Do you see that towards the bottom of the page?---Yes, I do.

And they were that Australian banks were not responsible for the economic disaster that impacted Europe and the US during the GFC and, therefore, haven't faced the same regulatory scrutiny yet. Australian banking's market structure and conduct had led to an environment more focused on delivering good customer outcomes:

> *Despite the current political environment, there is no evidence of widespread mis-selling in Australian retail banking as there was in the UK, and our incentive schemes have already been through efforts to orient towards good customer outcomes as a result of FOFA, and the competitive context.*

Do you still consider each of these to be differentiating factors between Australia and the other markets, Mr Comyn?---Far less so than I did at that point in time.

Far less so. Could you explain that?---Well, I'm comfortable with bullet number 1, although, clearly, the regulatory context has understandably shifted. I – I do think the Australian banking market has focused on customer experience. Clearly, there have been examples of very poor customer outcomes. And bullet 2, I suspect we may examine this third point during the course of my appearance on mis-selling, but there has certainly been examples that I have seen since then.

It has been a big problem for CBA, hasn't it, Mr Comyn?---There have been examples of mis-selling, yes, Ms Orr. And – well, our incentive schemes, yes, have been through efforts to orient towards good customer outcomes. I certainly could point to a number of shifts. I think the way – certainly we, and perhaps the industry, introduced FOFA has not been a success.

I want to come back to that, but can I ask you just to expand briefly on what you mean by that comment now?---Well - - -

In what way has it not been a success?---Certainly, in preparation for appearing today looking at things like the fee for no service and other – other examples, I think certainly some of the exemptions that we sought in the context of FOFA, they were, in my view, poor decisions. So not requiring customers prior to the FOFA implementation to, for example, opt in for ongoing fee for service, for not removing conflicted remuneration earlier. Whilst we removed conflicted remuneration from advisers in July 2013, we have not removed the – and refunded the payments back to customers until 1 January 2019. And if you look at the elements that are required under FOFA, clearly, they have not, in our case, been successfully implemented.

So do I understand that answer to mean – can I summarise, and you can tell me if I've got this right or wrong – there were mistakes or errors of judgment, poor decisions in terms of the carve-outs that banks lobbied for in relation to FOFA?---Yes.

And there were mistakes, poor decisions, poor judgment in terms of the way that banks transitioned from commission-based structures through to fee-paying structures under FOFA?---Yes.

And we saw that one of the primary consequences of those failings was the fees for no service situations that have arisen at a number of the major banks?---Yes.

All right. Now, fees for no service is something I will come back to, but can we go back to your email to Mr Narev. Having pointed out these four differences between CBA and the other markets, if we turn to 3262, we see that you identified four risks that CBA's incentive schemes and performance management schemes needed to avoid. Do you see that?---Yes.

They needed to avoid bad customer outcomes, including a customer receiving a product they don't need, or the wrong type of product, or loan balances that are too high for their situation?---Yes.

They needed to avoid broken promises, perceived inaction and customer needs going unmet?---Yes.

Now, we see under "customer needs go unmet", you said:

> *Meeting customer needs is the core element of what we do, and we must not land in a place where this is viewed poorly. We know from the UK experience that some products can decline so severely without proper incentives that customer needs go unmet, e.g. life insurance, and customer experience can also decline sharply in an environment where frontline staff are no longer properly motivated to serve customers.*

Now, when you refer to "customer needs" and the potential for them to go unmet, is meeting customer needs selling them CBA products?---Yes, it is. That obviously relies on the product being well-designed and it being appropriate for that particular customer. This particular topic is a – is a challenging one. We may return to this later.

Well, perhaps you could tell me now, Mr Comyn, what you see the challenges being?---Well, I mean, clearly, there have been examples where we've sold products to customers that they did not need.

And what's challenging about that, Mr Comyn?---Well - - -

Why - - -?---Well, that in and of – that in and of itself is not, but there is – there are real differences in terms of what customers would understand and the asymmetry of information. So what – so what products do I need? I know that I need a mortgage because I want to buy a house.

Yes?---I may not necessarily appreciate that if I have dependants, for example, having life insurance is a good thing to have. I may not - - -

What if I don't want life insurance, Mr Comyn?---Yes, or I feel the – the level of life insurance is appropriate in – in my superannuation.

Yes?---And to the extent that we will discuss superannuation, clearly the – we – we have failed to find a way to successfully deliver a product or products on a general advice basis. And so one of the observations that I'm making here – and at least it's my understanding and recollection of what happened in the UK, for example, was there were new legislative reforms. I think it went by the name of the RDR reforms, though I can't quite remember what those three letters stand for. All of the major financial institutions exited financial advice more or less overnight. As I understand it, 10 years on, the regulator would look at that and is concerned at the level of under-insurance and what outcomes or negative outcomes may flow from that. But I'm not using that as a way to suggest that – the way that we've delivered and tried to meet some of those needs has been appropriate either. So, you know, I'm genuinely am grappling with, as an example, how to deliver general advice products. And I've – in the case of essential super, I'm happy to no longer provide that through any assisted channel because I – I can reasonably understand that any customer that may have gone into a Commonwealth Bank branch may have thought, irrespective of whether we delivered the general advice warning, etcetera, that they have not – that their – that their personal financial circumstances were taken into account. But do I think that it should be left solely to the financial advisers? It's less clear to me that that is the – the case. As I understand it, we can't put a life insurance calculator on our website at the moment because that could be deemed as personal advice. There's – so how we most appropriately meet a need – and a need, not a sale – and how do we strike that right balance in the confines or the way that the legislation, at least that I understand it, has currently been drafted, I – I think is an important point. But I didn't necessarily have the fullness of that appreciation at that point in time. I'm more reflecting on what at least I had seen in the – in the UK experience.

We see finally from your email to Mr Narev that you propose six changes to him. And if we could bring up 3262 in full next to 3263, we will see the six changes, having identified these risks that we've just discussed:

> *To strike the right balance, I believe we need to make six changes.*

The first was:

> *Simplify and refine our current incentive schemes.*

The second was:

> *Extend and deepen our quality metrics.*

The third was:

> *Cap discretionary payments at five per cent, currently 10 per cent, for all non-lending roles below branch manager.*

Has that happened?---No, it has not.

Why hasn't that happened, Mr Comyn?---Not for a particularly strong reason. I – as I was preparing and reflecting on this email that I'd written some time ago, that was one of the things that I asked. And I think it just - - -

You don't know why it didn't happen?---No, I – I don't know specifically why we didn't implement it because, in fact, I recall having a debate with Mr Narev about whether – you know, whether five was better or zero for some – for some of those roles.

So having now seen that in preparation for today, do you plan to implement that, now you're CEO and can make that decision?---I certainly can make that decision. I would probably have a discussion with the head of the retail bank to hear his views before I did that, but I – as you have seen, I'm certainly inclined to, where appropriate, consider additional changes to what we've already done. We are making a lot of changes, which is one of the reasons why I'm preparing this email.

As – as you can see, we've been doing work on this for some time. And I'm trying to give Mr Narev a sense of, you know, what sort of changes I think might be necessary. Then, of course, Sedgwick comes along. We engage in that process, etcetera. So I think, actually, the number of changes that were made were just overtaken. I don't think there was a particular desire to drop that change. But I'm certainly very happy to return to it. I don't have an objection to it, in principle.

And your fourth suggested change at this point was:

> *Improve home loan outcomes via both broker and proprietary channels.*

The fifth was:

> *Continued intense focus on leading our vision and values linked and ensuring alignment with performance management.*

And the sixth was:

> *Embrace FOFA for Wealth.*

So this was the email that you wrote to Mr Narev at this time setting out your thinking at that point in time about reform to CBAs incentive structures?---Yes, that's right. Point 6 was beyond my control, but he asked me for my views for across the organisation, so - - -

Yes?---Yes.

Because, of course, at this time you're head of the retail bank?---That's right.

Can I take you to Mr Narev's response to your email.

THE COMMISSIONER: Just before we go to that, can I just stay a moment on point 2 and understand that better than I do, Mr Comyn:

> *Extend and deepen our quality metrics.*

Do I understand that to be looking at the quality of what has been done?---Yes.

Does it embrace, to any degree, examination of how it was done?---Yes, it will. It's generally done – so there's sort of two layers to it. The first is designing metrics. So for example, an account can only become quality if it's used X number of days afterwards, it's generally – then there's a central analytics team who would then look for concentration, outperformance. So for example, if our team detects that there's a particular branch that's doing very well or doing more than they should be in their target, then there would be an on-site review why - - -

Why are they the outlier?---Exactly what's going on.

Is it something that takes account at all of whether to do it? You see the three questions I've got. What you've done, how you've done it, but before either of those emerges is whether it should have been done. Now, do quality metrics tackle that logically preceding step of should this have been sold?---Yes. There's – there's other ways that we would try and come at that. So in the same way the analytical teams, one of the things we would do, for example, is design our core monitoring based on a customer who has taken out – and it's easier to do this in a call centre environment because everything is recorded, unlike a branch – specifically look at where a sale has been made, then go and find that call, listen to that call, listen to the nature of the – what the customer was calling for, whether that was compliant. That's, in effect, exactly how we detected the issues in Direct Bank that Ms Orr was asking me about before. So those sorts of observations are, of course, easier to do in an environment where we have a very thorough and robust record. In other environments, it's more of a sampling, for example, certainly as it relates to lending.

Yes. Yes.

MS ORR: I said I wanted to take you to Mr Narev's response to your email, Mr Comyn, which is at CBA.0002.0066.3258. And if we could have 3259 on the screen as well. Now, this is Mr Narev's response to you, starting on the left-hand side of the screen. We see that he asked you – he thanked you for your email and asked that you consider an additional matter at the very highest level of CBA's philosophy on incentives. Do you see that?---I - - -

The second paragraph?---Yes, I do, sorry. Yes.

Continuing:

> *This will ultimately be a broader group issue, but given how much thinking you have already done and the need to marry the principle with the practice, it is worth progressing a bit here. We need to stand back and ask what our philosophy is regarding performance linked remuneration. This is a very important foundation. What do we actually believe is the link between performance-related incentives and behaviours? And how is that belief reflected in the architecture of our schemes?*

He then went on:

> *Our starting point must be that all aspects of remuneration must reinforce the right customer-focused behaviours and, in particular, must align the interests of the customer with those of the employee. Subject to that, we can then look at what we really believe about how it motivates. Do we believe it is necessary for discretionary effort? Is it necessary for establishing or reinforcing priorities? Or is it just a nice gesture? Once we have established that, we can then go into a bit more detail on how we structure the incentives.*

So this was your response from your CEO at the time, Mr Narev?---Yes.

And we see that you provided what you termed some quick reactions to Mr Narev's email. If we turn to 3257, we see those reactions. In the second paragraph, you said:

> *We want our staff to be motivated to uncover the unserved financial needs of our customers and ensure we always provide good customer outcomes. It's much easier for our people to fulfil needs that customers ask for rather than to be proactive. This is even more important as customers do more of their banking via digital channels. Customers lack the financial literacy to understand their needs and the products to best meet them. So we need to create an environment where our front line is proactive.*

Were you referring there to being proactive in selling products, Mr Comyn?---Yes, for appropriate products where it met – meets a genuine need. Yes.

You said:

> *To do this, we need a culture of customer service focused on financial wellbeing, strong performance routines and management, and reward and recognition to keep our people motivated. We need to back all this up with insights into customer needs and rigorous controls to ensure there is no incentive to put customers in products that don't meet their needs or that they don't need at all or borrow too much.*

And then the next line:

> *We believe that variable compensation is an effective way –*

"To", I think, might be missing?---Sorry.

Continuing:

> *…motivate people to provide discretionary effort.*

Now, that's the discretionary effort we've been speaking of earlier today - - -?---Yes, it is.

- - - Mr Comyn. And further down we see – can I take you two paragraphs down to the paragraph starting:

> *While financial incentives are an effective mechanism to motivate and elicit discretionary effort, they are definitely not the only one. Sales, while only a small part of someone's variable remuneration, is a very simple symbol or proxy for other sources of motivation.*

Now, in what ways are sales a proxy for other sources of motivation, Mr Comyn?---Well, I think I go on in the paragraph below, Ms Orr ..... I was referring to what we were discussing earlier. So it – I'm suggesting that in aligns with what I go on to say, a sense of purpose, feeling of progress, a sense of community and team. And when I say that, I mean that people at their heart, particularly in the retail bank, there's a strong sense of purpose and alignment to the organisation and to serving their – their customers. And they want to feel that they are contributing to the team, there are career advancement opportunities, a number of the things that you and I have discussed, Ms Orr. And I can't – I mean, Mr Narev and I end up debating – and as you would suggest, we haven't – we haven't solved it – whether – whether we need it. Whether we need it at all.

Whether you need variable remuneration?---Yes.

And - - -?---For these – for these roles, yes.

And Mr Narev was questioning that, wasn't he? He was asking you to consider whether you needed it at all?---Yes.

Where are you at this point on whether you need it, Mr Comyn?---My view hasn't changed dramatically from this point. I'm certainly – I was then open-minded. I've seen – I've certainly seen more examples of bad outcomes, so I'm dramatically concerned than I was then. I'm certainly shifting closer to the spectrum of whether the – and given the recent implementation at a large job family in our context, I mean there would be 3000 who – people who would now be – have no financial and seeing how that goes, seeing if that aligns, whether that then obviously – running a large organisation, it's – it's prudent to take steps, observe, measure, see impact, and then extend.

And the steps that you've taken to date to remove variable remuneration for some parts of your business have not hurt the business at all, have they?---As it relates to financial, no. That's my understanding, as I sit here today.

Have they hurt the business in any other way?---No. No.

Thank you. And could I just take you to the final paragraph - - -

THE COMMISSIONER: Well, you said that with a degree of force that suggested that you wonder whether the changes may not have enhanced the business. But am I reading too much into the force of your denial?---Yes. I think I was – maybe I'm apologetic for creating a misunderstanding so I was trying to quickly correct rather than strongly deny.

Yes.

MS ORR: Can I take you to the final paragraph on this page, Mr Comyn, where you refer to your discussions with someone from Wells Fargo. Do you see that?---Yes.

And you had a discussion with this person from Wells Fargo about what had happened within Wells Fargo. And you said that:

Targets were set too high. And while incentives played a role, performance was managed very hard to hit very ambitious targets.

Now, in your view, how easy is it to distinguish conceptually between the effect of targets on performance and the effect of incentives that are connected to those targets?---How easy is it to distinguish?

Yes. What's the difference, Mr Comyn?---Right. So - - -

What's the difference between a target and the money that you get if you meet the target?---Because that's just a – even if there was a – no financial incentive but there was a target, and assuming that that target was then linked to career progression, advancement - - -

Yes?--- - - - non-financial rewards, and possibly the inability to meet that target led to consequences, dismissal. My view remains the same as it was then. People will try – ultimately, people want to retain their jobs. So if you set the targets too high and they're not set appropriately – and, I mean, we've got more than 1000 branches in this context, so there's 1200 branches – you need to be able to account for differences in micro-markets, for example. They need to be set to be fair so that there's a fair and reasonable chance for anyone to hit their target. And as has I think been well-documented, Wells Fargo had a very clear position externally and a performance metric that ultimately supported their stock. And that drove a lot of very aggressive target-setting in terms of number of sales per customer.

Yes?---And because those targets were – at least in my view, after speaking to a senior executive there, a former senior executive – was that because they had set those targets so ambitiously, and because those performance management routines were so effective, i.e., "Don't meet the target, you lose your job", her view – the point that she was making to me was the incentive – and the incentives are far more aggressive, to be fair as well, than the Australian context, and all of the acceleration that we were referring to before, but it's more – it's the holistic interaction between a number of those elements that can drive people to do the wrong thing.

But where there's a financial reward for meeting a target, you can't conceptually distinguish between whether the problem is the target or the financial reward that is the result of meeting that target. That's the proposition I want to put to you?---Yes, I accept that. But if I – if the financial target is the same in both scenarios and the target is set 30 per cent higher, I suspect that there will be more perverse outcomes, from my observations, in that environment. Even allowing – in some ways, the target actually drives the behaviour more so than the financial incentive.

Why do you say that? When the result of meeting the target is that you get some money, why do you say the problem is the target rather than rewarding with the money?---Because at least in this case, job – people put primacy or priority over job security from financial. And so it might be one thing to miss out on a bonus, in the context of the US, but it's another to lose my - - -

Yes, I understand?--- - - - job. Yes.

So you're linking those - - -?---Yes.

Those consequences in addition to the - - -?---Yes.

- - - financial consequence?---Yes.

All right. I tender this email chain, Commissioner.

THE COMMISSIONER: Email between Comyn and Narev of October 2016, CBA.0002.0066.3257, exhibit 7.9.

EXHIBIT #7.9 EMAIL BETWEEN COMYN AND NAREV OF OCTOBER 2016(CBA.0002.0066.3257)

MS ORR: Now, Mr Comyn, I want to ask you a little more about how you incentivise and remunerate your home lenders at CBA. We've talked a little about that already. How important is home lending to CBA's business model?---Very.

What's CBA's share of the home loan market?---It's approximately 21 per cent for the Commonwealth Bank and I think it's about three and a half and four per cent for Bankwest. So an aggregate, best part of 25 per cent.

And you offer home loans through two channels: through your direct or proprietary channels and through the mortgage broking channel?---Yes, that's right.

And roughly, what percentage of your loans come through the direct lending channel and what percentage through the broking channel?---In the context of CBA, it would be approximately 60 per cent proprietary, 40 per cent broker-originated. And in the context of Bankwest, which is about a sixth of the size of CBA, it would be approximately 75 per cent broker originated and 25 per cent through proprietary. So close to the inverse of each other.

Now, you remunerate your home lenders like your other frontline staff with a combination of fixed and variable remuneration?---Yes.

And that variable remuneration is performance-based remuneration?---Yes.

And what determines whether a home lender gets their variable remuneration at CBA?---It has shifted over time but there would be a – certainly a risk moderator, as I think – probably in some of the older documents might be referred to as a gate, but it's both to encourage as well as, of course, remove any financial incentive if certain risk and quality metrics are not met. So that can be everything from, you know, file reviews, the quality of customer information, etcetera. Then there is, I think, a 50 per cent weighting on customer outcomes which would be a measure of the net promoter score or advocacy. 30 per cent would be on financial outcomes, the exception being for the top – top two per cent that I referred to earlier.

Yes?---And the remaining 20 per cent – I would have to double-check, Ms Orr. I - - -

Would that be for the key role activities?---Yes. Yes, it is. Thank you very much for the prompt.

That's all right?---Yes. There's a number of routines that we expect our lenders to follow in the context of the way they interact with customers.

So those financial outcomes that are 30 per cent: is that sales-based metrics?---Yes. It's – they – they would be allocated a plan, which is, in effect, a volume of loans. So yes, that's related to sales.

Now, in the emails that we've just looked at between you and Mr Narev in October 2016, you discuss not just remuneration and incentive arrangements for your own home lenders but also for mortgage brokers operating in your broking channel. Do you recall that?---With the email - - -

We will come back to it?---Yes.

Do you recall that was part of the discussion you had there as well?---Yes, there and in – in other places. Yes.

Is the issue of how best to remunerate brokers to ensure good customer outcomes another issue that you've been giving thought to for a number of years?---Yes, it is.

Now, mortgage brokers typically interact with CBA through aggregators, don't they?---Yes.

And CBA has an ownership stake in a number of mortgage aggregators?---Yes.

It part-owns Mortgage Choice, one of the largest aggregators?---Yes.

And it's the parent company of online aggregator, eChoice Home Loans?---Yes.

And it presently wholly owns Aussie Home Loans, the largest aggregator by market share?---Yes.

Now, what's CBA's current market share of the broker channel?---In terms of – so what proportion of the entire broker market would be - - -

Yes?---I don't – I think it would be in the order of – I don't know in aggregate. I would be more familiar with some of the individual aggregator groups, I think one of the larger ones like AFG, maybe 15 per cent or something of their flows. It – it can be quite volatile depending on circumstances that are occurring in the market. I say that in the context of when things like the investor lending cap came in and we remained under that cap the entire time, we saw volumes move by up to 20 per cent in a particular month. It would be something like that. We are the least dependent on the mortgage broking industry of all of the major banks.

The major banks?---Yes.

And why has CBA owned or part-owned aggregators?---So for each of those three, for very different reasons. So the stake, which I think is 16 and a half per cent of – of Mortgage Choice that came through as part – when the Commonwealth Bank acquired Count, it was part of that transaction. But we've held that since that point in time, which I think was 2011. EChoice we acquired – I think it was late last year, but certainly in the last 15 or 18 months. It's a – it's a small mortgage aggregator. There's a particular piece of technology that was – appealed to us that they had developed. And Aussie Home Loans we took out a 33 per cent stake in 2008. It increased to 80 per cent in – late 2011, then moved to – there was an option in place for the proprietors to sell the remaining 20 per cent to us which completed about 12 or 18 months ago. So of those three, I would say Aussie was an explicit strategic choice going back to 2008, in terms of at that time, as I recall – I didn't see it at the time, but I've read the strategic papers since then. It was seen as an important distribution channel. Aussie was seen as a – a leader in that industry. And there was a view that having access to a growing distribution channel was – was an important strategic priority.

So why has CBA decided to sell its interests in Mortgage Choice and Aussie Home Loans through the demerged entity?---Because our views have shifted since that point in time.

And how have they shifted, Mr Comyn?---So at the strategy – at full-day strategy session with Commonwealth Bank board in May, and in that strategy we outlined a number of priorities for the organisation over the long term. We also had a discussion about the portfolio composition, so, ultimately, the businesses that we wanted to be in to focus on. and any business that wasn't what we considered to be core to our purpose and strategy, we decided to exit, and our stake in Aussie Home Loans is one of those.

Do you think that mortgage brokers provide a valuable service to customers?---Yes, I do.

And what do you see that service as being?---Well, when it's done well, they provide – because I've seen or – certainly seen the results of a number of different research studies over time. From a customer perspective, they are seen as providing access to someone that's independent of the financial institutions, they're someone who's providing choice. Often customers would say mortgage brokers make the process easier for them. There may be a perception in some customers' minds that it might be a better price that may be available through a mortgage broking channel to them. I think for some customers they quite like the idea of a broker doing the work for them to select the loan that they think would be appropriate in their circumstances. That's generally what I recall to be the – the proposition. And I've – I've met some excellent mortgage brokers who work exceptionally hard, provide a very high quality of service and deliver good outcomes.

Do you agree with the observation of the Productivity Commission that the intimidatingly complex and confusing nature of the home loan market is a strong motivator for consumers to increasingly choose brokers over direct contact with lenders?---Yes. I would describe it as over – over time, the product complexity has increased, although we've reduced now to – I think it's only four products that are actually available for customers. One of the observations I would certainly make over the – over the last five years has been the introduction of various changes to both capital – and I'm not for one moment suggesting they weren't appropriate, they were absolutely appropriate, that the prudential regulator insisted upon. Things like investor lending caps, changes to the capital that banks need to set aside, has meant that banks at various points of time have created multiple different product types. When I – when I say that, I mean a product that's for investors, a product that's for owner/occupier, a product that is then interest-only or principal and interest. And there has been a lot of changes, beyond just pricing competition, actually. At various points in time – for example, for us I think it was in December 2016 when we were getting very close to the lending cap, we had to pull back dramatically to ensure that we stayed under it. When we introduced income-based HEM, I think over the subsequent months we lost about six or eight billion dollars of flow versus the market. I think for many customers at that point in time they may have gone to a broker to say policies are changing – APRA was doing quite a – quite a lot of changes to the serviceability policy, making changes such as unstable source of income, for example, maximum rental yields. I think all of those factors contributed to, "I will go and see a broker. They will tell me who have got, you know, appetite for a particular type of loan and a price." So I think that complexity has been multidimensional.

In your view, do mortgage brokers provide customers with advice?---Yes.

And do you regard mortgage brokers as similar to financial planners or financial advisers?---I think in a customer's eyes, yes. I think the average customer would walk in to see a broker and expect that the broker was effectively their agent working for them, was going to make the necessary inquiries, and to ensure that they were taking out a product that was appropriate for them.

But under the present legislative framework, financial planners or advisers are not permitted to receive conflicted remuneration, but mortgage brokers are?---Yes.

Now, that means that for loans that come through your broker channel, CBA currently pays upfront and trail commissions to aggregators, who then pay commissions on to the brokers. Is that right?---Yes, it is.

All right. Now, you've been in favour of moving away from a commission model for mortgage broker remuneration for some time, haven't you, Mr Comyn?---Yes, I've done a lot of work on this topic.

Well, let's talk about that work, Mr Comyn. In 2016, there were two external reviews underway in which consideration was being given to mortgage broker remuneration. One was the Sedgwick review, and the other was ASIC's review of mortgage broker remuneration?---Yes.

CBA participated in both of those reviews?---Yes.

And CBA saw them as an opportunity to advocate for changes to mortgage broker remuneration; is that right?---Yes.

And you were personally involved in CBA's responses to both of those reviews?---Yes.

Heavily involved, Mr Comyn?---I would say by most people's definitions of "heavily involved", yes.

Yes. Now, CBA provided both Mr Sedgwick and ASIC with work that it had done to compare customer outcomes in the direct loan channel with customer outcomes in the broker channel; is that right?---Yes.

And what were those pieces of work that you gave to Mr Sedgwick and to ASIC?---I had numerous engagements with Mr Sedgwick. I think I provided him with a similar – and I think in my tender bundle I think there's two particular documents that we provided to ASIC. The first was – which we took to a meeting, and then in that meeting with ASIC we were asked a number of questions. We provided a second pack of material which – and had another meeting. And I can't specifically recall if I provided – I certainly provided one. I may have provided both, but I just can't remember the sequencing of my meetings with Mr Sedgwick, which were obviously much broader than broker remuneration. We made multiple submissions to that review.

So you provided both of these pieces of work to ASIC, and you think you may have also provided them to Mr Sedgwick?---I'm – I'm almost certain I provided at least one of them to Mr Sedgwick.

All right. Well, let's look at what I think those two pieces of work are, and you can tell me if I've got that right?---Yes.

The first one is CBA.0001.0584.0050. Now, this is a slide pack, Mr Comyn, which I think you would have looked at before coming to court today. It's undated, but the metadata gives it a date of 3 November 2016. Now, I will bring up the next page, 0051, and ask you if this is one of the pieces of work that you were referring to that CBA provided to ASIC?---Yes.

Now, on this page, we can see that the document shows CBA's analysis of the differences in customer outcomes between the broker and proprietary channels at this point in time, in November 2016?---Yes. I'm not exactly sure of the – of the date, but I have no reason to suggest it's – it's – it's certainly around that time.

Yes?---But I couldn't exactly recall when the – when the meeting was.

No, that's all right?---Yes.

But this fits in the period of time when ASIC - - -?---Yes.

- - - is doing their work on this topic and Mr Sedgwick is doing this work and a much broader piece of work about remuneration?---Yes.

Okay. Now, could we look at the observations contained in this document. The observations about the differences in customer outcomes were, firstly, that:

> *Applications via brokers more commonly misrepresent borrower circumstances. Broker behaviour explains the difference. Broker-originated loans have higher initial loan-to-value ratios. Broker-originated loans are more likely to be interest-only, particularly for younger home buyers. Offers of higher broker commissions are associated with increased flows to lenders. Customers achieve equal interest rates in both channels. Consistent with commission structures, broker originated loans are paid down more slowly, costing borrowers more interest. Broker-originated loans are more commonly in arrears. And borrows with broker originated loans more often experience financial challenge.*

Now, this paper then goes on to deal with each of those observations and the evidence base for each of those observations in a bit more detail; is that right?---Yes, with the exception of the first one. As I was looking at that on the weekend, I was trying to work out – and I – I don't think we were doing any work. We were actually relying on two issues. One, that we saw higher error rates. And secondly, there was a piece of work that was publicly available at that time by a cell site analyst from UBS which had – who had done a lot of research on whether brokers were misrepresenting borrowers' information in applications, and his conclusion was they – they were substantially. So I think you will see to the other points the substantiation, but not the first.

Okay. So apart from the first dot point, these were observations made by CBA based on its own analysis of customer outcomes in its direct lending channel and its broker lending channel?---Yes, as I recall we did a five-year longitudinal study.

Right. So the information in this document is based on the findings of that five-year longitudinal study?---That's my understanding, yes.

Do you recall the period covered by that five years, if we take this as the end of 2016 for this document?---I don't specifically. If I – I don't know whether it would be possible to bring me both the documents. In the second – I know in the second one there's more information because it has – there's a page on the statistical significance of it. I don't know if one of those pages we talk specifically to the period. If I had to say, I would have thought we may have – it would at least make logical sense to have finished, let's say, the June of that year.

Yes, thank you. Well, let's have a look at 0052, which deals with the second observation on that page, which is:

> *Broker-originated loans have higher initial loan to value ratios.*

And we see that the data on this page comes from applications submitted between June and September 2016. Do you see that in the small type at the bottom of the page?---Yes, I do.

And the data showed that 55 per cent of broker applications had an LVR of more than 80 per cent, compared to 40 per cent for the proprietary channel?---Yes.

And then if we turn to 0055 – I won't take you to each of the observations. I will take you just to some. 0055 deals with the observation:

> *Offers of higher broker commissions are associated with increased flows to lenders.*

And we see on this page that CBA compared the flow of loans to another lender before and after that lender increased the size of its commission. Do you see that?---Yes. What we did, the – the CBA column refers to prior to that point of July 2014, we didn't offer a trail in year 1. We offered an upfront, but the trail didn't kick in till year 2. We added the five basis point trail in year 1 to come in line with the market. So we're basically evidencing that our flow increased after that.

Yes?---And the second example of – and again, apologies to one of my competitors. We – we used an example where they had – which was not uncommon practice – in fact, it was probably somewhat common practice at that point in time, where they had introduced a special or an increase of commission available to brokers. And what you see is an increase in the flow that is going – sorry, the – the flow of mortgages or origination of new mortgages, we're able to observe that because we have access to the AFG, which is the largest aggregator group. So we're basically making the point that brokers are sensitive to – at least in this study, in our view, which I am sure others may not agree with – are sensitive to where the commission structure is set.

So we see that the other lender had temporarily increased the commission that they paid to brokers for the period from October to December 2014, and that resulted in a 5.9 per cent increase in their share of loan flow?---Yes.

And when they decreased the commission back down to the earlier level, there was a 5.1 per cent decrease in their share of loans?---Yes.

So this was the sort of analysis that the conclusion at the top of the page was based on, offers of higher broker commissions are associated with increased flows to lenders?---Yes.

Then if we turn to 0059, we see an analysis of the data underpinning the observation:

> *Consistent with commission structures, broker-originated loans are paid down more slowly, costing borrowers more interest.*

And we see an analysis on this page of how long it took borrowers to pay down broker-originated loans?---Yes.

After five years with a $350,000 loan, customers who had obtained that loan through the proprietary channel had a balance that was $35,000 lower than customers who had obtained the same sized loan through the broker channel. Do I read that correctly?---Yes.

And then at 0061, we see an analysis of loan arrears by channel over a number of years showing that broker-originated loans were more commonly in arrears, 30 days throughout most of those years; is that right?---Yes.

And we see the analysis of the 90-day arrears on the left-hand side?---Yes. That's, obviously, our experience, yes.

Yes. So this was one of the pieces of work that you provided to ASIC to assist in their review of mortgage broker remuneration?---Yes.

I will tender that document, Commissioner.

THE COMMISSIONER: CBA slide pack of November '16 concerning customer outcomes, CBA.0001.0584.0050, exhibit 7.10.

EXHIBIT #7.10 CBA SLIDE PACK OF NOVEMBER '16 CONCERNING CUSTOMER OUTCOMES (CBA.0001.0584.0050)

MS ORR: And can I take you to what I think may be the second piece of work that you were referring to, which is CBA.0001.0584.0071. This is another undated slide pack, but the metadata suggests it was from 29 November 2016?---That's - - -

So three weeks or so after the first document. Does that sound right?---Yes, that sounds right.

And is this the document you referred to that was created after ASIC had some questions and you produced another piece of work to address those questions?---Yes.

All right. And we see that it's styled an update. And if we turn to 0072, we see the findings or observations, which are again about the difference in outcomes by channel. And they were:

> *Compared with loans applied for through the proprietary channel, customers who use brokers apply for and receive, on a like-for-like basis, loans with more leverage. As a result, this promotion of leverage by brokers leads to higher total debt-to-income levels for broker customers compared to proprietary and more frequent incidence of interest-only repayment through the broker channel. Over time, higher leverage means broker customers have an increased likelihood of falling into arrears and pay down their loans more slowly.*

So these were the observations based on the further analysis that underpinned this second document?---Yes. Yes. No, definitely. I think there were some other questions, which is why there's quite a detailed sort of statistical analysis slide. ASIC wanted some more information. I think they also wanted to understand a little bit more about the – the way the analysis had been performed.

Well, let's look at one of the slides that gives us that further information, 0073, which is headed For Representative Borrowers, Higher Leverage Leads to Inferior Outcomes. And do I read this page correctly as showing that across three groups of representative borrowers, a median owner-occupier, a first home buyer and an investor, broker-originated loans resulted in higher rates of leverage, higher starting debt and a higher balance outstanding after five years across each of those groups of representative borrowers?---Yes, that's right.

And then at 0090, after a number of further graphics supporting the observations that I took you to on the first page, we see the final page of this pack is headed Potential Regulatory Changes Could Improve Customer Outcomes. And one set of potential regulatory changes dealt with down the bottom of the page related to remuneration incentives. The potential action that's listed there is a number of things that includes introduce consumer pays and introduce flat-fee only broker compensation. Do you see that?---Yes.

So they were two potential regulatory actions to deal with remuneration incentives in the broker channel?---Yes. As I recall, that ASIC had asked us for recommendations about what – what could be done, and this – this page attempts to capture that across a number of different categories, including remuneration.

What could be done to improve customer outcomes?---Yes.

And one of the things that you said could be done was to change remuneration incentives in one or more of the four ways listed there, and the document then dealt with the rationale for why those things would result in better customer outcomes. Do you see that?---Yes.

And the rationales were that these changes would incentivise brokers to communicate and deliver a compelling customer value proposition, they would reduce the broker incentive to increase loan size and leverage, and they would reduce the broker incentive to increase leverage or mis-sell?---Yes.

So these were the ideas that CBA put to ASIC based on its five-year longitudinal study of the difference between customer outcomes in the broking channel and the proprietary channel?---Yes, they were our views.

Yes. I tender that document, Commissioner.

THE COMMISSIONER: CBA slide pack customer outcomes update of November ’16, CBA.0001.0584.0071, exhibit 7.11.

EXHIBIT #7.11 CBA SLIDE PACK CUSTOMER OUTCOMES UPDATE OF NOVEMBER ’16 (CBA.0001.0584.0071)

MS ORR: I am about to turn to another document, Commissioner.

THE COMMISSIONER: Probably, I think - - -

MS ORR: I see it’s very close to 1 o’clock.

THE COMMISSIONER: Yes.

MS ORR: Perhaps if I could leave that next document for after the luncheon break.

THE COMMISSIONER: Yes. What time do you say we should come back, Ms Orr?

MS ORR: Two o’clock would be helpful, thank you, Commissioner.

THE COMMISSIONER: Two.

Is that convenient to you, Mr Comyn?---Yes.

If we come back at 2?---Yes, of course.

Thank you.

ADJOURNED **[12.57 pm]**

RESUMED **[2.00 pm]**

THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Mr Comyn, before the break, I had taken you to those two documents that showed CBA's work analysing different customer outcomes in the direct channel to the broker channel over that five-year period. Now, that was around the end of 2016, we established, that that work occurred?---Yes.

Can I take you back to the email that we looked at earlier between you and Mr Narev, which is also from that period, in which you also deal with the issue of mortgage broker remuneration?---Yes.

So that email is CBA.0002.0066.3257. That's exhibit 7.9. And could I ask that you look at 3261, which is a part of your original email to Mr Narev, towards the top of the page where you dealt with the experience in the Netherlands. And I asked you some questions about this earlier, you might recall?---Yes.

And we talked about the fact that you had told Mr Narev that in the Netherlands, the regulator had banned payments from banks to brokers, mandating consumer pays for broker and proprietary originated home loans?---Yes, that's right.

So the Netherlands removed conflicted remuneration for brokers?---Yes.

And you told Mr Narev that:

> This had been viewed as suboptimal for brokers, with average broker fees dropping by 20 per cent, while maintaining overall share of flow.

Do you see that?---Yes.

You then said to Mr Narev that you saw this as a potential opportunity to shape the mortgage broker market for better customer outcomes and to further reduce your reliance on that channel?---Yes.

And if we go over to 3263, we will see again that one of the six changes that you recommended to Mr Narev in your email related to home lending outcomes. Do you see number 4?---Yes.

You said that:

> The biggest change to reduce the risk of lending more than a customer needs is to de-link incentives from the size of the loan; for example, flat fee. This should equally be applied to broker and proprietary channels.

And further down you said:

We are contemplating publicly advocating for a FOFA approach to mortgages where the customer would pay for advice, that is, same as the Netherlands. We have done a lot of thinking about the broker market and the implications for us and the industry, worthy of a separate discussion.

So this was the position that you put to Mr Narev - - -?---Yes.

- - - as part of your broader thinking on incentives and remuneration in this email at the end of 2016?---Yes.

Now, you developed these ideas further in a paper that you prepared for the executive committee in October 2016?---Yes.

Can I take you to those documents, CBA.0002.0067.2498. This is an agenda for the meeting of the executive committee on 31 October 2016. And the paper that you presented is at 2527. So this is a paper that you prepared dealing with sales incentives and performance management delivering good customer outcomes?---Yes.

And you attached some slides to this presentation. And if I could take you to 2531. You attached a slide called What We Can Learn From the Netherlands. Perhaps if we could blow up the first half of that document so that we can see more clearly the content of that slide, What We Can Learn From the Netherlands. Now, in the first row, you summarise the regulatory changes that have been made in relation to the proprietary channel in the Netherlands, including the cap of variable pay at 20 per cent of base pay, and the discouragement of incentives based on individual sales?---Yes.

And in the second column, you explain that this had not had a material sales impact as the starting position of the Dutch banks was already customer-centric, but beyond the banks it had caused a major drop in sales for some insurance products with a pushy sales culture?---Yes.

And in the second row, you summarise the regulatory changes that have been made in relation to the broker channel in the Netherlands, including the ban on payments from banks to brokers and the requirement for both banks and brokers to charge an advice fee before executing a mortgage?---Yes.

Now, in the second column there, you explained that this had initially led to a drop in broker market share but had since returned, although the average broker fee per advice was down about 20 per cent, and that banks were reluctant to undercut brokers on fees due to their reliance on the broking channel?---Yes, I think the regulator also regulated it to ensure that they couldn't.

They could not undercut?---Yes. As I recall it from the discussions I said with the chairman of the G20 OECD regulator, I think they actually introduced a standard so that it was similar across proprietary distribution and brokers, so that either that they would ensure that if – you couldn't just create distortion. So as I understand it, there was some form of regulatory umbrella over all channels so that no part of the market could gain an unfair advantage. And they wanted to, as we should here, preserve that channel in the interests of promoting competition.

And I think that's dealt with in the key takeaways that you've got on the right-hand side of the screen. What you saw as the key takeaways from the Netherlands' experience were, firstly, that a customer-centric starting position should minimise the impact of the changes. Second, expect significant drops for products that are sold, not bought. What did you mean by that, Mr Comyn?---Typically, wealth management products, insurance, as an example, unlike banking products where, as I said earlier, it's quite clear to a customer if they want to make a deposit, they want to open a transaction account, they want to buy a house, they need a mortgage. It's not always as clear if they needed a particular insurance product. If they went and saw a financial adviser, they wouldn't necessarily understand what products they actually needed and, therefore, they're depending on that adviser performing their duty.

So that's what you were referring to - - -?---Yes.

- - - when you were talking about products that were sold, not bought?---Yes.

And your third key takeaway was:

Fixed fee consumer pays broker model encourages price competition, reducing broker revenues.

?---Yes.

And the final was:

In consumer pays broker model, regulator may level the playing field by forcing banks to charge for service.

Now, is that what you were referring to before?---Exactly what I was referring to before.

So your understanding of what happened in the Netherlands was that they moved to a consumer pays fee for brokers, and to keep channel neutrality between the proprietary channel for banks and the broking channel they required the banks to also charge a fee for the execution of a mortgage to a customer who came to them directly?---Yes, exactly. So in the context of our situation, it would prevent, let's say, the fee being set that a customer would pay a broker – let's call it $2000 A – but a financial institution such as ourselves couldn't charge $200 because we were prepared to cross-subsidise, because of our scale that would create - - -

Yes?--- - - - an unfair advantage relative to the – to the broker. So there needed to be some form of competition – sorry, regulation to ensure there was no beneficial or undue advantage gained.

So that was something that the Netherlands' regulators explicitly considered and dealt with in the model that they rolled out, by requiring a fee to be charged whichever channel the loan came through?---Yes, that's my understanding.

And you understand they did that with a view to preserving the competitive nature of the broking channel against the bank channel?---Yes, their primary motivation, as I recall, was improving customer outcomes, but their secondary consideration was ensuring there were no distortions and no – no player was given an undue advantage.

So you obviously did some work into understanding this quite different model in the Netherlands. We see that you spoke to Mr Narev about it in the email I took you to earlier, and we see that you presented to the executive committee about it in October 2016. How was this model received by the executive committee?---With interest. I mean, Mr Narev asked me to make this – and I think you saw in the agenda, it was only 30 minutes. It was more of a presentation of, "Here is how I was thinking about incentives more broadly", and to the extent that it was relevant for others around the executive committee. But yes, to understand the Netherlands' position, I – I flew to the UK and met with the – the regulator there who had over seen those changes, and I think I had spoken with him on the phone as well.

You flew to the UK to meet with the Dutch regulator. Is that - - -?---Yes.

Yes?---Well, whilst I was in the UK, I met with the Dutch regulator.

Yes, I understand. And did you believe – when you were putting these documents together, did you believe that a flat fee paid by the customer would lead to better customer outcomes than the present commission model?---Yes.

And did you think that the introduction of a flat fee paid by the customer would reduce the broker's share of the home loan market?---Sorry, did I think the introduction of a flat fee?

Yes?---Depended a lot on where the fee was set.

And if it did reduce the brokers' share of the home loan market, did you think that that brokers' share could rebound after a period, as it did in the Netherlands?---Yes, I did. It – it could also be said, though, that as a large financial institution, we would seek – we could gain from any interruption in the mortgage broker model.

Yes?---But yes. What surprised me what I found was interesting in the Netherlands, because it was quite a dramatic shift, and it surprised me, at least according to the person that I spoke to, despite, as you would imagine, a lot of resistance over time, it actually, at least in their view, had proven to be quite effective.

Effective in what way? Effective in ensuring good customer outcomes?---Good customer outcomes and actually the – reforming any industry is difficult, but after the period of reform and disruption, actually, the industry returned to a – an equilibrium which were quite similar to pre the reform.

So the broking channel survived?---Yes, that's my understanding.

And you said equilibrium came to be restored?---Yes.

Do you think that customers in Australia would continue to use brokers if they had to pay a fee for their services?---Provided it was a fee that was charged across all points. So I – I think it would put a material disadvantage to the brokers if customers paid a broker but they didn't have to pay a similar amount to a financial institution. I think that would create a distortion.

And assuming they did, assuming wherever the customer went they had to pay a fee for getting the mortgage, do you think customers would continue to use brokers?---Yes.

Do you think that customers value the service provided by brokers enough to pay a fee?---Yes.

And do you have any views on how they would react if they were required to pay a fee but they were able to capitalise that fee into the loan?---The brokers or the customers?

The customer?---Yes, I think - - -

So the customer is required to pay the fee but they're told it can be capitalised into the loan in the way mortgage insurance or other sorts of fees can be capitalised into the loan. What effect do you think that might have?---I think that that would be supported.

Supported by?---Customers.

And do you think that if a fee paid by the customer was introduced in Australia, banks would be reluctant to undercut brokers on fees in the same way banks were in the Netherlands? Or do you anticipate that you would need the same regulatory reform to ensure that that was the case?---I – I think some degree of regulatory reform to ensure that there were no distortions created would be good. There's also combinations where you could have bank pays a set proportion to broker, customer over and above that amount. There's lots of different models that we developed. We thought about flat fees, transitionary payments. We may go to some of those. But in essence, what surprised me – it has been several years, but, as I recall, one of the pieces of research that the Dutch had done that – I'm sure this example also translates into financial advice – when you go out and ask a customer what they would be prepared to pay, it's a lot less than what the provider of that advice would want to charge. But over time, that actually normalised. And so I can't remember all of the details, but I think the fee – they did quite a lot of research. They set the fee at a reasonable level, regulated it, and then, as I recall, the fee was increased over time and customers were more willing to pay that. And at least the regulator's perspective was the customer outcomes, the conduct had improved.

THE COMMISSIONER: Well, it's ultimately a question of transparency of the cost, isn't it? The cost is incurred. Now, whether it's recouped by an adjustment in the price the customer pays for the product or it is a line item where the customer is outlaying cold hard dollars to pay for it, it matters not, does it? It's a question of is there a cost? Yes. What is that cost? Is it transparent? And is it transparent? Who bears it?---Exactly. And ultimately, even the current construct, in the end, customers are paying.

Yes. No free lunch?---No.

Right?---And so part of – we may see in some of the documents some of the things that we were considering is, of course, how to best pass some of that value through to customers as well.

MS ORR: What impact do you think a move to a flat fee model paid by the customer would have on smaller and regional lenders?---Proprietary, as in financial institutions? We will provide it because they are – provided the broker channel was able to continue to thrive and operate. I – I wouldn't have thought it would – at least it's not immediately apparent to me now what the big – what the impact would be to them. Of course, they don't have the same physical distribution as we do, so they rely on that intermediary channel to compete, effectively, with the larger financial institutions. So provided that distribution channel remained viable over time, I'm not sure that there should be an impact to them.

The Productivity Commission calculated that on average, each smaller lender would have needed to open 118 new branches to generate the equivalent market share achieved through the use of brokers. Have you seen that statistic?---I don't recall it specifically, no.

Does that sound about right to you?---Yes.

And do you have any ideas about how the competitive influence of smaller and regional lenders could be maintained if brokers commenced being remunerated with a fixed fee paid by the consumer? For you, is it just a matter of keeping the broking channel viable?---Yes. So they have access to, let's call it 17 and a half thousand brokers regionally, provided they're on the panel, they've got competitive products, and that distribution channel is not weakened insofar as capacity, in particular, to service customers, and from a customer perspective, the attractiveness of that channel is equally as – as attractive as it is today, then I would see no detrimental impact.

Because competition in the home loan market is a good thing for customers. Would you agree?---Yes.

But so is removing remuneration models that are inherently conflicted and, therefore, create the risk and, according to your internal work at CBA, the reality of poor customer outcomes?---Yes, that's right.

All right. Could I tender that document, Commissioner.

THE COMMISSIONER: Memorandum of Commonwealth executive committee slide pack October '16, CBA.0002.0067.4298, exhibit 7.12.

EXHIBIT #7.12 MEMORANDUM OF COMMONWEALTH EXECUTIVE COMMITTEE SLIDE PACK OF OCTOBER '16 (CBA.0002.0067.4298)

MS ORR: Now, this was the presentation that you gave at the end of October 2016. Then in the new year, in 2017, in response to an issues paper issued by Mr Sedgwick, CBA put together a submission for Mr Sedgwick about mortgage broker remuneration?---Yes.

And that submission was tendered in the first round of hearings. It was dated 10 February 2017. It was a letter from Mr Narev to Mr Sedgwick. You recall that letter?---I do.

And did you have input into that letter?---Yes, I did.

And in that letter, or submission, CBA raised the idea of a flat-fee payment for brokers, and Mr Narev said that a flat fee would enable brokers to be agnostic towards loan size and leverage. Now, was the flat fee referred to in that submission intended to be a fee paid by the customer, as we see in the documents that we've been discussing, or a fee paid by the lender?---I think at that time we were contemplating lender rather than customer. We felt that it was quite a big departure from current practice to go to the Netherlands. So I think you will find in even our internal workings, we're mostly contemplating how to construct an appropriate flat fee, how to support what we refer to as transitional arrangements to ensure that small businesses who are broking and existing in the industry are not adversely impacted from a reduction in their income. But we – we thought through many different models at that point in time.

So despite you presenting to the executive committee about the consumer pays flat-fee model, by February 2017 when the submission was made to Mr Sedgwick, the bank had moved instead towards a flat fee model paid by the lender?---Yes.

And you said that to go to the Netherlands model would have been quite a big departure. Do you accept that going to the Netherlands' model would give more certainty about improved customer outcomes than the fee paid by the lender model?---Yes.

So why didn't you go to the Netherlands' model rather than to the lender-pays-the-fee model?---Because our – as you will see, we were struggling or grappling with how to implement. And I'm sure we will return to it. We felt there was a genuine first-mover disadvantage. We didn't think it would be replicated, absent regulatory intervention. Therefore, we didn't think we would improve customer outcomes because, effectively, no one else would change their model. We would just originate fewer loans through that channel.

So you would lose business but not have the industry move through with you to try and improve customer outcomes?---Yes. There would be a commercial detriment to us and no accompanying improvement to customer outcomes. And a – a shift to a flat-fee bank pays – and there are limitations with that model as well – we thought was more likely to be something that would be contemplated here. The Netherlands, to the best of my knowledge, is the – is the only market in the world where I've seen such a move from an intermediary channel.

So you decided to look instead at going part of the way, which was to move away from a commission structure to a fee structure, but not make the consumer pay, still have that paid directly from the lender to the broker?---Yes.

All right. Now, having put that proposition to Mr Sedgwick in the letter in February 2017, did you then have a meeting with Mr Sedgwick after that?---I recall having meetings with Mr Sedgwick, I think certainly prior to the submission, and I think post both of our submissions. I think we – we – we met as part of the – he engaged with all of the institutions in the lead-up. Then as I recall, there was an interim. We made a submission, and we met before that. There was an interim report. We met after that report and before the final report.

We have a document that appears to have been prepared within CBA for a meeting with Mr Sedgwick on 16 February, so six days after the submission was put in. I will show you that document, CBA.0001.0584.0935. So this appears to be a draft of a document prepared in anticipation of a meeting with Mr Sedgwick on 16 February 2017. Have you seen this document before, Mr Comyn?---Yes, I have.

And does it help you to recall whether there was a meeting on 16 February?---I'm sure there – there was. There was multiple meetings with Mr Sedgwick. This particular one, I understand that this document was prepared by Mr David Abusah, who was the head of Remuneration and Reward for the Commonwealth Bank.

Could I ask you to look at 0939 in this document. Now, we see that this document is structured in a way that lists the question posed by Mr Sedgwick in his issues paper with a number on the side, and then the areas where CBA supports change and CBA's position. Can I ask you to look at third party payments next to issue paper questions 29 and 30. And we see there that CBA said, part way through the first dot point:

Any changes will need to be made uniformly across the industry and across both proprietary and broker channels to eliminate bias and avoid significant market disruption. A move to a flat-fee payment would enable brokers to be agnostic towards loan size and leverage. However, consideration is needed on the amount and on appropriate claw-back periods to disincentivise the churning of loans to maximise broker income.

Now, was CBA keen to impress on Mr Sedgwick its view that changes to one home lending channel needed to be aligned with changes to another home lending channel?---Yes.

Do you believe that CBA is accountable for customer outcomes irrespective of which channel the customer gets their loan through?---Yes.

So that the same standards, as you apply in your proprietary channel, should also be upheld in the broker channel?---Yes.

And did Mr Sedgwick agree with you on the need for channel neutrality?---I don't recall it being a sort of meeting where he either agreed or disagreed. I think it was very much positioned as we were able to provide input in the – in the period in between his interim and his final report. I think he was certainly engaged in the conversation and very open to hearing about it, our views, as I am sure he was with others.

And does this remain CBA's view, that any – I will make that easier for you?---Yes.

Any change towards a flat fee needs to be made uniformly across the industry and across both proprietary and broker channels?---Yes. We – we still believe in channel neutrality, yes.

Yes. And that this needs to happen across the industry?---Yes.

Yes. All right. I will tender that document, Commissioner.

THE COMMISSIONER: Draft notes for meeting with Sedgwick February '17, CBA.0001.0584.0935, exhibit 7.13.

EXHIBIT #7.13 DRAFT NOTES FOR MEETING WITH SEDGWICK OF FEBRUARY '17 (CBA.0001.0584.0935)

MS ORR: Now, a few weeks after this meeting, in February 2017, ASIC released its report on broker remuneration: ASIC report 516?---Yes.

And ASIC made findings about poor customer outcomes with broker loans that were consistent with the work that you had provided?---Yes.

ASIC found that broker loans were, on average, larger and had a higher loan to value ratio than direct loans?---Yes.

And that broker loans were more likely to be interest-only?---Yes.

And ASIC linked those outcomes to what it described as two inherent conflicts in the way commissions worked. It described them as the lender choice conflict and the product choice conflict. Are you familiar with those, Mr Comyn?---I don't – I don't recall specifically what they're referring to.

The lender choice conflict was described as a conflict that arises because a broker has a self-interest in recommending a loan from a lender that will offer the broker a higher commission?---Mmm.

You understand that?---I do.

And the product choice conflict arises because a broker has a self-interest in encouraging a customer to seek a larger loan because the more that that customer borrows, the greater the upfront commission for the broker?---Yes.

Now, I want to come back to those two particular types of conflicts. But before that report was released, ASIC provided CBA with a draft?---Yes. I think they only – I don't know that they provided the whole report. There was a particular sector that they – segment of the report. They may have provided the whole report, but I do definitely remember one element of it.

And that draft that you received, whether in whole or in part, was the subject of discussion within CBA. Do you recall that?---Yes.

Can I show you an email chain between you and Mr Narev from 10 March, CBA.0002.0073.8807. We see – we will see in a minute. You see your email to Mr Narev on 10 March down the bottom of the page. Do you see that?---Yes, I do.

You said to him:

> *The ASIC report is going to be very interesting.*

And at the end of that paragraph:

> *What they say on the existing commission structure is the big question.*

?---Yes.

And you referred in the next paragraph to a meeting you had had with ASIC in November 2016 at which you said you had got the sense that ASIC would find that there was no evidence of broker commissions driving increased debt, slower repayments, and customers paying more interest?---That was my sense from the meeting, yes.

And then you refer to the five-year longitudinal study that you had done for them which showed that broker incentives were demonstrably leading to poor customer outcomes. And you said to Mr Narev:

> *We've done quite a bit of work with them on this recently and they know we will support a move to an amortising flat fee model and FOFA-like reforms.*

We have reforms over the page. Perhaps if we could just bring up 8808 as well. You see that?---Yes.

You then said to Mr Narev:

> *What we've made clear is that it's very hard for us to move unilaterally so we would need legislation.*

And further down:

> *If all that happens, then the important question is where to set the flat fee. We've done quite a bit of thinking about this, which would be great to bounce around with you at some stage.*

Now, that was your email to Mr Narev. Can I ask you to look at his response on the left-hand side of the page:

> *All interesting and constructive. As you know, history is littered with banks, even big ones, who try to take on the broker channel and lose. I agree that it looks like we are on the cusp of a genuine discontinuity. We also need to understand that the prisoner's dilemma still applies here. So if you are going to try and lead the pack to the top right quadrant, you had better be sure. It is clear that NAB and ANZ have a heavy reliance on brokers, so if they are smart they could see this as a step-out opportunity to turn that channel in their favour.*

That was Mr Narev's response to you?---Yes, it was.

What did you understand him to be referring to when he referred to the "prisoner's dilemma" there?---He's questioning whether they will – whether anyone else will follow us if we move unilaterally. He's implying they will not.

And he says:

> *We are on the cusp of a genuine discontinuity.*

What did you understand that to mean?---A discontinuity in this construct would be referring to the opportunity to reshape the commission model in the market in order to improve customer outcomes.

And we see your response to this email towards the top of the page, you said to Mr Narev:

> *We've thought about it a lot.*

If we could bring up that paragraph:

> *We've thought about it a lot. Step 1 is enabling the discontinuity. Then we have to decide how to respond.*

What did you mean by "enabling the discontinuity", Mr Comyn?---Advocating for a change.

And what did you hope at this stage that the ASIC report in relation to mortgage broker remuneration would achieve?---I thought it would be very difficult to change the – the commission structure unless there was at least regulatory guidance, which I – which I would have thought the industry would then follow. But absent that, I thought it would be very challenging.

So I just want to understand that answer. What did you hope that the report would achieve?---I hoped it would recommend a specific commission model and structure.

Yes. A change to the commission model towards a fee model. Is that what you were hoping for?---Yes.

A recommendation that that occur, which you could then adopt and the rest of the industry would also adopt?---Yes.

But that wasn't what happened?---No.

All right. Could I tender this email chain, Commissioner.

THE COMMISSIONER: Emails between Comyn and Narev 10 March '17, CBA.0002.0073.8807 exhibit 7.14.

EXHIBIT #7.14 EMAILS BETWEEN COMYN AND NAREV DATED 10.03.2017 (CBA.0002.0073.8807)

MS ORR: Could I ask you to look at another email between yourself and Mr Narev from about a month later. This one is CBA.0002.0075.4577. Now, this is from 12 April, you will see when it comes on to the screen. So this is days prior to the release of the report of the second review on these topics, the Sedgwick review. And days before it was released you sent Mr Narev some further thinking about what CBA could do to change broker remuneration?---Yes.

And by this time, we see from the content of this email, that you knew that the Sedgwick report would recommend that banks introduce new broker remuneration models that didn't directly link broker payments to loan size?---I certainly hoped that was the case, yes.

You thought, we see from this document, that that recommendation, together with the ASIC report, still created an opportunity for CBA to now proceed to reform its broker remuneration model. Is that right?---Yes.

Okay. Now, on this first page at 4577, we see in the first paragraph, four lines down, that you said to Mr Narev:

> *We are proposing to delink the value of a loan from the broker commission and replace with a flat fee, conditional on satisfactory customer outcomes. Interestingly, broker commissions have risen 45 per cent since 2009 as a result of increased house prices. We are also proposing to introduce a transition payment to existing high quality brokers that will provide downside protection in case other lenders do not follow. We are proposing to announce next week, effective in February 2018.*

That was the position at the time you sent this email on 12 April 2017?---Yes, that certainly reflected my thinking at that time.

Well, and it seems it was more than thinking. You were proposing to announce this in the following week?---Yes.

And that it would be effective in February of this year?---Yes.

Now, the transition arrangements that you referred to in that paragraph also involved grandfathering the trail commissions for your existing loans?---Yes.

Now, did you think that this model that you were proposing to announce the following week would promote better customer outcomes?---Yes. Yes, I did, if it was adopted more broadly. And here, this is one of the many – and you're quite right, Ms Orr, I was very seriously considering moving.

It seems you were more than considering - - -?---Yes.

- - - Mr Comyn. You were proposing to announce it next week?---Yes. Yes. That's right.

So you had moved beyond consideration, had you not?---Yes, I had moved to a firm recommendation, that's correct.

Well, more than a recommendation, it seems, if it was going to be announced the following week?---Yes.

Okay. You dealt in some detail in this email, Mr Comyn, with the impact of your new proposal, the one you were going to announce the next week, on brokers. Is that right?---Yes.

And you expected that broker behaviour would adapt to your new model with brokers moving to consistently recommend the right product, the right loan value, and the structure based on customer needs, and that they would prioritise simple loans and focus on productivity rather than pursuing complex or high value loans. Is that what you thought would happen?---Yes.

So in this email, you set out some quite detailed analysis of the likely financial effect of your proposed changes on brokers. And I want to take you through - - -?---Sure.

- - - some of the details of that analysis. But do you accept, based on what you put in this email, that you didn't think that moving from a commission payment linked to the size of a loan to a flat fee would break the broking industry?---If the industry moved to it, no, I did not.

If you moved to it?---Well, this is still – in my view, at that time, no. There are a lot of discussions that are still going on, even as I'm sending this email, and it – it would have been certainly a high risk move to try and reshape the industry by ourselves. We had tried to structure in a number of different elements, including both grandfathering of trail and transitional payments because we were very conscious of the fact that there are thousands of very high quality mortgage brokers, small businesses who have set up their businesses in good faith. And changing the economics of their industry would – for very understandable reasons would not be well received. Nobody likes to have their income reduced. But in terms of the structure, we have real doubts to varying degrees about whether it will be replicated. And you see that in some of the exchange between Mr Narev and I. And I am, in turn, having conversations with my head of home buying and a number of people in that – in that team. But, in effect, yes, we – I had developed it to such an extent to try and make it very specific and then we modelled all sorts of different scenarios, if we went and nobody followed, what would happen. If we went and everybody followed, what would happen. And as I said earlier – and I probably need to be limited in how much detail I go – I add – we also had contemplated – it's not covered in this email – how we might pass some of that improvement through to customers directly in the context of lower interest rates, because absent anything else, a change such as the one we're recommending, which is a lower cost to the bank, would – would generate an incremental return to the bank and we certainly felt at that time that would not be well supported by stakeholders, understandably.

When you say an incremental return to the bank, you expected it to deliver $197 million in cumulative savings over five years?---If everyone moved to that point, yes.

And that is why you say you were giving consideration to passing some of that on - - -?---Yes.

- - - with a reduced interest rate?---Yes.

I see. Now, in this memo to Mr Narev you considered separately and in quite a bit of detail the effects of your proposed changes on new brokers and existing brokers?---Yes.

And if we turn to 4579. We see at 4.3 the heading Impact of Proposed Arrangements on New Brokers. Do you see that - - -?---Yes.

- - - Mr Comyn?---Yes.

Continuing:

> *The effect of these arrangements will be to reduce the expected broker revenue on an average loan from $6627 to $2310. This is aligned with market guidance on the expected price of 2500 to $4000 for complex financial advice following Future of Financial Advice reforms.*

So you thought that not only would this reduce broker revenue down from 6600 to 2300, but that would place it within the band that was seen as an acceptable band for the price of financial advice post FOFA?---Yes, that's right. I can't remember the specific report from ASIC but there was one report where they published in that an expectation of what a customer should be expected to pay for complex advice. So we were trying to align it to something from a principal perspective – there may be debates about if it's the same amount of complexity in a statement of advice as there is in completing a home loan application but that was one of the principles that we were trying to – where we would set the flat fee.

So at this point the broker revenue on an average loan was well above what you should expect to pay on complex financial advice, it was $6627?---Yes. As I wrote in the note, one of the things that had struck us was the fact that just with house prices increasing around the country, that broker remuneration had increased by 49 per cent. I think in markets like Sydney it was getting close to 100 per cent. I recall there was something in the order of 1300 brokers earning more than a million dollars and the top 200 were sort of two and a half million dollars. And so we were trying to set a level that would maintain viability. As you will see we were trying to create transitional payments so that we weren't going to be disadvantaging people who were already in the industry. It was – as you will see from the analysis, it was quite complex.

Yes. Yes. And we see from 4.3.2 that you anticipated that a new broker, once established and performing at median broker productivity – I'm sorry, it is not on the screen yet. I will just pause, Mr Comyn:

> *Once established and performing at median broker productivity of .8 funded loans per week will earn approximately the same as the median proprietary channel lender but top quartile performers will out-earn top quartile proprietary lenders.*

Do you see that?---Yes.

Continuing:

> *Some premium is appropriate given that brokers do not earn guaranteed salaries or receive CBA-generated leads.*

?---Yes.

Now, we see from 4.3.3 that you thought that removing upfront and trail commission would change the slope of a new broker's remuneration curve over time. They would earn less as they built their portfolio. It would take them longer to reach maturity and remuneration would plateau at six years as the payments on their early loans expired?---Yes.

Then you considered the impact of your plan on existing brokers in 4.4. And we see that you had approximately 3500 brokers who were responsible for 86 per cent of your current broker flow. And they were all going to be eligible for transition payments?---Yes, that's right.

And brokers with smaller loan sizes, we see from 4.4.2, who were predominantly in regional areas, would benefit, while brokers in metropolitan areas with larger loan sizes would be worse off with this being partially offset by the grandfathering of the trail commissions?---Yes, that's right. It's one of the many distortions with the – the potential distortions with the flat fee bank set, is because (a) it will advantage or disadvantage differently in terms of regional. We worried as well if you set the fee, will brokers then – will we create a different sort of conflict insofar as they'll split loans so to create multiple loans which may not be in a customer's best interests. We also wondered whether – let's say if I'm a financial institution and I have multiple brands, I can, in effect, set different tierings of where I set the fee. So I can – I can effectively start to replicate the existing remuneration structure, albeit with a flat fee. The problem, at least as it occurred to us doing it in isolation, was there was – there was no perfect model. The closest model, as you've pointed out, quite correctly, is the Netherlands' model.

And we see in 4.5 the figure I took you to earlier. If the market moved with you, $197 million in cumulative savings over that period. And then in 4.6, you said that there's risk attached to acting unilaterally on this issue. Three credible scenarios. The first is we're the only one to adopt a flat fee and the regulator doesn't intervene to enforce new principles of broker remuneration. The second was that there was uneven adoption of the new model. And the third was that other lenders adopted a more or less similar structure to our proposed potentially with more attractive payment levels?---Yes.

And at 4.7 you anticipated that ASIC would intervene to address more generally the concerns over broker conflicts, but if they did not compel lenders to decouple broker remuneration from loan value, then you could adjust your public position to retain the commission or introduce a tiered flat fee?---Yes.

Then at 4.8, over the page, we see the statement that:

> *ASICs actions as the industry response unfolds will strongly influence the likelihood of these scenarios.*

?---Yes.

And at 4.13, towards the bottom of the page, you said that:

> *Even with widespread adoption of a similar model to our proposal, some lenders may set more attractive payment levels, ANZ and NAB, for example, and regional banks.*

?---Yes, that's right.

And you went on to consider, over the page in 4.14, what you would do if that happened, if other banks offered a higher flat fee. You could then offer higher broker fees or you could extend your transition payments?---Yes.

And we see from 5.1:

> *We propose to be an industry leader by moving first to establish a re-based broker remuneration model that resets broker payments to be more aligned with our proprietary lender remuneration, is aligned with ASICs guidance of 2500 to 4000 dollars for complex financial advice under FOFA and which returns them –*

being the brokers:

> *...to the levels of broker remuneration prevailing a decade ago.*

That was the plan?---Yes.

And you said in that paragraph at the end:

> *We believe this is an opportunity that will not be repeated and requires decisive action.*

?---Yes.

5.3:

> *We'll announce our intention for these arrangements to take effect on the 1st of January.*

5.4, you expect broad support from ASIC, the ABA and consumer groups?---Yes.

So in April 2017 this was the plan, to announce very significant changes to your broker remuneration the following week, effective from early this year?---Yes.

What happened, Mr Comyn?---Well, we decided that – and I'm sure – you've – a number of the documents I think you have in my tender bundle. There is lots of work that's going on, underway – that's underway in – concurrently. We come to a view that nobody will follow. And we will suffer material degradation in – in volume. And we will not improve customer outcomes. And we start thinking about how to continue to engage in the discussion, and certainly some time later we then – there's meetings with broker groups, we conduct our own research, we get involved in the CIF, Productivity Commission starts looking at it, there's – and so – but you're quite right. At that – at that point in time when I hit send on the email, that was my intent.

I'll tender that email, Commissioner.

THE COMMISSIONER: Emails Comyn to Narev, 12 April '17, CBA.0002.0075.4577, exhibit 7.15.

EXHIBIT #7.15 EMAILS COMYN TO NAREV, CBA.0002.0075.4577 DATED 12/04/17

MS ORR: Now, Mr Comyn, moving to a flat fee paid by the lender would not have fixed the lender choice conflict that I referred to earlier, would it?---No.

Because it doesn't address or remove the incentive for a broker to prefer the lender on the basis of the size of the fee that they offer?---That's right.

You could have still offered a higher fee to brokers than your competitors in order to win referrals?---Yes.

But it might have dealt with the product strategy conflict because it removes the incentive for brokers to prefer larger loans?---Yes, that's right.

But in any event, despite all of this work on potential changes to broker remuneration and the decision that we see reflected in these documents, today CBA maintains a commission model for the remuneration of its mortgage brokers comprising upfront and trail commissions?---Yes, that's right.

And what do you say, Mr Comyn, to the observation made by the Productivity Commission in June this year that it was not able to ascertain a credible rationale based on consumer interests for the current structure of broker remuneration?---I tend to agree with that.

Then why not change, Mr Comyn?---For the reasons that we've just discussed.

So you would like to change to a flat fee model?---I can certainly see advantages in that model, yes. I – I would add that - - -

And what?--- - - - that view would not be supported by other participants in the industry but my personal - - -

I am asking you about your view, Mr Comyn?---Yes, that is – that is my view.

You would prefer to move to that sort of model?---Yes, I would.

Would you like to move to the Netherlands' model, to go the whole hog and have a flat fee paid by the consumer?---I think that is, in my view, the most attractive model.

But you feel unable to embrace that model at CBA because you feel no one would follow in the absence of regulatory intervention?---That is correct.

But you believe that the Netherlands' model is the model that best serves the customer?---That's how I understand it, yes.

Yes. Okay. Now, Mr Comyn, the recommendations made by Mr Sedgwick included a recommendation that banks adopt approaches to the remuneration of brokers that didn't directly link payments to loan size, and that they establish how to do so in a timely fashion. Do you recall that recommendation?---Yes, I do.

Recommendation 18 in Mr Sedgwick's report. And Mr Sedgwick required the banks to report to ASIC on their progress in respect of that recommendation. Do you recall that?---Yes, I do.

And then a few months after that in June, the CIF, you've referred to, the combined industry forum, was created to address Mr Sedgwick's findings?---Yes.

And that includes – it's a forum that includes brokers and banks?---That's right. And consumer groups, I think, as well.

Yes. And CBA is part of that?---CBA is. I do not participate personally but the bank is represented there, yes.

And has CBA reported to ASIC on its progress in adopting an approach to remuneration of brokers that doesn't directly link payments to loan size?---No, I think we would have not much to report.

Well, how do you currently propose to comply with recommendation 18?---I think we will struggle, as will the industry. I'm not sure – in some of the emails that you've shown me, that is some of the rationale in my – in my mind is that the banks have – had already and the chief executives had committed to implementing Sedgwick in full, but there's – I don't think that the current recommendations that have come out of CIF, which I do acknowledge – I think they're absolutely a very positive step forward – I don't think they adequately implement that particular recommendation.

So at the moment there's no plan as to how to comply with recommendation 18?---Not – not that I can – no, there is not a – there is not.

Why is that, Mr Comyn?---Well, we're wondering what might be recommended from the Commission.

You're waiting for us?---You seem to be probing in the – in the right areas, yes.

You have this obligation to report to ASIC about this, though, and you haven't done so?---Not that I'm – not – I personally have not. Not that I'm aware of on behalf of the institution, but I – I would have to follow up.

Is it too hard for you to do anything further at this stage, Mr Comyn?---Unilaterally?

Yes?---I think it would be extremely challenging.

I want to ask you some questions about trails, trail commissions?---Yes.

In the report that it released in June this year, the Productivity Commission recommended that an enforceable code for brokers be created and imposed by ASIC to implement a number of reforms, including banning the payment of trail commissions. Are you familiar with that recommendation?---Yes, I am.

And the ban would be of trail commissions for all loans originated after the end of this year?---Yes.

Do you agree that trail commissions should be banned?---I think a more holistic review of the model is – would be a better solution.

What does that mean, Mr Comyn?---The – basically the context of what we've just been discussing.

But should we ban trail commissions?---And leave the existing – and leave the existing model.

I see. I understand your answer now?---Yes. Yes.

You say that banning trail commissions is one step, but there are further steps beyond it?---Yes, I – yes, exactly. To the extent that there is a – a shared view that the linkage between loan size and the amount of income that an intermediary earns creates a potential conflict of interest which needs to be holistically addressed. I see that as a – as a – more important and certainly broader than the trail commission component.

But is banning trail commissions one part of that - - -?---Yes.

- - - holistic response?---Yes.

One of the arguments that brokers put in support of retention of trail commissions is that they remunerate brokers for providing ongoing services to their clients. Are you aware of that argument?---Yes, I am.

And are you aware of what the Productivity Commission said about that?---Yes, I am.

You are aware that they said that they found little, if any, evidence to substantiate that claim?---Yes.

Do you have any views about that, Mr Comyn?---I think that may be broadly true. I – I do think there would be brokers that actually would do much more work than – on an ongoing basis. It does have a, you know – a similar theme in terms of financial advice and – and trail commissions and - - -

Yes, it does, doesn't it - - -?---Yes, it does.

- - - Mr Comyn?---Yes. So - - -

What do you say to that?---Well, I'd be reluctant to repeat.

Well, why is a trail commission paid to a broker any different to a fee being charged for a service that's not provided in the financial advice industry?---Yes. Why is it any different?

Why is it different? I'm asking the question?---Well, I think in the context of the mortgage broking industry, there is both work done at origination and at least, I think, in the Productivity Commission's view, the trail is effectively earned up front. It's just paid over a longer period – period of time. Some brokers would suggest that they're doing work on an ongoing basis.

Yes?---And then the parallel for me in the financial advice industry would be that – it's my view some advisers had treated that almost like a trail, pre-FOFA, had done the work and therefore didn't understand the relationship and the duties that they owed their customers to actually be only contemplating charging for a service that they were actually performing a corresponding service.

The Productivity Commission said that trail commissions were most likely a traditional form of remuneration common in the 1990s when brokers emerged as a competitive force that simply persisted long after it has been found detrimental to consumers in other financial product markets. Do you agree with that?---Yes, I do. I – I understand that the mortgage broking commission model originally was not unlike what we've discussed today, insofar as a flat fee, and it evolved to be an upfront and a trail. And, therefore, that's why it has become clearly the preferred remuneration model, in which case it would obviously would not be advantageous unilaterally to create a new model because there's a clear preference for the – for the current model but, yes, I do agree with what you've said.

The Productivity Commission also said that:

> *If the genuine purpose of trail commissions was to support the provision of ongoing services, it would expect the conditions that govern the payment of commission to be formulated differently such as by making the quantum of the commission reflect the cost or value of providing those ongoing services, rather than the value of the outstanding loan.*

What do you say to that observation?---Yes, I agree with that.

And - - -

THE COMMISSIONER: Step one is to identify these ongoing services. Are there any ongoing services supplied by a mortgage broker, Mr Comyn?---I think they would be limited, Commissioner.

Well, limited or none?---Much closer to none.

I will take that as a "none".

MS ORR: The Productivity Commission also said that if that was the purpose of trail commissions then you would expect to see documentary evidence of the provision of the services. Do you receive records at CBA from brokers demonstrating the provision of ongoing services?---Not that I'm aware of, but I – I would need to double-check, but not that I'm aware of.

And do you think that the abolition of trail commissions for brokers requires legislative change?---Yes.

All right. Now, Mr Comyn, we've talked a lot about remuneration of mortgage brokers. I want to come back to what it is that mortgage brokers do and, more importantly, what they're perceived by the customer to do. You gave some evidence about that before lunch. Do you recall that evidence?---Yes, I do.

You said that you thought that the average customer would walk in to see a broker and expect that the broker was effectively their agent working for them?---Yes.

You think that a customer would think that a broker is looking after them?---Yes.

Do you think that customers think that a broker is doing no more than ensuring that the loan they recommend is not unsuitable for the customer?---I suspect most customers would not believe that, no.

Would not see it that way?---No. Yes, that's right.

And do you agree with the observation of the Productivity Commission that the broking industry trades on a belief that broking services are provided with the interests of the borrower at the forefront?---Yes.

But the law does not currently require brokers to act in the best interests of their customers?---Yes, that's right.

And that's unlike financial advisers who are required to act in the best interests of their clients?---Yes.

Does CBA think that brokers should, like financial advisers, be required by law to act in the best interests of their clients?---Yes.

Why is that?---For the – for the – all of the reasons that we just discussed, and I think the Productivity Commission report is quite a helpful, best interests duty. I think it's on page 334, or something like that. And I know there has been various positions advocated between a customer first duty versus a best interest.

Yes?---But I thought, at least as I was reviewing my tender bundle, I – I thought the recommendation in the Productivity Commission report was a pretty good starting point from my perspective.

Well, the Productivity Commission thought that a best interests obligation was necessary to safeguard against real and potential conflicts of interest. Do you agree with that?---Yes.

And some of the submissions to the Royal Commission and to the Productivity Commission questioned how a best interests duty would work in practice. Brokers said it would be very onerous for them. What do you say to that?---Well, as a – as I saw and – and read through the way it was drafted, as I said on that page in the Productivity Commission report, that didn't seem overly onerous to me.

The CIF, the combined industry forum, hasn't supported a best interests duty, have they?---No, they have a customer first duty. And I'm not sure about exactly how they would think that would be drafted but it sounded, at least to me, in principle that it was certainly going down the same direction. That's what I thought, at least from my observation, the Productivity Commission was a pretty solid starting point.

So in the initial response to the ASIC report on broker remuneration from CIF, they recommended that brokers work to achieve something called a good customer outcome. Are you familiar with that?---Yes, I am.

And that was described as a loan which was appropriate in terms of size and structure, affordable, applied for in a compliant manner, and a loan which met the customers' set of objectives at the time of seeking the loan. That was what they described as a good customer outcome?---Yes, I agree with that.

That wasn't much of a development, was it, Mr Comyn, because customers would already expect to receive an appropriate and affordable loan, and for their loan application to be compliant?---Yes, that's right.

And then in the July 2018 progress report of CIF, they took it a bit further and announced that they had agreed in principle to extend the good customer outcome to incorporate a conflicts priority rule described as the customer first duty. Are you familiar with that?---Yes.

And the customer first duty hasn't been formulated yet?---That's – that's my understanding.

But the Combined Industry Forum suggested that it could be formulated as a requirement for the customers' interests to be placed above those of the providers or those of their organisation, based on the information reasonably known to the provider at the time of providing the service?---Right.

That's how they've described it to date. Do you understand that?---Yes.

You support brokers taking on some form of customer first duty?---Yes, something – something either a best interests or a customer first duty. I think the specific drafting of it is important, and as I said, at least the various versions I read through in preparing for today, I thought the Productivity Commission's version of that was the most appropriate from my perspective.

In your view are there any reasons why a broker should owe a customer a different duty to the duty owed by a financial planner?---I mean, the – I think the duty itself is very – is very similar but I'm not implying that the drafting from the obligations as they apply to a financial adviser should necessarily just transfer over. I think the drafting is important but in the context of the customer relationship and, therefore, the duty and the expectations on the broker, I see that as being similar to a financial adviser.

But you see best interests as underpinning both of the duties, both the duty of the financial planner or adviser and the duty of the mortgage broker?---Yes.

That's what you think should happen?---Yes, it is.

Okay. All right. Now, before I leave the topic of home lending, Mr Comyn, I want to ask a few questions about your current home lending practices at CBA. We heard in the first round of public hearings that in late 2016 APRA requested that CBA and four other banks undertake a targeted review of their home lending practices?---Yes.

And APRA had concerns about the risks of potential misrepresentation of mortgage borrower financial information that was being used in loan serviceability assessments?---Yes.

And CBA engaged PwC to undertake its targeted review?---Yes, that's right.

And PwC completed that review in May last year?---Yes.

And the review identified a number of concerns with CBAs processes for verifying the financial circumstances of borrowers, and its processes for monitoring serviceability overrides?---Yes.

And since that time, CBA has taken steps to address the findings of the targeted review?---Yes.

And in your statement you say that CBA has taken steps that have gone beyond addressing the 21 findings in the targeted review?---Yes.

But about a month ago, APRA sent you a letter informing you of the results of a residential mortgage risk management review that it had undertaken of the major banks?---Yes.

And APRA said a number of things to you in that review about residential mortgage risk management practices at CBA. But one of the things it said was that CBAs reliance on the Household Expenditure Measure or HEM, was the highest of all of its peers?---Yes, at that point in time which is not at the point of time that the letter was written. There's quite a - - -

A gap?---Yes, because their file observations actually go back to – I think it's the week of 9 to 13 October 2017, which is approximately three weeks after I write the response to the tripartite letter to APRA. So I think it has improved consistent with all of the actions that we took at that point in time.

So we're about a year on?---Yes.

From that time now?---Yes.

But at the period that APRA was referring to in its recent correspondence, CBAs reliance on HEM was at about 75 per cent. 75 per cent of your loans were defaulting to the HEM. Is that right?---Yes. But, as I said, that's the period of 9 to 13 October 2017. Yes.

But is that statistic correct for that period?---At that point in time, yes, it is.

And were you concerned by that figure, that 75 per cent in that period of your loans were defaulting to HEM?---Yes, I was.

And had that been the sort of level that HEM had been sitting at – CBAs use of HEM for some time?---The use of HEM had been lower than that up until the introduction of what was otherwise referred to as the income-based HEM approach, which I think came in October 2015, which basically meant that the HEM expenditure measure, which is a prudent floor increased with income which I guess by definition meant more customers – in more customer applications we would rely on the higher customer-declared living expenses or HEM and with the higher HEM the level of HEM increased. But, yes, I acknowledge that the – the level of HEM usage as a prudent floor at that point in time was too high. It is lower now and needs to continue to become lower during the course of the months ahead.

So APRA documents suggest that it was sitting at about 75 to 80 per cent in March of 2017. Have you seen those documents?---No, I'm – are you referring – I'm referring to both the tripartite review and then I'm referring to the letter that I received – I think it's 15 or 18 October 2018.

Yes. I'm trying to take you back earlier in time as well. So the recent letter, 75 per cent was the reliance on HEM. There was a meeting with CBA in March 2017 as part of the residential mortgages targeted review. And at that point, 75 to 80 per cent of your loans were defaulting to HEM. Are you familiar with that?---I am not familiar with the meeting but that metric does not surprise me.

Right. So what do you say your reliance on HEM is now at CBA, Mr Comyn?---Well, it's coming down each week. One of the actions that we took out of the tripartite review – there were 21 actions as a – as I completed my witness statement I said that 18 of those actions had been completed. There were three remaining. One was the use of comprehensive credit reporting. The second was the continued roll-out of what we call the lender front end and the third was related to user access verification. As we've rolled out – so we've replaced the entire front – the entire origination system for home lending and one of the reasons that we've done that is because there is a more granular expense capture.

Yes?---So we've increased the number of expense fields to 11. At each of those individual expense fields there are both prompts to the lender which ultimately is meaning that we're doing a better job of discovering what a customer's declared living expenses figure actually is, and, therefore, HEM as the prudent floor is being relied on less and less. I would certainly like to see it in the 50s very soon. I'm very confident it's going to be at that level very soon. As it gets towards 50 per cent, given the nature of the way the HEM benchmark is designed, which is the median for basic expenditure and the 25th percentile, somewhere – just mathematically, somewhere around 40 or 50 per cent should be largely reflective of the underlying expenditure.

So that's, in your view, an acceptable level of reliance on HEM as a default measure, 40 to 50 per cent of your loans?---Somewhere in that order, yes.

Can I ask you to reflect on the work that you've done with APRA in relation to residential mortgages. One of the responses to the letter that you sent to your staff after the APRA Prudential Review came back from Mr Huggins, who was the executive manager of home buying at CBA?---Yes.

Mr Huggins gave evidence in the first set of public hearings. He said in his statement to you that he believed that:

> *The financial success of the home buying business had dulled our senses at CBA.*

Now, reflecting on your engagement with APRA, what do you say in response to that observation?---Yes, I think that's consistent with a number of observations. I mean, certainly consistent themes from different leaders inside the organisation. As it relates to home buying, I think I make it clear in my witness statement, certainly pre-2015, we hadn't invested enough in the underlying controls and the management of operational risk. I actually think Mr Huggins, as the leader of that business, has done a very good job, and we've mobilised substantial investment, albeit we should not be having to be asked by a regulator to improve some of those underlying controls and quality of information. And the PwC report – and to give some context around that report, I think it was (a) a very helpful piece of analysis; (b) we should have done it ourselves. Effectively, what PwC did was a positive assurance audit, which is the same level of assurance that we would put over our financial statements, to analyse that the information that was being provided by borrowers was faithfully being reflected in our systems. And, therefore, there were a number of observations which they raised which I, and I know Mr Huggins, would have preferred that we'd found ourselves. I think we'd – we had identified four of the 21 recommendations. And it's regrettable that we needed to have the 17 others pointed out to us in 2017. And that piece of work is a significant priority for the organisation.

Mr Huggins said to you in his letter that he thought CBA had become too accepting of poor underlying processes, outdated systems and underperformance within the value chain. Do you accept those observations from your executive general manager of home buying?---Yes, I do.

And what are you going to do to ensure that things are different moving forward, Mr Comyn?---Well, quite a bit as it – as it relates to that. Mr Huggins has, as I said, in my view – is one of the best line 1 risk leaders in the Commonwealth Bank. He – in the way we mapped both the end-to-end processes and understanding the individual risks, then designed controls, we call that the risk management implementation. That approach that we have adopted in the home lending system and the process overall from an end-to-end – he uses the words "value chain" – is, in effect, the same approach that we're now undertaking across the rest of the organisation to more proactively map end-to-end value chains or processes to understand the specific risks, to understand how those risks may manifest themselves at a root cause level and then to appropriately design controls such that we're mitigating those risks. Then there are other observations that level – what's referred to as line 2 assurance is not strong enough. That's largely our risk management function. So we've moved – we're strengthening the – the risk management function, which includes compliance and operational risk, which, as we discussed earlier, is not about just having more people; it's about having the right set of capability who are constructively challenging, holding ourselves to a higher set of expectations, and from my perspective every month when I go to the board, a considerable amount of time is spent at both the audit committee and the risk committee and reported back to the full board in terms of our progress across a number of those different areas.

All right. Now, Mr Comyn, I want to move to a different topic and leave home lending and remuneration. And I want to come back to the root causes of CBAs failings identified in your statement and examine a number of the causes that you categorised as relating to customer and culture, that first set of root causes?---Mmm.

And I want to do that by reference to issues associated with CBAs sales of consumer credit insurance. Now, prior to this year, CBA sold three separate consumer credit insurance products. Is that right?---Yes, it is.

And they were CreditCard Plus insurance, home loan protection insurance, and personal loan protection insurance?---Yes, that's right.

And the first was sold in conjunction with credit cards, the second in conjunction with home loans, and the third in conjunction with personal loans?---Yes, that's right.

And the last two products, the home loan protection insurance and the personal loan protection insurance, seemed to often be referred to within CBA as loan protection products?---Yes, that's right.

Now, CBA sold all those products from at least 2003. Is that right?---That's my understanding as well.

And accountability for those products was shared by a number of different business units within the organisation?---Yes.

They included retail banking services?---Yes.

Wealth management?---Yes.

And CommInsure?---Yes. CommInsure being a division of the wealth management - - -

Yes?--- - - - business unit, yes.

Yes. Any other business units with responsibility for those products?---Well, I believe they were also distributed through Bankwest, which is a separate subsidiary. And my understanding is those products were manufactured, I think, via St Andrews, which is an external product manufacturer. It was - - -

Do you mean the ones that were sold through Bankwest?---Yes. Yes.

Yes. Let's focus - - -?---Just on - - -

- - - on the CBA products. CommInsure was responsible for manufacturing those products. Is that right?---Yes, it is.

And retail banking services was responsible for selling those products?---Yes, that's right.

And what was wealth management's role other than through CommInsure? Was there a separate role that they had?---No. Sorry. My point was more that CommInsure was one of the businesses within the wealth management division. But you're right; the – the manufacturing of that – of those products were under the CommInsure business.

Now, you were head of RBS, of Retail Banking Services, for some time?---Yes. From I think the 13th of August or the – August 2012 until April 2018.

And you tell us in your statement that you held concerns about the sale of consumer credit card products for – by CBA for some time?---Yes.

When did you start to develop concerns about the sale of consumer credit insurance products at CBA?---From about 2014.

And what were the concerns that you had about the sale of those products?---I had a number of concerns related to those products, as – my – my initial – are you asking me specifically what were my concerns with the products or why did I become concerned?

I'll take both, Mr Comyn. I - - -?---Yes.

I want to understand what the concerns were and then, perhaps, you can tell me - - -?---Yes.

- - - why you held them?---My concerns varied from the value of the product, the eligibility criteria, which, as I think you know, becomes an issue later, whether we were meeting a genuine need, the claim payout ratio, a number of elements of the product and whether they provide appropriate value and benefits for customers.

Did you regard the products as poor value products?---I did have some concerns in that area, which – over differing periods of time, and there were a number of improvements to the value of the underlying products, both in the context of reducing the price in terms of premium but also making other changes. As I was worried about the sale of those products, and there were various attempts to improve the controls around the sale of those products as well.

But did you regard them as poor value products?---Certainly as it related to other insurance and life insurance products, yes, I think they are lower value.

So lower value than other insurance products?---Yes.

But you didn't regard them as poor value products per se. Is that what you're saying?---I certainly had concerns about their – their value.

I see?---And my principal concern was how they compared with others. And, as I said, various steps were taken over time to improve the value of those products.

Were you concerned that customers didn't understand the products?---Yes.

Were you concerned that there were poor sales practices in connection with those products?---Yes. And we – just so I'm clear, we're referring to the period 2014 to 2018, over that period of time, or are you asking me – yes.

No. Well, I'm sorry. Yes, I'm asking about when you developed these concerns, what your concerns were. And you said this was 2014?---That's when I first became concerned, and there are various catalysts around degrees of concern in some of these particular areas.

Yes. So did your concerns increase throughout 2014 to 2018 as a - - -?---At - - -

- - - result of particular events?---At various points they increased and at various points, depending on what steps we were taking, they decreased, if that makes sense.

Yes, it does. Were you concerned that poor sales practices in connection with these products were being driven by sales targets?---Yes, I was concerned broadly about sales practices and targets around the sale of products are often a driver of that, yes.

And were you concerned that there was a risk of these products being mis-sold to people who didn't need the products or couldn't make claims under the products?---Yes.

So when you started developing these concerns about the products in 2014, what did you do?---Well, we – I'll make sure I try and get the time series right. The initial concerns – we had some work done externally to compare the products that we were offering with both products in the external markets. Then in periods of 2015, I discussed my concerns with the chief executive. I discussed my concerns again in 2016 with the chief executive and on at least three occasions raised those concerns. Ultimately, when I had the decision rights in March of 2018, we ceased the sale of two of the three products that you're referring to, being CreditCard Plus and personal loan protection insurance.

You say you discussed it on three occasions. Are you referring there to three separate occasions when you raised your concerns with the CEO?---Yes.

Yes. In 2015, 2016 – was there another time?---At least once in 2015, and I think probably twice in 2016.

And what was the CEOs reaction when you raised these concerns about the products?---The – I raised the concerns. He had a differing view. One of the – one of the issues, at least from my perspective, was we were continuing to improve the products. It was not obvious that our products – in fact, in many ways our products looked better than the other products that were on sale by various other institutions. I raised at various points in time and certainly suggested a decision to suspend those sales. There was generally indecision around that. And I took that indecision to be the decision.

So you suggested suspending the sales of these products. You said there was indecision in response to that. Indecision by the CEO?---Yes.

Which resulted in CBA continuing to sell the products despite your concerns?---Yes.

Despite the concerns that you held as the head of retail banking services at that time?---Yes.

What happened in 2014 that gave rise to these concerns, Mr Comyn?---One of the early origins of my concern was meeting with executives again from the United Kingdom. You might be familiar with a product family called – yes – PPI, personal payment insurance, products. Whilst there are very important differences between the Australian context and the UK, there were various discussions at that point in time and work that was undertaken to compare the consumer credit insurance products in Australia with the personal protection products in the UK.

What happened with those products in the UK, Mr Comyn?---They led to billions and billions of dollars of remediation to customers. As I understand it, some were in the order of 25 billion sterling.

Because they were mis-sold?---Yes.

And when - - -?---Mis-sold, and, also, I would say the way they were designed. And there are some important differences in the way they were designed. They were often embedded as a single product with a loan product - - -

Yes?--- - - - where there was a cross-subsidy. So, in effect, the loan was quite – was a low price but the – the cost to the consumer from the insurance product which was embedded into it was where a lot of the value was to the institution. Very low claim rates. Yes, they were mis-sold. They were also, at least as I understand it, there are examples where customers were led to believe they couldn't take out the loan if they weren't also taking out the insurance product. The value there was low as well, and I measure value as a function of claims paid out over premiums received.

And when did those things come to light in the UK. Do you recall?---They were already underway by the time I had taken the role in – in 2012 and my predecessor, who had run the retail bank at CBA between the years of 2006 and 2012 was both the head of the retail bank in the Royal Bank of Scotland and is now the chief executive of the Royal Bank of Scotland. So his insights were very useful and informative from my perspective.

And when did he share those insights with you?---With me personally, on numerous occasions between – I mean, I've kept in touch with him for – for many years, but certainly from – perhaps late 2013, 2014 onwards.

Right. So from late 2013, 2014 you were thinking about what had happened in the UK with the PPI product?---Yes. I think there was a piece of work that was undertaken in approximately late 2013. I think it was delivered by KPMG in March or April of 2014, which compared the consumer credit insurance products with the UK, South Africa – there may have been one other market in that presentation. There have been various presentations to – since that point in time but that was sort of the primary piece of work that was done to compare and find differences between the products that are offered in Australia and the UK.

And what was found in that work done by PwC?---Sorry, it was KPMG.

I'm sorry?---Largely as I described. So a quite different product in the construct, the way – it was a – I think it was called a single premium product. So it was basically embedded within the loan. Very different value exchange – claims experience, eligibility. So some similarities, but a lot of differences as well, was the – certainly the conclusion in 2014.

But you continued to have concerns about the products. So the similarities concerned you, is that right, the similarities with the PPI experience?---Yes.

And can I suggest to you that there had been a number of other alarm bells about poor customer outcomes with consumer credit insurance before that time. Are you familiar with ASIC report 256 which was released in October 2011?---Yes, I am.

And the sorts of concerns that you've articulated about problems with consumer credit insurance are all concerns that were expressed by ASIC in that report back in 2011. Do you agree with that?---Yes, I do.

And CBA was one of 15 institutions who participated in the work that gave rise to that ASIC report?---Yes, that's right.

And at the time it was published, you were the executive general manager for local business banking?---That's right.

And do you remember receiving a copy of that report?---No.

When did you first receive a copy of that report, Mr Comyn?---I suspect around the time of – well, I – I recall it specifically because it was raised in reference to an audit – an unsatisfactory audit, which I believe was in April 2015, and it's specifically in that audit where it considered the 64,000 customers who had taken out credit card insurance that we – we hadn't complied with one of the recommendations from that report that you're referencing.

But as the head of retail banking services, were you not aware of ASIC report 256 about consumer credit insurance until 2015?---I don't recall reviewing it in detail before that time, no.

Should you have, Mr Comyn?---Yes, I think it's reasonable to suggest I should have.

Well, the report made clear that ASICs view was that there were persistent issues with the sale and distribution of consumer credit insurance products?---Yes, that's right.

And from the information provided by the 15 ADIs, including CBA, ASIC said that there were deficiencies in sales practices which it thought could lead to consumers being mis-sold the products?---Yes, that's right.

And there was also reference in that report to the high proportion of denials of claims made under those products?---Yes, that's right.

ASIC said that in 2010, 13 per cent of claims on consumer credit insurance products had been denied as opposed to two per cent of all personal general insurance claims?---Yes, that's right.

And ASIC made 10 recommendations in that report. Were you not aware of any of those recommendations until 2015?---I think I was aware of some of the recommendations. I hadn't read the report in – in its entirety.

You were aware of some of the recommendations?---Yes. I can't say for sure that I was aware of all 10.

Should you have been, Mr Comyn?---I think that's a fair proposition, yes.

Well, should you have been - - -?---Yes.

Yes. And the recommendations included recommendations about the sales scripts used in the selling of consumer credit insurance. Do you now know that?---Yes.

And the recommendation was that sales scripts needed to include clear explanations of the main exclusions under the policy?---Yes, that's right.

Now, following report 256 did CBA implement each of those 10 recommendations, including the scripting recommendation?---No, we did not.

Why not, Mr Comyn?---We – we did not, Ms Orr. We should have, and we did not.

You can't explain that failing?---Well, as – as I've made clear in the witness statement, it – as early as – which I had not seen the report until preparing for my appearance today, but it – it looked as if – you know, I think October 2012 a paper that I had not seen but had gone to the CMLA board. It was clear, at least from my reading of that report, that we knew or certainly had reason to suspect that we were not complying with all aspects of that – of the recommendations, specifically recommendation number 1 which deals with sales scripts.

I want to come to that October 2012 event. But you say that CBA didn't recommend – I'm sorry, didn't implement all of the recommendations, and should have done so. Is that your evidence?---Yes, we should have.

What else do you say CBA should have done at that time?---I think we should have continued a more – as I have spent a considerable amount of time reading all of the chronology and everything that has happened in those products since that point in time, certainly engaged in a much more thorough risk assessment and ongoing review than – than we ultimately did, which obviously led to the unsatisfactory audit and what has been a very poor demonstration of the organisation post that time, both in our urgency and lack thereof of the way we've remediated customers, the way we've dealt with our regulator, and most recently, there's still concerns as it relates to two of those products, notwithstanding the cessation of the – of their sale.

You say in your witness statement that even though – this is paragraph 76 of your witness statement:

> *Even though ASIC report 256 published in October 2011 recommended only that sales scripts include an explanation of exclusions relevantly relating to employment eligibility criteria, a proper analysis of the recommendations within the group should have revealed that the products were being sold to customers who were not eligible for all of the benefits of the products.*

?---Yes.

That's your position?---Yes, it is.

That should have been apparent to CBA at that time?---Yes.

But it was not?---No, it was not.

Why not, Mr Comyn?---Well, we – we didn't do a thorough assessment and understanding of the report 256. We didn't sufficiently thoroughly review both the scale – sale scripts – I think at various times and in some of the evidence that has already been provided, we over-relied on disclosure documents, both in our assisted channels as well as our digital channels, which is unsatisfactory.

So then you took over as the head of retail banking services in August 2012, but no one gave you a copy of this report at that time?---No, I did not receive – I did not see that report until last week.

You haven't seen the ASIC report - - -?---Sorry, I thought you were talking about the CMLA report.

I am sorry?---Yes, yes.

That was a confusing question. The ASIC report, no one gave that to you when you took over - - -?---No.

- - - as head of RBS?---No.

But at that point the consumer credit insurance products became part of your direct responsibility?---Yes, and it should not have required someone to give it to me. I accept that.

All right. And then in October 2012 there was an audit report in relation to consumer credit insurance. So that's two months after you commenced in that position. And that audit report dealt with the distribution and sales of the products. Do you recall that audit report?---Yes, that's the report that, as I said, I had not - - -

You were referring to?---Yes, I had not seen until last week.

That's the report you had not seen?---Yes.

So the October 2012 direct life insurance distribution and sales audit report within CBA was not brought to your attention until last week?---That's right.

Do you have any explanation for that, given that these were products that you had direct responsibility for, Mr Comyn?---Yes. No, I do not have a – a good if any sort of explanation. It was provided to the CMLA management and board and was not shared with the distributors of that product.

I see. So your evidence is that no one within retail banking services received a copy of that audit report. Is that right?---That's my understanding, yes.

That's a significant failing within your organisation. I want to put to you that a report that dealt with sales practices of the product was not provided to the business unit responsible for selling the product?---Yes, I agree.

Now - - -

THE COMMISSIONER: All this at a time when there is emerging in the UK a scandal of very large size with evident similarities?---Yes. That's right.

I think you said that the figure for PPI in the UK was 25 billion – I think that the provisioning is now upwards of 40?---Right.

Yes.

MS ORR: There were a number of issues identified in that audit report which you were not aware of at the time but you've now read that audit report from October 2012?---Yes, I have.

And you would have seen that it was identified in that audit report that the sales scripts that were being used by retail banking services staff didn't include the things that the ASIC recommendations required?---That's right.

So that was identified in October 2012, but not given to the people responsible for those sales scripts?---That's right. The other thing that struck me was, from memory, the report was amber, and those risks that you're referring to were rated as a medium risk, which I found particularly surprising, and I am certain that by today's standard or any reasonable standard they would have been very high rated risks, and that audit would have been unsatisfactory.

Yes. So these didn't look like amber or medium rated issues to you?---No, they did not.

I will show you that audit report, just so that we're clear that we're talking about the same one. CBA.0002.3181.6938. This is the audit report you're referring to, Mr Comyn?---Yes, it is.

And we see there the overall amber rating?---Yes.

And at 6943 we see a list of five audit issues, and the fourth of those is:

> *Sales scripts provided to RBS frontline staff do not include all ASIC recommendations.*

That's the medium rating that you're referring to. You would not regard this as a medium-rated audit problem?---Definitely not.

You would expect this to be rated as - - -?---Very high.

What did you say? Very high. And what would you have expected the overall rating in this audit to have been?---Unsatisfactory. Which, by – I'm not exactly sure of the practice then but certainly in today's standard that would then be escalated – actually, it would require me to inform the company chairman within two days of the audit being issued and it would be presented at the next audit committee of the board with both the head of group audit and the business unit accountable for it to explain both the issues that have been identified, and also to have dates firmly set for when those issues were going – were to be remediated, and that would then be tracked on a monthly basis and reported on a continuous basis right the way through to the board audit committee.

But none of those things happened?---To the best of my knowledge, none of those things happened. Particularly – well with that rating it definitely wouldn't have happened.

So it wasn't escalated at all?---I – I can't be certain. It was – as I said, it was provided in the – in your – the notices to produce that were provided. That's how I saw the document. I don't – I haven't - - -

You saw the document for the first time because the Royal Commission provided it to you?---Yes. Well, in – in the process of preparing for my appearance today, it was – it was – it was part of the – that document, one of the folders of documents, and I had not seen it before, but I – I am not sure within CommInsure and Wealth Management to what extent it had visibility, but, as I said, there – there were a number of failures with the – the – the ratings, etcetera.

And we see – can I just ask you to look at 6939. We see in the executive overview of this audit that it makes very clear, towards the bottom of the left-hand side, that it was RBS, Retail Banking Services, your business unit that was responsible for compliant selling practices and ensuring all staff are adequately trained and supervised to ensure appropriate sales practices are followed within all the distribution channels. You accept that was your responsibility?---Yes, I do. The practical – my understanding of the product manufacturer's responsibility does not end with a complete delegation to the distribution. The – the practical application of that would mean that the scripts would be provided by the product manufacturer, and it would be my accountability through my team to ensure that the scripts were then accurately performed. Yes.

And you had input into the scripts, if you thought that they were deficient?---Yes, generally what would happen - - -

Yes?--- - - - would be the product manufacturer would be primarily accountable for designing and developing those scripts, and, of course, to be compliant with all relevant obligations, and then, yes, the distribution part, whether it's a contact centre or the branch network, would then engage in those scripts, but they wouldn't have the authority to dilute the scripts or change the scripts in any way that didn't comply. So that it would be – their changes would be very minimal. And – but it would absolutely be the – the distribution channel's responsibility to ensure that those scripts were faithfully performed.

And what about ensuring that the scripts were compliant with the recommendations of ASIC?---Well, I believe they would – that would sit with CMLA, but I don't – I - - -

You don't think that's your responsibility?---But I would – I would accept that as the distributor, given the – the risks associated with this product, I wouldn't rely solely on the product manufacturer, no.

How does it work? What is the arrangement between the business units in terms of commission or monetary payments in respect of your sales of CommInsure's product?---Yes. So it varies. So there's a – it varies across different parts of the organisation.

With this product?---No, sorry, just – just generally.

I'm sorry?---But just with this product.

Yes?---It's quite a unique set of circumstances because this is really the only part of the group where the products are manufactured in one business unit but the distribution is relied upon by a separate business unit. So in the context of the rest of the retail bank - - -

Yes?--- - - - all of the products that we distribute we also manufacture – home lending, deposits, credit cards, etcetera. So it varied by product type but, generally, there was some form of distribution agreement. My understanding is as it relates to consumer credit insurance, 80 per cent of the value was kept by the manufacturer or wealth management, and 20 per cent to the distributor.

I see. So that was the subject of a distribution agreement between the two business units?---Yes.

I see. All right. Could I tender that audit report, Commissioner.

THE COMMISSIONER: Just before we take it down, can we drop the pop-up, please, and – yes. I simply draw – I note what appears in the right-hand column under Audit Conclusion, Mr Comyn. Does that accord with what you understand to be the way in which responsibilities are to be assigned with respect to the distribution of this product?---Yes, broadly, Commissioner. I – I would probably phrase it slightly differently. I mean, in the context of, say, for – for home lending that's distributed through business banking, I rely on Mr Huggins to ensure that the control environment that the business banker performing in the origination of those home loans, he's singularly accountable in my mind for the end to end distribution of those products across the value chain. But the performance in terms of in the context of lending, reasonable inquiries, the various steps, the credit decisioning process, yes, that needs to be performed. But in my view, that end-to-end accountability sits with the product manufacturer. So I would use slightly different words, but the intent, at least as I've expressed it, would be as such.

Yes. Have we a date for this audit report, Ms Orr?

MS ORR: October 2012 is apparent from the front of the document, I think, Commissioner.

THE COMMISSIONER: Thank you.

MS ORR: I'm sorry, and from Mr Comyn's statement.

THE COMMISSIONER: Yes. Audit report Wealth Management Direct Life Insurance distribution and sales October 2012, CBA.0002.3181.6938, exhibit 7.16.

EXHIBIT #7.16 AUDIT REPORT WEALTH MANAGEMENT DIRECT LIFE INSURANCE DISTRIBUTION AND SALES OCTOBER 2012 (CBA.0002.3181.6938)

MS ORR: So it was known within one part of CBA in October 2012 that the recommendations of the ASIC report were not wholly being complied with, particularly in relation to scripts?---Yes, that's right.

And that there were a series of other problems identified in this audit report with the sales of consumer credit insurance?---Yes.

But you didn't receive that?---No.

Then in 2013, there was a paper created in May for the retail banking services risk committee that reviewed consumer credit insurance products in some detail. It was called a risk deep dive. Have you seen that document before, Mr Comyn?---Yes, I have.

And when did you first see that document?---At the time.

Okay?---I think I was actually an apology for that meeting, but I do remember reading that – that paper.

All right. Can I bring that paper up. It's CBA.1002.0014.0001. So we see that this is the result of a risk deep dive into consumer credit insurance. And we see from 1.1 that the RBS Risk Committee requested an update on the key risks associated with consumer credit insurance sold through the retail, given RBS's responsibilities under the mis-selling guidelines. Do you know why this update was requested at this time, Mr Comyn?---I – I can't be certain. It was not uncommon for products to come through what is referred to there as a risk deep dive. It – it may have been coincidence. It may have also been we specifically asked for it to come and give an update, i.e., the retail bank would have asked the manufacturers of this product to come and make a presentation on these products.

And this update was prepared by them. It was prepared by people by the direct Life business, the manufacturers?---Yes.

And we see at 0002 in paragraph 4.1 that there were a range of risks identified as associated with sales of consumer credit insurance. And we see a list of the sorts of risks associated with the sales of these products. Do you see that?---Yes, I do.

Including mis-selling, inappropriate structure of remuneration or incentive systems and poor product features driving poor value?---Yes, I see that.

And then if we turn to 0003 and bring up 0003 and 0004, we see that the authors of this paper spent some time explaining the UK PPI scandal. Do you see that in part 6?---Yes, I do.

And seeking to distinguish the PPI situation from the situation here with consumer credit insurance?---Yes, that's right.

And at 7.2, right down the bottom of the right-hand side, we see that this section concluded with a statement by the authors that despite the differences, that that outlined above,:

> *It's important we continue to focus on taking a proactive stance to improve sales processes and controls, product value, and adopt a collaborative approach with regulators directly and through industry bodies such as the FSC and ICA.*

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

And then at 0005, in the final part of the paper, we see that the authors recorded that they were working closely with RBS risk management – do you see 8.2 – to introduce further improvements to support compliant sales and reduce the mis-selling risk?---Yes, I see that.

And at 8.2.8, they planned to review product value with a focus On CreditCard Plus?---Yes.

So this is May 2013, and you were provided with this paper, you say?---Yes.

But you only developed your concerns about the products in 2014?---I recall being certainly more concerned in 2014. It's hard for me to distinguish, as I've looked at the chronology in preparing for today, certainly this is – this is one – one marker. There was certainly a discussion, but I was not as concerned at that point.

Why not?---Because I was over-relying on the differences between the Australian context and the UK context.

I see?---And I'm taking false comfort, with the benefit of hindsight, from the – some of the language around, "We're working hard to do X and Y", including improving some of the controls to ensure and to reduce the mis-selling risk.

So you didn't think at this time about whether to cease selling consumer credit insurance?---No, I did not.

All right. Could I tender that document, Commissioner.

THE COMMISSIONER: RBS Risk Committee CCI risk deep dive, 29 May '13, CBA.1002.0014.0001, exhibit 7.17.

EXHIBIT #7.17 RBS RISK COMMITTEE CCI RISK DEEP DIVE (CBA.1002.0014.0001) DATED 29/05/2013

MS ORR: So what - - -

THE COMMISSIONER: Seven-point-one-seven, yes.

MS ORR: What changed between your attitude when you received this paper around May 2013 and the point in 2014 where you developed the concerns that you articulated earlier?---I think it was more visibility and awareness, particularly on the UK context. As I said, we commissioned a piece of work – or either wealth management or CMLA commissioned an external piece of work to compare those differences. I don't recall too many specific events other than towards the end of 2014 I recall a specific event.

Towards the end of - - -?---2014.

- - - 2014?---Yes.

What was that specific event, Mr Comyn?---It was a meeting that I had with ASIC. I believe it was Monday, 24 November 2014.

And what do you recall of that meeting, Mr Comyn?---I was there with who was then the chief legal counsel, David Cohen. I was there to present on a program that we – we were working on at the moment known as the Better Customer Outcomes Program, and I was walking them through what steps we were taking, some of the work that we were doing. That's – as I said earlier, that's where we discovered the issue in – in Direct Bank. And I remember asking them at that point in time if there was anything else on their mind, and I remember them mentioning consumer credit insurance.

And had you seen report 256 with their thinking on consumer credit insurance at this point?---I can't be certain to say I had seen the whole report, but I think it would be fair to say that I was aware of the report at that point in time. I can't – certainly in subsequent meetings with ASIC they've referred specifically to that report, but I can't recall when was the first time it was mentioned.

So what was it that ASIC said to you they were concerned about with consumer credit insurance?---As I – as I recall – and, obviously, it's – it's several years ago, it was the end of the meeting. I had run through what we were working on, which is everything from some of the topics that we've discussed today, incentives, how we're doing various things around monitoring, what we're doing around our product – what we call product governance framework, all the reviews we were doing of our products. And I said, "Is there anything else that's on –" at least my recollection – "Is there anything else that's on your agenda or something that I should be aware of?" And I don't remember it being any more than, "Consumer credit insurance is – is something that we're interested in."

And what did you do as a result of receiving that indication from ASIC?---I recall making that – that comment back at the executive committee after that meeting, at the end of November and certainly in 2014.

You told the executive committee that ASIC was concerned - - -?---Yes.

- - - about consumer credit insurance. And what was the executive committee's response to that?---I don't recall specifically. There was a practice at the beginning of executive committee meetings which were called general business, which was basically people around the table would give an update on – it would vary, but issues or business performance, etcetera. And I remember just raising it in the context of this was something that the regulator had passed on.

So apart from raising it in the general business section of the executive committee meeting, did you do anything else in response to the concerns raised by ASIC?---Well, I recall having a conversation with the then head of wealth, but then I – that was probably one of the escalating points in my mind about the level of concern that I had, but I can't recall all of the specific steps that I took between that meeting and May 2015 – well, I think it was April 2015 when the - - -

Audit?---When the audit report came out.

So what do you recall of the conversation that you had with the head of wealth?---I think I raised it in the context of at that particular meeting, that this is something we should be concerned about.

And what did the head of wealth say to you?---I don't recall specifically.

So did you inform the impression that anything was going to be done at CBA in response to these concerns?---I don't – I certainly didn't have a reasonable basis to form that conclusion, ie, there was not a demonstrable – there was not demonstrable evidence that something was going to come from that.

Well, did you think anything was going to come from that, Mr Comyn?---Well, I wasn't sure, but I – I raised it then. I probably – it's hard for me to remember everything that was happening at that point in time, but I suspect I had a conversation around that time with my head of the Better Customer Outcomes program, Mr – Mr Reeves, but I can't recall whether that would have happened in late 2014 or early in 2015, so first quarter 2015.

So you raised it in the way you've described - - -?---Yes.

- - - at the executive committee meeting. You had a discussion with the head of wealth, but you can't recall what their response to this was, and you can't recall any other steps that were taken at that time in response to ASICs concerns?---Well, I think my assumption was that we put the product through what I thought – what we called the product governance forum, which was our formal process to review products. I can't recall whether I specifically instructed that we commence that review then.

Was it commenced then, Mr Comyn?---I – I don't know if it was, Ms Orr, I'm sorry.

Have you seen any documents to suggest that it was commenced at that time?---I've seen documents in my tender bundle of multiple reviews. There's obviously some going to 2017. There's one done in 2015. But I – I don't – there's nothing to suggest exactly what the catalyst was to start that. There is a – an email trail in my tender bundle, I think, which is around March 2015 between one of my former colleagues and myself talking about those concerns, but I can't specifically recall exactly what happened from 24 November until – I think it's March 2015.

What do you say happened in March 2015?---I think that's the – there's an email trail in my - - -

I see?---In my tender bundle.

Is this the email you exchanged with the head of wealth and possibly the CEO? Is that correct?---That come – it's with the head of wealth and then I – I forward it to several members on my leadership team and the head of the Better Customer Outcomes program.

All right. Perhaps if I bring that email up - - -?---Yes.

- - - to see if it assists. That's CBA.1004.0171.0011. Now, this email starts at 0012. And if we could have 0012 and 0013 both on the screen. It starts with an email from Annabel Spring to you on the 24th of March 2015?---Yes.

And Ms Spring was the head of wealth?---Yes.

And Ms Spring said to you:

> *There is a growing rumour doing the rounds in CI –*

Is that CommInsure?---Yes, it is.

Continuing:

> *…stretching to WM –*

wealth management?---Yes.

Continuing:

> *…that RBS is thinking stopping selling insurance particularly on the –*

I'm sorry:

> *…potentially on the advice of McKinsey. It is getting pretty live, given the DB –*

direct bank?---Yes.

Continuing:

> *…issues, BCOP –*

the Better Customer Outcomes program?---Yes. Sorry. I'm - - -

That's a lot of - - -?---We have our own language. That's – that's another problem.

You certainly do, Mr Comyn:

> *It is getting pretty live given the direct bank issues, the Better Customer Outcomes program getting up and running, plus commentary as to what the RBSLT*

?---That's my leadership team, all of my direct reports.

Continuing:

> *…is said to be saying re NAB and the UK and the various CommInsure people involved. Given the only fact out there people can actually see is sales data, we are missing plan and the pressure is rising. These rumours are somewhat predictable. I had not realised until today just how widespread they are. Do you have time to talk first thing? Would really love your perspective or perhaps an update. I am checking in with Angus D too.*

So this is the email you were referring to - - -?---Yes.

- - - that you received from the head of wealth on the 24th of March 2015?---Yes.

And what did you interpret this email to mean?---She is expressing concerns that we are doing a review of those products with a – forming a view that we will cease the sale of those products, is – is how I would interpret that.

And she didn't - - -?---That email.

She didn't want you to cease the sale of these products. Is that right?---Yes, that would be – that is right.

Is that what you understood her position to be?---Yes.

And why did you understand her to hold that position?---Because we are the sole distribution of that product.

Were these profitable products for CBA?---They would have earned, at that point in time, perhaps $150 million. The revenue - - -

Over what period, I'm sorry?---No, so per annum.

Yes?---I won't be – might not be precisely right. In the context of the retail bank, that is the 20 per cent of that. That's $30 million of a business that's making $10 billion in revenue in the context of the Commonwealth Bank of probably, at that time, $23 billion revenue.

So these were profitable products?---In my view, not sufficiently profitable, but it depends on your view of profitable, but - - -

Sounds pretty profitable to me, Mr Comyn?---Yes. By any reasonable person test, I accept that, but in the context of a – of a business of our size, there are – just to frame the alternative for a moment, there are many parts of the market that we choose not to participate in which would generate income of that size.

So did you understand the head of wealth management to be concerned about the potential that you might decide to stop selling these products?---Yes.

And the concern was related to the loss of income that would flow if you stopped selling the products?---That would be my interpretation, yes.

Yes. Now, we see that you responded to Ms Spring - - -?---Yes.

- - - at the top of the page. You said you hadn't spoken with Angus Dawson on the topic:

> *Nor have we received any advice from McKinsey. I have received plenty of free advice over the last three years from Ross McEwan and others in the UK to stop selling PPI products.*

?---Yes.

Continuing:

> *On a more serious note, there is no new information other than what I shared with you recently re NAB stopping the sales of credit card insurance products from their assisted channels. As you know, I don't think a strong rebound in sales for CreditCard Plus - - -*

?---That's right.

Continuing:

> *…is likely to occur in the foreseeable future, but we are not considering the cessation of sales of insurance products.*

So was that your position at the time, in March 2015? You weren't considering the cessation of the sale of these products?---Not specifically. We were doing a review and the issue that we spoke about earlier in the day in direct bank, and we had identified some sales practices that concerned us, combined with a number of – so the – the Ross which I'm referring to there, which I – when I say "on a more serious note", I'm not trying to be flippant; it's more – I've had – I've made that point numerous times that he's provided that advice. Having overseen the growth of those products in the Commonwealth Bank and then having gone to the UK, his advice to myself, my – as I recall, Mr Narev, Ms Spring, is quite clear – stop. And - - -

I'm sorry. Whose advice was quite clear?---Mr McEwan.

Mr McEwan said to Mr Narev and Ms Spring, "Stop selling the products"?---That is my recollection. He certainly - - -

And when did he say that?---I can't be certain, but as I've said, over three years, but I would have kept in touch with him since he left.

But you understand he conveyed that not just to you, but to Ms Spring and to Mr Narev, his position that they should - - -?---That – that – that is my understanding but I wasn't - - -

Yes?--- - - - personally present. So - - -

I see?---And then I say yes, I did – that that was something else I had raised. I think I'd also raised that at the executive committee, but I raised – and, again, apologies to a competitor if this is incorrect – but I understood at that point in time that NAB had stopped the sale of credit card insurance products from their assisted channels, and I mean assisted channels to – to mean branch and contact centre. And then I'm basically saying do not expect - - -

THE COMMISSIONER: NAB domestically, NAB Australia, not NAB via Clydesdale - - -?---No, I mean that domestically, Commissioner.

Yes?---And then I go on to say the sales will not improve. And then I'm referencing that – the Angus there is one of my direct reports. And he's engaging in – in – with representatives of the CommInsure business.

MS ORR: The Helen is Helen Troup?---Yes, it is.

Yes. Now, you then forwarded this email chain to others within CBA. If we turn to 0011, we see at the bottom of the page that you forwarded it to Angus Sullivan, Quentin Boyes, Fiona Larnach and Lyn Cobley. And you said:

> *See below FYI. I am sure it goes without saying but there is understandable sensitivity on this issue. We should all be judicious about this topic. And can you please ensure that nobody in any of your respective teams is providing a running commentary on any work being undertaken within direct bank or the Better Customer Outcomes program.*

Why was there so much of a need for sensitivity and being judicious about this, Mr Comyn?---Because we were doing a product review of those products, where I thought it was at least somewhat, if not reasonably, likely that there may be a recommendation coming out of that.

A recommendation to cease the sale?---I thought that that was a possible recommendation, yes.

Yes?---And that would be a very sensitive issue. And the people that I'm writing to are my direct reports and suggesting that – because I'm responding to Ms Spring's point around there's rumours to say don't provide any – let the team do their work and don't provide any running commentary whilst that work is being undertaken.

I see. All right. Could I tender this email chain, Commissioner.

THE COMMISSIONER: Emails March 2015, Spry, Comyn and others, CBA.1004.0171.0011, exhibit 7.18.

EXHIBIT #7.18 EMAILS, SPRY, COMYN AND OTHERS, CBA.1004.0171.0011, DATED MARCH 2015

MS ORR: Now, that was March 2015, Mr Comyn. Some weeks later in April 2015, the audit report came that you've referred to a number of times with highly concerning findings about the selling of consumer credit card – I'm sorry – about the selling of CreditCard Plus insurance within CBA. Is that right?---That's right.

That audit report revealed that approximately 64,000 CBA customers had been sold CreditCard Plus in circumstances where they weren't eligible or may not have been eligible to claim on certain benefits under the policy?---Yes, that's right.

And that was because at the time they bought the product they were not employed, and it was necessary under the eligibility criteria to be employed to get certain benefits under the policy?---Yes, that's right.

All right. So the product should never have been sold to those people?---That's right.

And that came up in a regular internal audit relating just to credit cards. Is that right?---Yes, that's right. The audit team was looking at credit cards and doing an end-to-end review of the credit card business and happened to, as part of that, look at the sale of CreditCard Plus, that product, and specifically against the ASIC report 256 recommendations, and, as I recall, it was that we hadn't implemented the sufficient knock-out scripts to ensure that customers who could claim on the full benefits of that product had taken out that product.

So a contributing factor to the mis-selling of the product to the 64,000 customers was that you had not implemented the changes to your sales scripts that had been recommended by ASIC in 2011?---That's right.

All right. I want to move on to events after the receipt of that audit report, but I see the time, Commissioner.

THE COMMISSIONER: Just one matter, Mr Comyn. It's at about this point in the story, is it not, that Clydesdale are dealt with by the FCA?---I - - -

Are you familiar with that?---Not specifically, Commissioner.

Clydesdale were fined by the FCA for their participation in – or for their dealings in PPI?---Yes, I know that they were one of a number of institutions. I – I don't - - -

Yes, in April 2015 and were fined 20 million sterling. Is that right?---Yes, I think your recollection of that is – is better than mine.

And because of Clydesdale's connection with NAB, it would have been a matter of note in the Australian banking industry, would it not?---Yes, I suspect that's where I made the connection with – with NAB.

Yes. Yes. Now, Ms Orr, how are we travelling for time? My eternal question.

MS ORR: Yes, which I anticipated, Commissioner. I think it would be - - -

THE COMMISSIONER: Well, I'm predictable, at least.

MS ORR: I think it would be useful for us to start slightly earlier tomorrow, 9.45.

THE COMMISSIONER: Is that possible, Mr Comyn, if we begin at 9.45?---Yes, of course.

Yes.

MS ORR: Thank you, Commissioner.

THE COMMISSIONER: Nine forty-five tomorrow it is, then.

<THE WITNESS WITHDREW [4.15 pm]

MATTER ADJOURNED at 4.15 pm UNTIL TUESDAY, 20 NOVEMBER 2018

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