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TRANSCRIPT OF PROCEEDINGS

O/N H-871455

THE HONOURABLE K. HAYNE AC QC, Commissioner

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

MELBOURNE

9.45 AM, TUESDAY, 20 MARCH 2018

Continued from 19.3.18

DAY 7

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

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

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

**MS L. NICHOLS SC appears with MS C. VAN PROCTOR, MR C. TRAN and MR R.
CHAILE for ASIC**

MR C. SCERRI QC appears with MR P. KULEVSKI and MS Z. HILLMAN for CBA

MS D. HOGAN-DORAN SC appears with MS J. SHEPARD for Aussie Home Loans

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

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

MR A. SLEVIN appears for Finance Sector Union of Australia

MR D. MACKAY appears for ING Bank

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

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

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

THE COMMISSIONER: Mr Dinelli.

MR DINELLI: Thank you, Commissioner. In the opening address of Senior
Counsel Assisting last week, we identified the six consumer credit topics that would
5 be addressed in this, the first set of hearings. You have heard evidence last week and
yesterday about two of those topics, home loans and add-on insurance. We now
intend to say a few words by way of opening in relation to two of the other issues
identified by Ms Orr, the consideration of which will occupy today and some of
tomorrow. The first such topic is personal overdrafts. The second is a set of
10 problems that has occurred in connection with the provision of credit products,
namely, account administration and processing errors.

Commissioner, you will hear evidence relating to three case studies which explore
these topics. I will say more about each of those case studies shortly, but first I will
15 briefly touch on some background to these case studies, including the products and
systems which they concern.

First, overdrafts. An overdraft is, to put it simply, an arrangement that allows a
person to withdraw more funds than they have in their account. ASIC's smart money
20 fact sheet overdrafts identify two types of overdraft, one being an arranged overdraft,
and the other an unarranged overdraft. As described by ASIC, an arranged overdraft
is a credit facility connected to a bank, building society or credit account which a
person applies for or which may be given to a person as part of that account. In
contrast, ASIC says that an accidental or unarranged overdraft occurs if a person
25 makes a payment but there are insufficient funds in that person's bank account to
cover it.

In that circumstance, where the person's bank or building society honours the
payment anyway, this creates a debt in the nature of an unarranged overdraft. While
30 financial services entities have different policies in relation to unarranged overdrafts,
many cheque or savings account permit some form of unarranged overdrafts to take
place. As to the prevalence of this credit facility in Australian commerce, the
Reserve Bank of Australia records data in relation to what they describe as revolving
lending, which refers to lending facilities that permit a customer to draw on as much
35 of a preapproved amount of credit as is required at a given point in time.

In January 2018, the RBA found that there was 58.9 billion in revolving credit
provided to households. The majority of that, approximately 51.6 billion, relates to
credit cards, another topic which awaits the Commission's consideration later this
40 week. While the precise figure cannot be ascertained by the figures provided by the
RBA, overdraft facilities granted to personal banking customers account for some of
the remaining 7.3 billion that was on loan as at January 2018 to Australian
households.

45 Second, I refer to processing errors. The other topic we will be looking at – the other
topic that we will be looking at in this next phase of the hearings, being account

administration and processing errors by financial services entities when providing consumer credit products. As noted in the opening address of Senior Counsel Assisting last week, as a result of work done by ASIC since July 2010, approximately \$239 million has been repaid to almost 540,000 customers who have
5 been affected by account administration and processing errors in connection with home loans. This remediation has been paid by financial services entities such as ANZ, the Commonwealth Bank of Australia, and Bankwest, National Australia Bank, Westpac and the Bank of Queensland.

10 The remediation paid demonstrates that processing errors occur across a variety of credit products. They occur predominantly by reason of the application of automated processes, but human errors left unchecked often underlie them. And in their application, for example, to the calculations of interest payable, they can have a very significant effect on Australians' day-to-day lives. That is, Commissioner, we will
15 explore the fact that such errors throw into stark relief the right of all Australians to be treated honestly and fairly in their dealings with banking and financial services providers.

I now turn to the case studies about which you will shortly be hearing. The first case
20 study, relating to CBA, concerns a programming error in the automated serviceability calculator used by CBA to assess certain applications for personal overdrafts. In CBAs first submission to the Commission, it told the Commission that CBA had paid four infringement notices issued by ASIC in relation to breaches of responsible lending laws when providing personal overdraft facilities. These totalled \$180,000.
25 CBA had identified a programming error in the automated serviceability calculator used to assess certain applications for personal overdrafts. As a result of that error, CBA failed to take into consideration the declared housing and living expenses of some customers between July 2011 and September 2015. According to an ASIC media release, CBA told ASIC that the error resulted in 9577 customers being
30 granted an overdraft when their application should have been declined by the bank, and 1152 customers being granted a higher overdraft limit than that for which they were eligible.

In CBAs second submission to the Commission, CBA advised the Commission that
35 CBA had remediated 9161 customers, writing off overdraft balances, reducing limits where required and waiving outstanding amounts, to a total of approximately two and a-half million dollars. The impacted customers who did not require mediation had primarily closed their accounts prior to the remediation. An example of the approach that CBA took to remediation, where customers were actively utilising the
40 overdraft facility, was that CBA would send a letter, an email to the customer, providing 34 days notice of the overdraft limit removal or reduction. CBA would then write off the outstanding balance and remove or reduce the limit at the end of the notice period. The remediation methodology was agreed with ASIC and overseen by Ernst & Young.

45 On 14 September of 2016, ASIC issued a media release announcing the imposition of penalties on CBA in respect of this conduct. The media release stated:

ASIC was concerned that this conduct breached responsible lending laws and that affected customers would have been unable to comply, or could only comply with substantial hardship, with their obligation to repay their personal overdraft on demand.

5

This study will raise issues with respect to responsible lending in the overdrafts context and in relation to the effect of automated processes on responsible lending. You will hear evidence from Mr Clive van Horen, who gave evidence before you, Commissioner, yesterday. Mr van Horen, as the Commission heard, is the executive general manager, retail products, and overdraft products fall within his area of responsibility.

10

The second case study will be an ANZ case study concerning ANZs Assured Overdraft facility and breaches of the National Credit Act in connection with that facility. In its submissions to the Commission, ANZ acknowledged that in 2014 ASIC commenced an investigation in respect of the ANZ assured overdraft facility. Between November 2014 and January 2015, ANZ had issued a series of mail-outs to a group of existing customers holding transaction accounts. The mail-outs offered cost customers an overdraft facility with limits of \$500 or \$1000.

20

In February 2016, ASIC issued five infringement notices totalling \$212,500 for alleged failures to comply with the requirement to make inquiries about the maximum credit limit required by the customer in respect of preapproved offers. ANZ paid those amounts. ANZ also said that it ceased making ANZ Assured preapproved offers at that time. ASIC issued a media release announcing the imposition of penalties on ANZ on 7 March 2016. The media release stated:

25

These failures by ANZ were in breach of its obligation to make reasonable inquiries about the credit limit a customer requires, a protection aimed at ensuring the consumers can select the credit limit that meets their needs, particularly where they may need a lower credit limit than what might be on offer.

30

Again, this case study will raise issues with respect to responsible lending. The Commission will hear evidence from Ms Heang Forbes, who was the product manager of Assured and overdrafts in personal loans and overdrafts at the relevant time that these unsolicited offers were made.

35

The third case study in this unit, again, relates to ANZ, and it relates to account administration or processing errors. In ANZs Commission – sorry – in ANZs submissions to the Commission, ANZ acknowledge that in the period from 2003 until July 2013 certain Breakfree home loan customers were charged an interest rate higher than they should have been according to the relevant terms and conditions.

40

In addition, some offset accounts were not properly linked to home loans, resulting in customers being charged excess interest. These matters primarily arose because of limited system controls to ensure the correct package interest discounts were applied,

45

a disaggregated process for implementing offset linkages and a lack of oversight and detection controls.

5 A program that you will hear about was designed and implemented to remediate the errors. It was known as the Mortgage Breakfree Offset Remediation Program. That program identified approximately 400,000 affected accounts and refunded customers approximately \$69.3 million. This comprised reimbursements to customers of \$61.9 million in interest in respect of their home loans and 7.4 million in compensation, to recognise that the customers have not received the interest rate discount from the
10 Breakfree package or the benefit of linking their offset account to their loan. The average payment per customer in respect of these issues was approximately \$300.

ANZ informed ASIC of this matter on 17 June 2010 and provided updates in relation to its further investigation and in relation to remediation. The program was
15 completed in April 2014. ANZ has told the Commission that as a result of the Mortgage Breakfree Offset Remediation Program ANZ has made a number of process and control enhancements in respect of both the Breakfree package and the offset account linkages. The Commission has been told that ANZ performed forensic data analytics across its home loans portfolio to compare customer contracts to the operation of core systems.
20

ANZ also acknowledged the existence of a number of other processing error events in ANZs provision of home loan products. Those four further issues will be addressed, the first being, as part of an ongoing review in July 2017, ANZ identified
25 certain further issues which had some similarities to those that I've already explained were the subject of the remediation program. They will be explored. Second, as part of a broader review of other product processes, ANZs commercial lending business also looked at offset linking processes. That review also identified that those processes did not always work as intended and, as a consequence, that there were
30 linkage errors in relation to commercial lending offset products.

The recurrence of the Breakfree and offset issues and the additional offset linkage issues identified by ANZs commercial review were notified to ASIC on 5 October of last year. ANZ continues to update ASIC on its progress in relation to these matters.
35 The remediation program began in October of last year and is expected to be completed later this year. ANZ estimates that it will be required to refund around \$4.3 million in over-charged fees and interest, with additional compensation.

Third, ANZ also acknowledge that between 14 December 2012 and February 2016,
40 4800 offset accounts had not been linked to an eligible retail home loan. ANZ reimbursed customers to a total of approximately \$4 million in relation to that issue.

Fourth, ANZ acknowledged that between June and December 2016 certain customers did not receive the correct interest rate margin discount on their home loan.
45 Approximately 2300 customers were affected and ANZ is currently investigating approximately 24,000 further customer home loans. It expects that the majority of

these accounts were not subject to the error. ANZ acknowledged that it had reimbursed and compensated customers to an approximate total of \$980,000 to date.

5 The Commission will hear evidence from Ms Sarah Stubbings, the head of loan products for ANZ in Australia. Her evidence will consider this period of time over which these errors have occurred that have been the subject of, variously, identification, analysis and remediation. It bears emphasis that this case study, which involves a number of distinct but related errors over a very significant period of time, will provide the Commission with a lens through which to consider a number of
10 questions relating to process errors, including the adequacy of ANZs processes to detect and prevent such errors, and the effect of technology on the ability of banks to deliver honest and fair services to their customers, and the adequacy of remediation to their customers. Commissioner, that concludes my short opening in relation to the topics - - -

15

THE COMMISSIONER: Thank you. Mr Dinelli.

20

MR DINELLI: And it falls now, perhaps, for my learned friend Mr Scerri to call back to the witness box Mr van Horen. Thank you, Commissioner.

THE COMMISSIONER: Is that right, Mr Scerri? Mr van Horen, having been sworn yesterday, there's no occasion to re-swear you. And we've had your personal details taken. Thank you. Do sit down.

25

<CLIVE RICHARD VAN HOREN, RECALLED

[10.03 am]

30

<EXAMINATION-IN-CHIEF BY MR SCERRI

MR SCERRI: Mr van Horen, one of the statements you made was in relation to personal overdrafts?---That's right.

35

And that's dated 9 March?---Correct.

And the reference is CBA.900.0002.0001?---That's right.

40

Do you have a copy of that with you, sir?---Yes, I do.

Are there any corrections to be made to that statement?---None.

Are the contents true and correct?---They are.

45

I tender that statement, Commissioner.

THE COMMISSIONER: Exhibit 1.113, statement Mr van Horen, 9 March '18, CBA.9000.0002.0001.

5 **EXHIBIT #1.113 STATEMENT OF MR VAN HOREN DATED 09/03/2018
(CBA.9000.0002.0001)**

10 MR SCERRI: Thank you, Commissioner.

THE COMMISSIONER: Yes. Yes, Mr Dinelli.

15 **<CROSS-EXAMINATION BY MR DINELLI [10.04 am]**

MR DINELLI: Thank you, Commissioner. Mr van Horen, my name is Albert Dinelli and I am one of the counsel assisting the Royal Commission?---Good morning.

20 You have given evidence to this Commission that your present role at CBA is Executive General Manager Retail Products. Is that correct?---That's right.

25 And, as I understand it, you have held that role since May 2016?---Correct.

And, before that, you held various other roles within CBA?---That's right.

30 I am going to ask you some questions today, or this morning, relating to personal overdrafts. And that, as I understand it, is part of your role and area of responsibility within the bank?---It is, yes.

35 You've explained in your statement which has just been tendered what a personal overdraft is. Can you assist the Commission, perhaps, by explaining in your words the nature of a personal overdraft?---Well, a personal overdraft is a credit facility that's linked to a customer's day-to-day transaction account. And so it's a facility that allows a customer to go into negative balance, essentially, up to an agreed – or down to an agreed limit. So if your limit in your overdraft is, for example, \$1000, then the customer is able to spend into debit by up to \$1000.

40 I see?---It incurs interest at an agreed interest rate.

And - - -

45 THE COMMISSIONER: Sorry, Mr van Horen, the last part of your sentence I missed?---The overdraft incurs interest - - -

Yes?--- - - - at a published interest rate.

At a published interest rate. Thank you.

MR DINELLI: What is that interest rate?---It's 14.9 per cent.

5 And that has recently been reduced, has it not, by CBA?---I'm not sure it has been reduced a lot. It certainly has changed. And it's a rate that moves up and down over time. It hasn't been reduced in recent weeks, though.

10 In February 2016, as part of the consideration of the issue that we're going to speak about this morning, the interest rate as at that time was 16.6 per cent, wasn't it?---I wouldn't disagree with that.

15 And, in fact, as part of that, there was a new pricing structure whereby the interest rate dropped – dropped to 13.59 per cent and there were some other adjustments in relation to the fees?---Yes. As I say, it's a product that – it's not static, that the rates do change over time for various different reasons.

20 Now, during the – I'm going to refer in my questions to what I will describe as the relevant period, and that relevant period is July 2011 to September 2015, being when CBA offered that product. Now, maybe to understand the significance of that timeline, can I take you to CBA.0509.0001.0022. Now, this is an exhibit to your statement – and you will have seen this, of course, being dated February 2016?---That's right.

25 What was the purpose of preparing this update?---It was an internal update prepared by the team that manages the overdraft products covering a range of topics. And, as you can see on the agenda page, it covered a number of areas, including remediation, marketing activity, enhancements and improvements we were making to the product.

30 That's on 0023, which perhaps - - -?---Yes.

35 - - - for the assistance of the Commission, the Commissioner will go to. I see. And I referred previously – and I might take you briefly to 0034. And it's there in relation to pricing that there's a reference to the reduction of the interest rate and some changes to fees?---Yes.

40 And then if I can take you to 0026, which was the initial purpose of going to this document, if I may. Now, I asked you about the relevant period. The relevant period, as I indicated, Mr van Horen, is from July 2011 through to September 2015. And you will see there that there are 120,000 overdrafts on the books at CBA in July 2011. Is that right?---Yes.

45 And what does it mean at that same time where it says “PODs on CommC”?---PODs, personal overdrafts. CommC is our front end system. It's a customer relationship management system, to use some of the jargon. In other words, it's the front end system that houses all the information about the customer. It is a fairly comprehensive front end system, because it not only has information about the

customer, but it's also the way in which new products are originated in assisted channels, being branch or on the telephone. So think of it as the core front end system that a lot of different components are integrated into.

5 But does that enable some automated processes to be done by the bank?---It can. It doesn't follow. But in this case I think the relevance of July 2011 was when we commenced automated decisioning for PODs, meaning that, you know, broadly speaking, you've got two ways you could originate or make a credit decision, a very manual process, which, you know, you might think of as what happened 20 or 30
10 years ago, where a human being would look at a whole lot of information and make a judgment decision as to what the appropriate credit limit was. Or a more current approach would be using whatever data and automated tools are available and to serve up a credit decision through automated processes. I might add that many of those automated processes have a lot of manual checks and balances, as well.

15 Is it a fair – is it fair to say, however, that from – or during the relevant period, that is, from July 2011, it was almost entirely an automated system for the checking of - - -?---Yes, it was a very heavily automated system. As I say, there are manual controls, which we can come back to later, but yes, it was an automated decisioning
20 system.

And I will come back to that. Now, in June 2012 it indicates there is 80 per cent year on year growth?---Yes.

25 And that in June 2012 there were 228,000 overdrafts on the books?---Yes.

That is quite a jump in the period of 12 months?---Correct. Off a low base. So, obviously, a lot depends on what the denominator is, but it was growth off a very low base.

30 And, in fact, by July 2014, which I accept a couple of years further on, it's then 500,000 – 550,000 overdrafts?---That's right.

35 And part of that growth in overdrafts was because CBA, as part of its – as parts of its marketing, etcetera, was advertising overdrafts to its customers?---Sure, we were advertising.

40 And people were making applications – there's a distinction in your statement between what you call short form applications and long form applications?---Yes.

45 What's the difference between those?---A long form is what you might think of as a traditional credit application, where a customer supplies, you know, all the information as part of the application, income expenses, assets and liabilities and so on. So that's what we would call a long form information, because it's – you know, as the name suggests, there is very detailed information on a number of aspects. Short form applications in our language refers to situations where, for example, it is already a CBA customer. They may have other credit products with us, they may

have their transaction account, their day-to-day bank account with us and, therefore, we have a lot of information available to us. And so an example of how short form differs from a long form application would be around income, because if the customer has their salary being credited to an account that they have with the
5 Commonwealth Bank, then we can determine or estimate what their income is. And as part of the short form application, instead of asking the customer to provide pay slips or bank statements, you would expect them to say, well, hang on. You should know that already, because I bank with you. What we do is we serve up and say, well, based on your information your income is X. Please confirm if this is right or
10 wrong. If it's wrong, then they would follow up with further - - -

So you're able in that regard to – you dealt with income, but you're able in that regard to ascertain from the customer's bank account the amounts that are deposited in it and if they're deposited on a regular basis from a particular entity?---Yes. It's
15 not a perfect science, because, you know, you would appreciate that people's income can take many different forms. For some people it's very clear and regular, and also the descriptor that appears in the transaction is sufficiently accurate in detail that we can identify that it is a salary. However, there - - -

20 And, likewise – sorry – go on, Mr van Horen?---But it doesn't always apply. So there would be many customer of ours where we do not know what their, you know, regular income is and we're unable to follow a short form path.

And, likewise, you can see if there's particular expenses that would come out on a
25 regular basis, as well?---Yes. That's a much more complicated area. Happy to explain that a little if it's helpful.

No. No?---Or we will get to that later.

30 We will come to that in due course?---Yes.

So you've spoken about the shot form application. And that's important by way of context. But I'm focused here in relation to the personal overdrafts on the long form applications that you – that are the subject of your statement. And as part of that
35 more detailed analysis of their expenses, you would ask people what their living expenses were?---That's right.

And any rental expenses that they had?---Yes. So fixed – if you think of it in two categories, fixed and discretionary. Fixed would be rent or mortgage repayments or
40 other loan repayments, and discretionary would be your other living expenses.

And it's important to have that figure. Dealing with them in turn, but it's important to have the rental figure, because that, of course, allows you to assess whether it's reasonable or not to offer an overdraft to someone?---Correct. It's relevant to those
45 suitability assessment, the serviceability assessment.

Thank you. In July 2014 there's a reference to a CALC notice. Can you inform the Commission what that's a reference to?---CALC is the Consumer Action Law Centre, consumer advocacy group based here in Melbourne. And they raised issues around the way that the short form – so short form was being marketed. And that led
5 to a series of quite an extended process with ASIC of assessing whether our short form application process was meeting responsible lending requirements.

And then during this stage – during this process, if I can call it that, or since the first CALC notice, there was also the identification of an error in relation to the long form
10 application, wasn't there?---Yes. That's right. So what was happening was whilst the work was underway on the short form side, a new leader took responsibility for the personal lending business – personal lending includes overdrafts. And what he did was commenced quite a comprehensive review of the full portfolio, not just
15 focused on the short form product, but on all aspects of the portfolio. And so we call it a DDI to understand, you know, the states of health of the portfolio. And, at the same time, we were upgrading our decisioning system or tool. Stop me if this is too much detail, but, essentially, from a system called Transact to Power Curb
Optimisation, which is PCO. So that is the decisioning tool that takes all the inputs
20 and then produces a credit decision: approve, decline, defer. And as part of the implementation of that change we ran the old and new system in parallel and he saw that it came up with a different answer.

And if I could stop you there. And it became apparent, as I understand on 1 September – and let's leave aside how CBA came to realise, but there had been a –
25 an issue, in that in the serviceability calculator there wasn't proper consideration of various expenses. That's right, isn't it?---It's a little – it's not quite that. There was consideration, but the way that the data moved from one system to the other, there was an error. And so the data was correctly captured at the first stage of that system by the customer, or our front line where appropriate. And it went into this
30 decisioning system and didn't come out the other side in the correct places.

Mr van Horen, the position is, however, that – the position is that, whilst you might have spoken to the customer about these things - - -?---Correct.

35 - - - in terms of when you came to analyse their expenses, your decision-making process did not have regard to – and I will be specific here – did not have regard to the rental amount that was put into the application, did it?---That's correct.

40 So, therefore, what came out of this system – and if I can use this term – what was spat out by the automated system – was not an accurate reflection of what that person's expenses were, was it?---That's correct.

45 Now, you're aware, aren't you, of course – given your experience and your role, and your extensive experience at CBA, you're aware that as a credit provider CBA must, of course, do certain things before entering into a credit contract with a customer?

THE COMMISSIONER: Before we go on, Mr Dinelli, there seems to be some glitch with the screens. If we just wait a moment and see what we can - - -

MR DINELLI: Thank you.

5

THE COMMISSIONER: - - - do about that. Thank you. Go on.

MR DINELLI: Thank you, Commissioner.

10 THE COMMISSIONER: You might start your question again. I have forgotten. Whether or not Mr van Horen has - - -

MR DINELLI: Thank you, Commissioner.

15 I'm sorry about that, Mr van Horen. Perhaps before I start I will go to CBA.0001.0028.0945. Now, these are the credit guide and usual terms and conditions for consumer lending with respect to overdrafts. You're, obviously, familiar with that document?---Yes.

20 You - - -

THE COMMISSIONER: Is it a dated document? That is, is it current at a particular time, or is it unvaried?---It's - yes. It's a good question, Commissioner. There is a date - and I understand the question. There is a date - - -

25

MR DINELLI: If I can assist you, Mr van Horen, this is the one as at 1 July 2011. And I will take you to that. And where there is a difference - and I will tell you that there isn't, relevantly - the Commissioner would also be assisted to know that Mr van Horen has exhibited five versions over time during what I've described as the relevant period. So I will go to the start of the relevant period. This is when your processes became automated?---Yes.

30

In July 2011. And if I could - having recognised that document and said that you're familiar with it, if I can go to .0949, please. Now, Mr van Horen, I ask you to assume that this language appears in all of the terms and conditions over time. And if I can take you to under the first bold heading:

35

We will not enter into an unsuitable contract with you. We will not enter into a contract or increase the credit limit of your current contract if it would be unsuitable for you. A contract will be unsuitable for you if you will be unable to comply with your financial obligations under the contract without suffering substantial hardship or if the contract does not meet your stated requirements and objectives.

40

45 What's the source of those obligations, Mr van Horen?---In terms of the legislative source? So the - there's the NCCP act and ASIC has provided regulatory guidance as to how responsible lending obligations are fulfilled, RG 209.

I see. And are you familiar with RG 209?---Reasonably.

Yes. And generally with the process of responsible lending?---Yes.

5 It goes on then to say:

10 *In order to ensure that we do not enter into a contract that is unsuitable with you, we are required to make reasonable inquiries relating to your financial situation, requirements and objectives and to take reasonable steps to verify your financial situation.*

?---Yes.

15 And then you will see – and CBA acknowledges in these credit guides – under the next bold there:

20 *We are required to make an assessment that the credit contract or increase in credit limit is not unsuitable before we enter into a credit contract with you or agree to increase your current credit limit.*

?---Yes.

25 Now, I asked you before – and I understand you’re not a lawyer, but I asked you before what the source of those requirements were. And, in fairness, I might ask for RCD.0022.0001.0001 to be called up. And that’s, of course, the National Credit Act. If I can go to .0099. Perhaps, in fairness, I ought go back to the page upon which 128 is. Just a couple of pages before. Thank you. And as you would be – thank you. And, as you would be aware, a licensee must not enter into a credit contract unless these various inquiries and verification made in accordance with section 130, 30 just to put that in context?---Yes.

35 So if we go back to 130 – and I do apologise for that – one then goes and sees that – goes to that provision and sees that for the purposes of that paragraph, the licensee, that is relevantly CBA, must:

40 *...make reasonable inquiries about the consumer’s requirements and objectives in relation to the credit contract, make reasonable inquiries about the financial situation, take reasonable steps to verify the consumer’s financial situation, and make any inquiries prescribed by the regulations.*

I will leave that to one side for the moment. Then if one goes ahead to 133(2)(a), one sees this – and I would like to draw attention to this because this is particularly relevant to the notices I am about to go to:

45 *The contract is unsuitable for the consumer if at the time it is entered or the credit limit is increased it is likely that the consumer will be unable to comply*

with the consumer's financial obligations under the contract or could only comply with substantial hardship.

5 Now, is it right that what CBA puts in its terms and conditions is intended to give effect to its obligations under the Act?---Yes.

10 Now, before we come to exactly what happened during that relevant period, can I take you, please, to one of the four infringement notices that was received in August 2016. And I will take you to CBA.0001.0028.0821. In your evidence you've explained that in August 2016 in relation to the matters that are the subject of your evidence, four infringement notices were served on CBA. Is that right?---There were.

15 And, relevantly – and I won't take you to all of them. There's some slight differences. But the one that I'm taking you to covers – I think, to be fair, it covers the relevant issues; the others may have different focuses. But the issue in all of them – and the allegation is that – and I will take you to – you will see in the paragraph beginning:

20 *On 18 August 2015 –*

Three lines down, you, being CBA:

25 *...engaged in conduct contrary to section 133(1)(b) of the Act, namely increasing the credit limit of a credit contract with a consumer from 2000 to 4000 –*

Do you see that?---Yes.

30 Now, in relation to some of them – it's not in relation to an increase, it's in relation to offering a credit limit?---Yes.

But nothing turns on that for the purposes of my questions:

35 *...when the contract was unsuitable for the consumer pursuant to subsection 133(2)(a) of the Act.*

40 Now, it then sets out, not verbatim, but, essentially, the terms of the section. And I would like you to confirm that this is a correct statement of what occurred:

45 *Due to a programming error in the serviceability calculation, you assessed the unsuitability of the contract without taking into account the consumer's declared housing expenses and living expenses. Instead, you substituted \$0 housing expenses and living expenses based on a benchmark which was substantially less than that declared by the consumer. Had you assessed the unsuitability of the contract taking into account the consumer's declared*

expenses, the contract would have been assessed as unsuitable, because the consumer's expenses were greater than the consumer's income.

Is that correct?---That's correct.

5

THE COMMISSIONER: Just to understand that, are there two difficulties or one rolled up difficulty there? That is, it says substituted dollars zero, housing expenses. Is that one problem? And then is it a separate problem taking living expenses based on a benchmark, or is it all one rolled-up problem where zero has gone in for both
10 items?---Yes, there – there were two errors in the mapping, Commissioner. So the living expense – sorry – the rental expense data that was inputted into the front end was – did not flow through to the serviceability decision, and, therefore, we assumed zero, clearly incorrectly - - -

15 Yes?---Assumed zero rent. Obviously a mistake. And then there was a second error in the way that the living expense looked for a data field and it pulled the wrong data in. So the net effect of both of those was we did not take into account the correct - - -

But it's two issues, not one rolled up?---Correct.

20

Yes?---Two different – two different issues. Both had the same outcome, which is that we underestimated or under-assessed the customer's expenses.

Yes. Yes.

25

MR DINELLI: And you were in your current role, I think, in August 2016 when these notices were served?---I was, yes.

30 And, obviously, then you're in a position to answer some questions about how that came to occur. You've given evidence that CBA discovered this issue on 1 September 2015?---Yes.

35 And your evidence that you've given orally and also in your statement is that it was whilst CBA was in the process of upgrading its decision-making platform. And, also, you say that it was during the internal review period that occurred after the CALC notice. Is that correct?---It was during the internal review period commenced by the new manager of that business, the one I referred to. So a new person took over the business. What he did was saying off the back of the CALC and the ASIC engagement on the short form let's do a deep dive review across the whole portfolio.

40

When was that decision made to do that, because the CALC letter was, you will recall, back in July 2014?---From memory, he commenced his role in the middle of 2015. Yes. So the error was identified on 1 September. It was finished – it was fixed two and a half weeks later.

45

That's right, on the 18th, I think?---And we notified ASIC in early November.

And I will come back to that. But, just to be clear, when you got the CALC notice, whoever was in the position, CBA did not at that point or at any point until this new person started in the middle of 2015 do anything to look at whether or not the long form application was adequate, did it?---To my knowledge, no. The focus was very
5 much on the short form, which was where, you know, if you think of where the risk – if you take a risk-based approach to this, there’s generally lower risk in a long form application, because by its very definition you’re gathering a lot more information about the customer. So the focus was on addressing the short form issues.

10 But you would accept that obtaining a lot of information is irrelevant if the process that you put in place doesn’t consider that information?---Yes.

So the issue was identified in September 2015. When did this issue – or, as a result of that identification, when did the issue – when did you identify the start time for
15 this issue? How long had the long form not been working, if I can put it that way?---Well, our investigation revealed that it went back to the commencement of the auto-decisioning, which was 2011. So it was the relevant period as you referred to, 2011 to 2015.

20 So it seems – so that’s over four years that – without this issue being discovered?---Yes.

So for that period of time, that is, from July 2011 to September 2015, when applications for a personal overdraft were assessed, that is, two types – there’s one
25 for a new one and also for an increased limit – they were largely assessed during that period on the basis of the automated process that you had put in place in July 2011?---Yes.

And CBA, during that period – that’s your evidence, that during that time they
30 received 331,000 applications from approximately 287,000 customers. Is that right?---That’s right.

Now, I said “largely” before, because, as I understand the process, the process was done entirely by a computer, except in one very narrow situation that I will come to.
35 Is that correct?---Yes, very narrow.

And that very narrow circumstance is – and perhaps I will take you to paragraph 11 of your statement. And that is court book – thank you. The operator is a step ahead of me. So if one goes to paragraph 11, it’s:
40

The key steps in the process by which customer a made an application and obtained approval for the establishment of a personal overdraft facility in the relevant period are summarised below.

45 And you go on to explain those processes. I don’t intend to take you to all of them, but the application could either be made at a branch, calling a call centre, or with a relationship manager. Is that right?---Yes.

And then various information was inputted by the relevant person?---Yes.

Using the information supplied?---Yes.

5 And then there's various matters which we can skip over for present purposes that might lead to ineligibility. That was assessed by – then one came to assess what you describe as the automated decision-making system at paragraph (d)?---Yes.

10 The application was then assessed by an automated decision-making system for both serviceability and risk?---Yes.

And what you were looking at was this in subparagraph (1) – what you were interested in is the serviceability assessment took into consideration the customer's financial position and assessed the customer's servicing surplus:

15

The servicing surplus is the customer's net disposable income derived by deducting from the customer's income their rent, existing debt repayments, and the higher of the declared living expenses and an internal expenses benchmark.

20 Now, that you refer to later in your statement. And, just to put a bookmark on that, so to speak, the customer's declared living expenses were compared against what's described as an internal benchmark – an internal benchmark. What was that internal benchmark?---So I think the Commission has heard evidence around the HEM benchmark.

25

And was it that? Was it the HEM?---It was the HEM benchmark, but at the time – and we've changed it since – but at the time it was based on – it was the HEM benchmark with adjustments. So I can describe it as adjustments. Essentially, we took – you would be familiar, the HEM benchmark has your basic expenses and discretionary expenses. At the time it was based on – primarily on the basic expenses. And the rationale for that was discretionary expenses were seen to be discretionary. As in, for a small credit contract there was ability for a customer to flex those discretionary expenses to avoid getting into hardship, as per the NCCP requirements. Since then we've changed that and we've moved to the income-based HEM, which is the 50th percentile of your basic and the 25th percentile of your discretionary expenses.

30

35

I see. So can I understand the HEM that you used at this time, how was that – what were the adjustments that were made by CBA to that?---As I said, at the time we used the basic HEM component, which is your minimum expenses, and we reduced – we eliminated or we did not take into account the discretionary component.

40

So the amount – if the HEM were to be applied, it was actually lower than what the HEM was, because you would take out of that certain discretionary payments?---There were many derivations of HEM. You know, HEM is a set of benchmarks, and we've changed our practice over time. We certainly strengthened it a lot over time. So today we use - - -

45

But at the relevant time?---Correct.

At this time - - -?---Yes.

5 - - - it was less discerning, because it was actually lower?---Correct.

During the relevant period, you asked people who filled out a long form about what their expenses actually were, didn't you?---Yes. And we've always had the practice of taking the higher of what they disclose and the benchmark.

10

Let's be clear about this, though. The practice that CBA was actually doing, though, did not do that, because the practice was only that which was spat out by the automated system at the end?---Yes, that's right. Policy is one thing. So our policy said we would take the higher of. Practice, the reality, as per everything we've said here, we know there was an error. We did not take that into account.

15

And that error went undetected for over four years, didn't it?---That's right.

Can I return to the – what are described as the servicing surplus. And we were distracted. But, essentially, what your process required is that a customer must have a monthly servicing surplus of at least 10 per cent of their POD credit limit, which would allow – which would allow the customer to pay off one 10th of their credit limit per month before considering interest and charges?---Yes.

20

25 Then the process goes on to also consider a risk assessment taking into account how long someone had been with the Commonwealth – with CBA and any other products. And then at subparagraph (e) you say:

30

A customer who passed the automated serviceability and risk assessment, CBA would then engage an external credit bureau to provide a credit report for CBA to further assess the customer's risk profile.

?---That's right.

35 Then at that point, the outcome would either be a conditional approval or a decline or a referral for manual credit assessment. And that was done without the involvement of any human?---Correct, at that point.

40

Now, you then go on – and this is – you will recall that I said there's only one area – and I think you described it as very limited?---Yes.

Which was an appropriate concession. It is very limited. You would only actually look at those that were certain customers – I am now reading from sub (d):

45

Certain customers, such as those with a servicing surplus of less than \$100, those living in remote postcodes or those who had high unsecured exposures,

were flagged by the automated system and referred for an additional manual assessment of both serviceability and risk

5 ?---That's right. So this is the category of manual referrals – the category of manual referrals where, because it was determined to be of a higher risk, a lower servicing surplus in particular, that there would be a manual review of whatever the automated decision had recommended.

10 And they are the – and they are the only people where it would – during the relevant period, they are the only people where CBA would have considered their actual housing expenses or their actual living expenses during that time?---Yes. I couldn't comment on the specific data that would be reviewed by the person doing the manual credit assessment. However, they would have – my expectation would be they would have looked at the available information to them, and, if there was an issue or
15 an error, they would have then - - -

Yes?--- - - - come up with a different decision.

20 To be fair to you, I am not concerned about those people. I am only concerned about those people who never made it to (g)?---Yes, I understand.

And the (g) people, you have said, were very limited. And that's right on its own terms, it would only be those with a servicing surplus of less than \$100, those in a remote postcode and those with high unsecured exposures?---Yes.

25 So, for everyone else, that is, of the 331,000 applications, with the exception of those limited ones that fit into (g) - - -?---Yes.

30 - - - all of the process would be done by an automated decisioning process?---Correct. I might add that, you know, the nature of the automated decisioning, we have regard to the size of the credit limit. And when we're talking about credit limits where, I think, 90 per cent are under \$2000, it's very different to the decisioning process where it's, you know, a \$1 million home loan or very large unsecured exposure. So we do have regard for that in determining what's automated
35 and manual.

THE COMMISSIONER: And at that time, 90 per cent would have been under the 2000 limit?---I believe that for the relevant period, 90 per cent of applications – sorry – of approved limits are under \$2000 or less.

40 Yes?---And 75 per cent are \$500 or less. So, broadly speaking, the very, very large majority of this portfolio of balances have limits under \$2000. There is a small number that will have a larger limit than \$2000.

45 And are those numbers today markedly different?---No, they're not. Those are, essentially, then and now; they haven't changed a lot. Yes.

Broad axe. That's about it?---That's about it, yes.

Yes.

5 MR DINELLI: So if the person had gone through the automated process and was offered a credit limit, that person could then accept, if they wish to proceed with the application?---Yes.

10 Now, once the credit limit was accepted, the customer was required to provide a human, a CBA staff member, with documents to evidence income. Is that right?---Yes, that's right.

15 And I think you say in your evidence that where it's over \$2000 there was also a requirement to evidence liabilities to other financial institutions. Is that right?---Yes, correct. So if – if the disclosed other financial institution, or OFI, liabilities were under \$2000, we did not seek to verify that information, but, if it was above, we would want to get the bank statements or the like to verify what the OFI liabilities were.

20 Again, at this stage, though, the process did not – there was no check at this stage by a CBA staff member of anything in relation to expenses, other than those who were over \$2000, which you've just answered – said in answer to the Commissioner's question was about 10 per cent of people. Those were – other than those people, there was no check at all of anyone's expenses?---I think there's a few things you're
25 bringing together there not quite right.

Look, I apologise. Let me ask it one step - - -?---Yes.

30 You've said in answer to the Commissioner that it's only 10 per cent of the approved limits that are over \$2000?---That's right.

35 So, in respect of any that were below that, the only check – the only check in relation to the 90 per cent was in relation to their income. Is that correct?---When you say "check", you mean verification? Yes.

40 Yes. Sorry. I'm picking up - - -?---Obviously, we made what we think are reasonable inquiries. And that's one of the obligations under responsible lending. The other is verification. And we did the verification for income and for OFI liabilities where the limit is above \$2000.

45 Correct. Now, I think you said – you would concede now, though, that those inquiries weren't reasonable in the circumstances?---No, I wouldn't concede that. I think we did make reasonable inquiries with regard to our obligations under responsible lending and taking into account scalability and so on.

Mr van Horen, it's your evidence and you've said that in relation to 331,000 applications during that time that you did not enter any housing expenses for any of

those, but you did not consider any of the housing expenses for those people?---Yes. Correct. Sorry, let me just clarify. I think your question was we didn't make reasonable inquiries. I believe we did. So there are different obligations under responsible lending, make reasonable inquiries. And I think we did make the
5 reasonable inquiries. Where we didn't do it right was in the serviceability assessment, because in that case we didn't use the information correctly. And - - -

So?--- - - - so that's the error. It's not reasonable inquiries. It's - - -

10 Yes. I understand the way you put it and thank you for clarifying that, but – so then – and it may have been the fault of my question, but where the – what you would concede is that, having had that information, then when you came to evaluate whether or not this was unsuitable for the person, that process fell short of what was required?---Absolutely.

15 And, just to return to the issue that I raised before, in relation to those over \$2000, the 10 per cent, for those you did assess some liabilities, some expenses, but only any liabilities to other financial institutions. That's right, isn't it?---It's not - - -

20 THE COMMISSIONER: Well, assess or verified. You verified - - -?---Verified, yes. Assess is different to verify. So we verified means you get the documents to confirm that they are correct.

25 MR DINELLI: Yes?---So we verified liabilities, which are, obviously, different to expenses. Expenses we relied on the customer's declared number, compared to the benchmark, incorrectly used that in our assessment process.

30 And, returning to the distinction that was drawn before in some of the questions from the Commissioner, there were two aspects to that, weren't there? There was, in relation to housing expenses, the insertion of zero rather than what was told - - -?---Correct.

- - - to the CBA?---Correct.

35 And in relation to the living expenses, there was the insertion of a – if I can use the shorthand, a lower than HEM, rather than what the actual expenses were?---Yes. Yes. And, just for avoidance of doubt, insertion was clearly not deliberate insertion by anybody. It was the error we made in our serviceability calculation and the mapping of the data flows.

40 The criticism is not made of the insertion at the relevant time; it's the process - - -?---Correct, yes.

45 - - - that was from July 2011, without overstating it, doomed to fail because of these two relevant questions not being properly - - -?---It certainly failed.

Thank you. So, on the basis of your evidence thus far in relation to the system, I think it's a fair summary to say that the reliance by CBA on evaluating whether or not a loan was suitable or unsuitable or not suitable was dependent upon this automated system?---Yes.

5

Now, you say in your evidence that the process by which applications were assessed and approved in the relevant period was designed to comply with the responsible lending obligations in the Act. Is that right?---Yes. And our policy it was absolutely designed that way. The process was intended to execute it that way. It failed to, as we've discussed.

10

Yes. But if I can understand – it might – your policy might have been to design it in a particular way, but it wasn't appropriately designed from July 2011?---Yes, the practice was not properly designed.

15

THE COMMISSIONER: And can I just understand that. Is that, in effect, the program didn't operate in the manner that - - -?---Yes.

- - - it was originally intended and designed to operate?---Correct. Exactly right. The intention was never to - - -

20

No. I understand that?--- - - - use a zero where - - -

Hindsight is a wonderful thing, Mr van Horen. Therefore, the questions are, perhaps, unfair. Is it something which in hindsight you think either could have – next, harder question – should have been detected before roll-out of the automated decision-making tool?---Yes. I think the short answer is yes, could have, should have. You know, this is sort of zooming out a little bit for a second. You know, we do a lot of changes. This is all – the error arose through change. We do thousands of changes every month in the bank, in the retail bank. And so having robust change management process to – to make sure that when we do a change it works as intended, you know, that has been a massive area of focus for us for years as you might expect. And we've made lots of improvements. We're still not where we need to be. But, for example, doing – running systems in parallel. In fact that's how we identified this issue in the first place, by running those two decisioning systems - - -

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Yes?--- - - - in parallel and checking that the new one gave the correct answer based on what the old one did or vice versa. And so having robust change processes, I think, was our failing and it's clearly an area of ongoing work. There are other controls which – maybe pause if I'm talking for too long – but there are other controls in place to try and identify these kinds of issues where they occur. For example, we sample a proportion of every single credit decision every month to determine whether it was the right or the wrong decision or whether there were any technical or documentation errors in that decision. And you would expect, provided you've got reasonable coverage in your sampling and the occurrence is quite

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widespread, you would detect it that way, as well. I can explain why we didn't in this case if you're interested, but maybe I will pause there.

5 MR DINELLI: Is it your evidence, though, that these – that no checks other than what occurred on 1 September picked up any of these issues for over four years?---Correct. So the - - -

And if I may - - -

10 THE COMMISSIONER: I think you wanted to add something, Mr van Horen?---Yes, that's correct. So, you know, I think it's a fact that the – the error was there from 2011 to '15. Some of those controls that we would normally expect to identify errors are both those change controls that I referred to earlier. We look at
15 sampling errors – not sampling – we do sample tests of decisions to check if they are correct. We do monitoring of complaints. So often if there's an inappropriate outcome from a customer point of view, there will be a complaint and then we try and see is there a systemic reason behind those complaints? And then we dive into those particular issues. So, yes, a number of controls in place that didn't detect it in this case until 2015.

20 MR DINELLI: So neither the sampling – the two examples you use were regular sampling and where there's a customer complaint. Neither of those things in the course of the relevant period were such as to pick up this error, were they?---Correct. And on the sampling point, as my evidence lays out, the subset of POD customers,
25 personal overdraft customers, during the relevant period who were affected, as in had the incorrect outcome, was 1.8 per cent of the total. And so to identify a very small subset of the entire population with an incorrect outcome, sampling, unfortunately, didn't – didn't detect that, because it was such a small proportion of the total.

30 And the – but there were no processes put in place in terms of data management during that period that picked up the issue either?---Certainly the issue wasn't picked up. There are various data practices but no, they didn't pick this up.

35 THE COMMISSIONER: You spoke of 1.8 per cent of the total were the wrong outcome. Can I just understand what you mean by “wrong outcome” in this context. Are you saying should have been declined, rather than approved? Is that the outcome you are mentioning or - - -?---Yes. Yes. The best place to look is paragraph 22 of my statement, which refers to – we started with 331,000 applications from 287,000 customers, bearing in mind some customers are joint applicants to one
40 overdraft. Just under – or just about half of those resulted in a POD being established. In other words, the other half were declined or withdrawn by the customer, 145,000. And, of those, Commissioner, 10,500 had an outcome where they had either a limit they shouldn't have had at all, which is the 9400 number; or 1100, where they got a limit bigger than they should have had.

45 MR DINELLI: Now, you've given evidence that over the course of those four years, CBA was cognisant of its responsible lending obligations?---Yes.

And it also knew during this period that ASIC was making various inquiries in relation to responsible lending matters, wasn't it?---It was.

5 In fact, that had made its way to the board in August 2013, that very issue?---Yes. If you can refer me to a paper, but - - -

If I could, I will take you to - - -?---Yes.

10 - - - CBA.0502.0001.5074 underscore – sorry – that's the front page, I'm sorry. Now, obviously, a lot of this document is redacted and it's simply not relevant to what we're asking about. Can you describe what that document is?---So this is a report to the board by the group executive of the retail banks, so retail banking service management report. So that is a monthly report covering a range of issues.

15 And if you go to the second page of that document. If I could ask the operator kindly to expand that:

20 *We have noted increased interest from ASIC in our compliance with responsible lending obligations. ASIC has made inquiries on CBAs reliance on the HEM in home loan serviceability calculations and separately about an unsolicited offer of a conditionally approved personal overdraft. RBS –*

Which is retail banking - - -?---Services.

25 - - - services:

is in the process of responding to ASICs inquiries.

30 ?---That's right.

So there was a – and if I may, Commissioner, tender that document.

35 THE COMMISSIONER: Exhibit 1.114, CBA.0502.0001.5074 Retail Banking Services report – sorry – the date, Mr Dinelli?

MR DINELLI: Yes. The date is – on the previous page, 12 August 2013.

40 THE COMMISSIONER: I should have noted it 12 August '13. Thank you.

**EXHIBIT #1.114 RETAIL BANKING SERVICES REPORT DATED
12/08/2013 (CBA.0502.0001.5074)**

45 MR DINELLI: So the board itself was aware that – of these inquiries that were being made by ASIC, wasn't it?---Yes. Yes. We've kept the board up to date fairly regularly on all these matters.

And if I could take you to another document about a year – a bit over a year later, ASIC.0013.0001.0002. This is a letter from CBA, as is apparent. It's not from you. It's from a Mr Walker, James Walker. And if I could take you to the first paragraph, please. There's reference there from CBA referring to a letter dated 24 September
5 from representatives of Consumer Action Law Centre, Financial Rights Legal Centre and Financial Counselling Australia to Nicole Scott at ASIC, a copy of which was forwarded to the bank, "and the discussion Nicole had with me on" – and that would be a reference to Mr Walker. Had with Mr Walker:

10 ...on 9 October 2014 around next steps.

Now, this followed from the first CALC, or Consumer Action Law Centre, letter, didn't it?---Yes, on the short form process, yes.

15 You're keen to emphasise that it was in relation to the short form. And I accept that that is the case, but the – what appears from this is clearly CBA was on notice that ASIC was interested in responsible lending issues, and, in particular, dealing with a number of concerns about overdrafts?---Yes, without doubt. I mean, we've had lots of engagement with ASIC over a long period, as I think have all credit providers,
20 around responsible lending.

Can I tender that, Commissioner.

25 THE COMMISSIONER: Exhibit 1.115, ASIC.0013.0001.0002, letter CBA to ASIC, 21 October '14.

**EXHIBIT #1.115 LETTER FROM CBA TO ASIC DATED 21/10/2014
(ASIC.0013.0001.0002)**

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MR DINELLI: Thank you, Commissioner. That can come down now.

35 Can I ask you what the risk management leadership team is at CBA?---We have a support area in the group called risk management. So it reports to the chief risk officer of the group and it would have representatives of, for example, the retail chief risk officer. And all key divisions would be part of that leadership team.

40 Are you on that team?---No.

It has an important purpose, though, as I understand it. It's said to work together to support the leadership operations and development of the risk management function across the group?---Yes, I would expect so.

45 Perhaps I can take you to a short document, CBA.0002.0343.4220. Have you seen this document before?---I have seen it, yes.

Can you explain to the Commission what it is?---Well, my understanding of it it's a simple charter, if you will, as to what the modus operandi is of that leadership team. So the expectations of the team as to how they conduct themselves, what their operating principles are and so on.

5

And the purpose I've already taken you to a moment ago, before I put the document up. Can you explain in your words what it's intended or why the expectations of the team would be set out in the way that they are in this document?---Well, I can only assume it's because a new chief risk officer was appointed to the group a couple of years ago. I couldn't give you the exact date, but I think it was probably about two years ago. And I think, as you would expect, or is often customary when you've got a new leader of a team, they use the opportunity just to be clear with their team about what their purpose is, how they're going to work together, and – I am speculating somewhat, but this looks very much like that kind of document, to say, well, new leader, we're a new team, this is how we're going to work.

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You will find in the footer that the date is 29 June 2016. Can you see that? It's a little bit small?---Yes. That feels about right, based on when the new CRO started.

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And, broadly, what's the purpose of having a risk management leadership team?---It's like any leadership team, right? You come together, where you've got common goals and objectives, to achieve the common outcomes that you have. The risk function across the group plays a very important role. So I think you might have heard testimony in the Commission to date around line 1, line 2, line 3. So line 1, essentially, would be me as the business leader. I have line 1 accountability for risk. This group of people are, generally speaking, line 2, which is one layer away from the business and, therefore, their role is around challenge and policy, and a degree of independence. And then line 3 is audit: internal audit, external audit. So this team here, their purpose is to play that line 2 role, effectively, across the group, setting policies and providing independent advice and challenge to the business.

And to stop risks eventuating into problems for the bank?---I wouldn't put it like that, no. I think their accountability for that sits with line 1 in the first instance.

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One of – this document seems to suggest that one of the things that they do is identify issues – identify issues so that risks within the bank can be managed. Is that right?---Yes, for sure. Absolutely. I mean, we all have that accountability, but if you're in a line 2 function you have a particular focus on identifying issues, raising them, alerting management to them, escalating them where appropriate, reporting them, engaging with regulators and so on.

Would it be accurate to say, sort of a bigger picture, sort of looking at the – you know, the processes of the bank and saying, “Where should we be focusing to stop things going wrong?” if I can put it that way?---At a very simple level, yes.

45

Well, at a simple level, but - - -?---They get into a lot of detail, as well, right? It's not just a central team that sit somewhere in a central building. They have –

members of their team sit right in the business, as well, supporting, engaging, challenging, providing guidance in the business, as well.

5 And the risk management team would be cognisant of things like what happened here, where you had a process that for over four years went wrong?---Yes, they would be – they would certainly be aware, involved, engaged, cognisant.

10 And seeking to improve processes so that those sort of things don't happen again?---Yes. As I say, the primary accountability for improving processes would not sit with the central team, it would sit with us as business owners, and, you know, it's our failing it's our accountability when things go wrong. Obviously, they are there to support us, challenge us, provide advice, but at the end of the day it's the business owner who's accountable.

15 I see. I am going to move to another document. I might tender that, if I may, Commissioner.

20 THE COMMISSIONER: Exhibit 1.116, CBA.0002.0343.4220, Risk Management Leadership Team Purpose and Operating Principles, June '16.

EXHIBIT #1.116 RISK MANAGEMENT LEADERSHIP TEAM PURPOSE AND OPERATING PRINCIPLES DATED 29/06/2016 (CBA.0002.0343.4220)

25 MR DINELLI: 29 June '16.

THE COMMISSIONER: Yes.

30 MR DINELLI: I might take you to CBA.0002.0343.4190, if I may. This is a meeting of the risk management leadership team that occurred on 6 July 2016. Is that right?---It looks like it. It looks like the agenda.

35 And I won't take you back to it, but one of the operating principles of the risk management leadership team is that RMLT, which seems to be the acronym used:

Meetings take precedence over every other meeting. We attend meeting except sick or on leave.

40 Do you recall seeing that - - -?---I don't recall that sentence, but I am sure it was in there, yes.

So these meetings are taken seriously, one hopes, by the people who attend it?---Yes.

45 I would like to take you to a heading on page .4194. And one of the issues there, the areas of focus, so the date, just to remind you, the date of this meeting is 6 July 2016. And it says:

The areas of focus have been ordered by priority for discussion with RMLT.

And the first thing is data management. Can you see - - -?---Yes, I can see that.

5 And there's a reference there to the yellow – at the bottom, there's a note:

The yellow areas are those new for financial year '16' while blue are repeated from financial year '15 or significantly similar. Those with an asterisk were mentioned in the RMD cover letter to APRA for financial year '15.

10

Are you aware of what that issue is that's referred to there?---Are you talking about the second point - - -

Yes?--- - - - the RMD cover?

15

Yes?---RMD stands for risk management declaration, as I understand it, which I believe is a declaration made – it follows a process up to the board, and I think by the board to APRA. So it's where the board of the bank has to – or the group has to say how it assesses the broad risks in the group.

20

THE COMMISSIONER: In effect, it has proper processes in place - - -?---Yes.

- - - to manage risk, doesn't it?---Yes.

25 I think?---Yes, it does. It's a fairly - - -

That's the essence of it?--- - - - comprehensive – yes.

Yes.

30

MR DINELLI: Jump ahead a couple of pages. Data management – then the discussion of it starts at 4196. And Mr Johnston, I understand, presented on it. Just won't be a moment, Commissioner. Perhaps I can skip ahead, whilst we seek to resolve that issue, to the next page. I think we've resolved that. I'm sorry, Mr van Horen. Under the heading data management, there's a discussion that:

35

The framework is less than effective in allocating data ownership responsibilities to detect and prevent DQ issues.

40 Now, the issue that arose – that we've been talking about today is such an issue, a DQ issue, isn't it?---In the very broadest interpretation of data quality. Data quality is a massive issue in the bank, as you could imagine. I think the context that might help – as I understand it, and not having been part of this – I'm not part of this team, but as I understand, this focus here on data management is very heavily focused on
45 the regulatory reporting around capital, in particular, because you could imagine, from APRA's point of view, the way we understand the risk in our business around holding of capital against those risks is really very, very central to them. And

specific example might be things like having good data on your loan to value ratio in your mortgage book, which is a massive part of our balance sheet. And, therefore, if we don't have good data on that, there would be a question about, well, are we holding the right capital?

5

Yes, but what this goes to incorporates matters of the type that we've been talking about. If one goes to the second dot point on the far left margin:

10 *Significant and unexpected data quality issues continue to emerge, which are expensive to remediate.*

Now, that's a reference to the sort of issues that had to be remediated as – by reason of what we've been talking about this morning?---I – I couldn't comment whether that sentence refers to the specific issue. As I say, I think the issues referred to here are probably a little more macro than the personal overdraft matter specifically. That's not to say we don't have significant challenges around data quality, as I think most large organisations do. And we've had examples in my previous testimony around very specific instances around, for example, understanding hours worked by customers. You know, those are very micro data quality challenges that we have throughout our business. We work hard to close them down. I believe that this document here refers to something different. But if your question is in the very broadest terms does the POD matter link to a data quality challenge, the answer would be yes, clearly.

25 And, returning to the top of that document:

So the framework is less than effective in allocating data ownership responsibilities to detect and prevent DQ issues.

30 And it then says:

The framework was restricted to IRB credit data in October 2014. And this area itself is only partially compliant with further funding and date extensions likely. The restriction has been in place for almost two years - - -

35

THE COMMISSIONER: Sorry for interrupting there. That first dot point is about

prudential capital requirements, is it?---Yes, I believe the reference to RB, that would be internal ratings-based systems, which is - - -

40

Prudential capital?---Prudential capital is determined by your ratings - - -

Yes?--- - - - and the models you use to understand risk in your overall portfolio.

45 MR DINELLI: So we're not talking about that. I accept that's not something that comes up in your evidence today. This is – what comes up in your evidence would be non-IRB data issues. There's some reference to that:

The restriction has been in place for almost two years with no approved plan, allocation of funding to progress practice improvement or policy compliance in non-IRB credit data areas.

5 And that indicates that there's no approved plan allocation of funding in relation to
other areas in relation to such credit data areas?---Yes, it's very hard for me to – to
interpret what that sentence refers to specifically. There are clearly requests that
come up from time to time around programs, projects to improve data quality, to
improve systems, to improve processes. I can't comment specifically on what that
10 refers to around "no approved plan allocation of funding". That may – that seems to
me to be referring something specific to the previous dot point.

If one goes ahead to 4212, the heading to this – or the 9th is compliance with
serviceability policies and procedures. Do you see that?---I see it.

15 And under the Executive Summary, the risk management leadership team – it was
noted:

20 *Within the RBS proprietary channel, errors relating to serviceability
verification for mortgages were evident through internal reviews and audits
completed by our mortgage insure reason, Genworth.*

Do you see that?---Yes.

25 Then:

*APRA raised a requirement in relation to serviceability policy compliance in
October 2014. Mortgage credit risk review –*

30 ?---Mortgage credit risk review, yes.

And:

35 *The corresponding action items to address these issues were open during FY16.*

?---Yes.

Continuing:

40 *RBS also identified that system errors resulted in some serviceability
calculations being incorrect.*

45 That's the issue of the nature that faced your part of the bank, isn't it?---It's the same
responsible lending and serviceability topic. It's not the same nature of issue,
though, but clearly it's in the broad category, yes.

And if one goes to the next page, the existing – it indicates there that:

The existing risk frame works have related to compliance with serviceability have a combination of automated and manual controls operating across different teams within the product value chain.

5 Do you see that?---Yes.

Continuing:

10 *Errors are occurring in the income calculation verification process missing debts commitments.*

?---Yes.

Continuing:

15 *Over FY16 a significant amount of work has been undertaken to enhance these frameworks.*

?---Yes.

20

And again, if one goes to the implications, the second dot point indicates:

25 *Applications may be approved that are, in fact, outside credit policy and/or appetite.*

?---Yes.

And that's the nature of the issue that we've been talking about this morning?---Correct.

30

Are you familiar with a data management strategy?---The data management strategy?

35 Yes?---I'm aware that there is a lot of work going on across the group around the management of data. Perhaps if you point me to a document, I can see if I'm familiar with the document.

I might – I will do that, and I might tender that document, Commissioner.

40 THE COMMISSIONER: Exhibit 1.117, CBA.0002.0343.4190, gender risk management leadership team, 6 July '16.

45 **EXHIBIT #1.117 GENDER RISK MANAGEMENT LEADERSHIP TEAM DATED 06/07/2016 (CBA.0002.0343.4190)**

MR DINELLI: It seems to be that – sorry, if I can take you to
CBA.0002.0347.1582. Now, I know you weren't party to this email, and I'm not
putting it to you that you were party to it, but you will see that it's from Fiona
Larnach. Now, I didn't point out her name, but she was the person who presented on
5 agenda 9 at the risk management leadership team. Do you recall?---Yes, I saw that.
Yes.

10 She says here to David Cohen – can you assist the Commission by informing us who
David Cohen is?---David Cohen is the chief risk officer for the group.

Thank you?---Fiona's manager. So Fiona reported to David.

15 And Fiona has written an email, and this email is about a month after the risk
management leadership team meeting that I referred to, and she's dealing specifically
with PODs?---Yes.

PODs, personal overdrafts. And she says:

20 *As per the discussion earlier, this is the summary of the PODs issue –*

I won't take you to that attachment:

25 *...and interactions with ASIC. IN also apparently asked Matt yesterday if we
had this exact issue elsewhere. My understanding is not exactly this particular
issue, but we have issues with servicing calculations which are a mix of system
and human error driven.*

Do you see that?---I do.

30 Who is the reference to IN?---Ian Narev, our CEO.

He was the CEO at the time?---Yes.

35 And Matt?---Matt Comyn, the head of the retail bank.

Ms Larnach goes on to say:

40 *More generally, we have pulled these into a single report for visibility across
products. Some of the issues are minor but outstanding for a long time.*

Do you see that?---I do.

Then if I could skip ahead, she says:

45 *The change we are making is to take a portfolio rather than a product view of
these issues, which would be partly addressed in a project called Big Data For
Risk.*

Do you see that?---Yes.

Continuing:

5 ...costing 3 to 4 million, which was rejected/delayed in the most recent round of
funding requests by RBS last week

You see that?---Yes.

10 Continuing:

I'm in the process of escalating this.

15 So in August 2016 there was, as I understand it here, a project, Big Data For Risk,
which would deal with dealing with some of these issues that have arisen in personal
overdrafts that was rejected at that time, wasn't there?---Yes. I can explain that. So
the way – the way our project requests and prioritisation processes work is we run
through regular cycles where people like myself or colleagues like Fiona would put
up a project for consideration. This was one of them that was put up. It was very
20 much a placeholder. There wasn't a lot of information behind the proposal. I recall
the meeting at the retail leadership team where this proposal was considered. It was
not approved, as Fiona correctly points out. However, we certainly I had the view,
she had the view, that it was something important to do, and I can explain what it is
if – if you're interested, but we thought it was important to do. And whilst it wasn't
25 approved then, it has been subsequently approved and is – several components of it
have already been implemented and others are still in train.

30 So it was approved after – do you remember when it was approved?---Well, I
remember several meetings that I had personally with myself and with our retail
CFO, chief financial officer, to try and find a way to fund it because we thought that
it was an important project. And even though the proposal was still under
development, we agreed that it was a priority and that we needed to proceed with it.
And so that is what has – what has happened.

35 Well, one of the reasons you would have said it was an issue, surely, was the fact that
you had had a process whereby you had been in breach of your responsible lending
obligations for over four years because of an automated process. That would be a
relevant factor, wouldn't it?---Well, by then it had been fixed, yes, so this was – this
was a year or so later. The project, just to explain what it was, Big Data For Risk – it
40 sounds grand. What it was doing was using the data that we have across the group to
assist in the credit decision and verification process. So to give you a practical
example, around liabilities we – our – our building – and this has been implemented
in one portfolio across our retail bank – not in all yet – it will be – is to try and build
a tool that looks at outflows out of our customers' accounts to determine what their
45 liabilities with other financial institutions might be. Again, that's an imperfect
science because it's difficult often to trace that, but to build a model which would

help us identify liabilities, which, as you know, is a key part of the – the assessment that we have to do, and - - -

5 Well, for people over \$2000 at the relevant time?---No, no, this is going to be used across all portfolios. When I say “portfolios”, I mean home loans, and credit cards and personal loads and PODs. So it’s an example of what this Big Data For Risk project is building. It has built and is being deployed in one of our portfolios. It will be rolled out in the others. I’m talking about what we call Comm liabilities.

10 But see - - -

THE COMMISSIONER: Sorry, what liabilities?---Comm – we call everything Comm something. Comm income, Comm liabilities. So - - -

15 Yes?---The Comm liability module of what we’re building under this program is the one that – that is attempting – and I say it’s an attempt and it’s not a perfect science but to build on our data in our customers’ accounts to understand where there is potentially an undisclosed OFI liability that we can then use in our serviceability assessments.

20

MR DINELLI: Let me take you back to personal overdrafts at this time. When this issue arose in August 2016, you must have been concerned that not insufficient investment was being put in data risk issues given what had happened for the previous four years where you had an unchecked system which caused the bank to breach its responsible lending obligations?---Correct. And that’s why I sponsored the project, to get it across the line.

25

Yes. And despite your no doubt valiant attempts, the most recent round of funding requests by Retail Banking Services rejected the spending of three to four million dollars on that issue, didn’t it?---No, no, just to recap, so, you know, it’s not a once and done process, right. So we’re constantly looking and updating our – our priorities and adjusting our investment portfolio as appropriate, and so correct, it was declined in that first round, but we found a way to do it subsequently, and funding has been allocated and the project is underway – well, it has delivered a whole bunch of - - -

30

35

Now, I understand you’re going to what happened then, but I wish to focus just – on 23 August 2016, which is around this time that you said you were sponsoring this, this is one year after this issue has arisen when you were first in your role where there’s been a failure – and I think you properly conceded there was a failure – of the process, the automated process. Yet, despite that, it appears that the bank wasn’t willing to do the very investment that’s needed to stop these things happening to its customers in the future?---I’m afraid I – I can’t concede on that point. You know, the nature of the way project prioritisation works in our bank and perhaps others is at any one time there’s a long list of wish lists, if you want to call that, there are many, many projects that are seeking funding. There’s a finite capacity to fund those. So a significant number of requests for funding will be declined. As I said, it’s not a once

40

45

it's declined it's all over. We all recognise that it was an important area. That's why I continued to advocate for the project and, with our CFO, we found a way to fund it. And so, yes, it was declined in that first meeting, but the reality is it's being supported and has executed a bunch of stuff and will continue to execute.

5

THE COMMISSIONER: What's the time period between – this speaks of delay last week, so, say, 16 August of '16, the project doesn't get up?---Yes.

10 What's the period that then elapses before the project either gets up in whole or in part?---Yes. I recall several meetings, some with Fiona, some with David Durante, our CEO, and myself and a few of our project portfolio team members in the months after that meeting. So it was over a few months. I checked in with the team recently just to see how the delivery has been going, and several of the modules or components – it basically got – I think there's six different components to the overall
15 program of work, and several of them have been delivered some months ago. So they've been implemented for quite a while.

20 Can you tell me when work on a deliverable started?---Commissioner, I would be estimating. I can check exactly.

That's the best we can do at the moment?---Yes.

25 The estimate will be useful?---It would be at least six months ago, would be my estimate, that the work started. It could be nine or perhaps a little - - -

That order of magnitude?---It's of that order of magnitude, yes. It's not in the last week or month. It is going well back into 2017.

30 So if we thought in terms of mid-'17, giving a lot of flex to “mid” are we about the right - - -?---Yes, I think that would be about the right range. Yes.

Right range?---Yes. And – yes.

35 MR DINELLI: So you described yourself as a sponsor of this and that you wanted this to happen - - -?---Yes.

40 - - - and that it did happen in mid-2017, using the flex the Commissioner referred - - -?---Yes, kicks off, so in the different modules and streams, and, you know, to – to be completely transparent, there are some work streams that have not yet kicked off, but we prioritised what we considered to be the most impact full and important first.

45 Surely, the breaches of consumer lending obligations was an important factor in getting this project over the line with your colleagues, wasn't it?---Sure. It has – it has got multiple benefits. So I think the – the strengthening of our credit decisioning has both regulatory benefits, customer benefits, financial benefits, because we make better decision. At the end of the day, it's not in our interests to – to write bad loans. So it has got many, many benefits to – to execute a project like this.

And – but despite those benefits, though, it obviously took you some time to convince others within the bank that this was a good idea?---Look, that’s the nature of having to get priorities agreed. You know, there’s – there’s, as I say, many, many demands on what are finite resources.

5

I understand that, but one of there was a demand on this time was because of breaches of responsible lending obligations. That’s a significant issue, is it not, for the bank?---Yes, just to decouple those a little, so, as you recall, the breach that we’re referring to in this case study was corrected back in 2015. So this project here was never going to address that particular issue.

10

I accept that it was - -?---It was strengthening our responsible lending practices right across the retail bank.

15

And as you’ve said, you were using automated processes – and I assume the bank still uses automated processes – and you wanted those automated processes to ensure that the bank didn’t breach the relevant law in relation to responsible lending?---As a non-negotiable, clearly we – we don’t want to breach any laws, but I think we’re trying to go a little bit beyond that as well.

20

THE COMMISSIONER: Can I just then understand the first paragraph. After the reference to Mr Narev, how am I to understand what’s written there? What do I take away from that sentence?---The one that say “My understanding”? So I think the question that the CEO typically asks us when we escalate an issue is, “Well, that’s all very well, but could it be happening elsewhere?” And - - -

25

“Is it only here? Or is it elsewhere?” Yes?---Yes. “Is it an isolated incident? Have you looked systematically across the board to see whether it could be occurring elsewhere?” And Fiona’s response is, “Not exactly this particular issue because it was quite a unique set of circumstances in this PODs matter, but we have issues with servicing calculations more broadly which are a mix of system and human error driven.” So examples of that would be, you know, we do this monitoring that I referred to briefly, the acronym is CS and M so credit support and monitoring, which is the post-decision monitoring that we do to determine whether the correct decision was made or not. And it also checks whether we’ve documented all aspects of this. For example, customer consent or – or similar kinds of documents that we need to keep on file. And so one of the issues that we’ve had in the past is, you know, human error driven would be where we haven’t, in fact – we’ve made a poor decision, not in accordance with our policy or we haven’t documented all aspects of that decision or we can’t retrieve the documents that were there once upon a time. So that would be an example. I – I would expect Fiona’s flagging, you know, rightly – and I wouldn’t pretend anything to the contrary – but getting servicing right across the board is clearly an area of challenge, and it’s very relevant to the Commission’s work.

45

Sure. And human errors occur?---Human error, and, you know, the – the – the evolving nature of expectations of what is okay to meet our responsible lending obligations.

5 It's the reference to system error that - - -?---Yes.

What do I take away from the reference to “We have issues which are a mix of” - - -?---Yes.

10 - - - “system and human error”?---I'm trying to think of what Fiona might have been referring to there in saying “mix of system and human”. You know, I think the PODs example clearly would be one where it was a system-based error. You know, it's – it's entirely probable that there are other system-related issues from time to time that come up, whether it's similar or different to the PODs matter that get
15 identified and fixed. I couldn't say what the specific ones are that Fiona had in mind there.

Thank you.

20 MR DINELLI: What this email demonstrates, however, is that a concern was being raised as to whether or not there was a problem within the bank in relation to these processes generally, wasn't it?---Look, I wouldn't make a sweeping conclusion like that from this email. I think Fiona was being quite specific about the – the Big Data For Risk project that we've discussed. And I think it's entirely appropriate that she
25 would escalate a matter like that to her manager. She discussed it with me, she discussed it with other colleagues of mine and, you know, that's why we landed up where we landed up, which I think is a good space.

30 But let me be clear, though. This was after there had been a process in place, an automated process that didn't work for four years, you discovered the issue. Then one year later, there's a question as to whether or not this is an issue within the bank generally or there's other issues that you should be looking at, and you're having to fight, on your evidence, you're having to fight to get this process through, and it does come through middle of last year, six years after the very issue that we've been
35 talking about first arose within CBA?---Yes. As I say, you know, with respect, I feel you're conflating two different issues there. The first issue was a very different one around the PODs error, and I've conceded that many times now that it was an error. Was this email flagging that the initial decision to not support that project was a concern? Yes. And I think that's a great process. And the fact that the escalation and my sponsorship resulted in an outcome where it did get support, I take that as a
40 very healthy process.

45 But with respect, it doesn't conflate them because the very thing this was looking at doing was making sure within CBA insofar as automated processes are used, they work properly?---No. You know, I've tried to describe what the Big Data For Risk project was doing. It was using data that we have to strengthen our credit decisioning and our verification processes. That was the overarching objective of

this goal, of this project, which I think is different to what the underlying problem was in the PODs matter.

5 But what the underlying problem was in the PODs matter was that you had a system that didn't work, that allowed CBA to fall into - - -?---Correct.

- - - breaches responsible lending obligations?---Yes, that's right, and that was fixed within a couple of weeks of it being identified. This project was not going to try and fix the same issue. This project was taking us to a different level.

10 I – We may be at cross-purposes. I understand that the issue was fixed and it was fixed on 17 days. You realised on 1 September, and it was fixed by the 18th. I accept that. What I'm asking, however, is here, one year later, you're sponsoring a project which is directed at seeking to ensure that these automated processes, that the data
15 that you were using, to use your language, that is, to ensure – and I won't seek to repeat your language, but it was to the effect that you would use that data to make better decisions, that is, to make decisions – better decisions for the bank but also better decisions, one would hope, in relation to responsible lending?---Yes. So I think we've agreed there's a certain minimum standard that we aim to achieve, and
20 that's absolute compliance with the – with the requirements of the law and the related regulations and ASIC guidance, and so on and so on. This Big Data For Risk project was, in my opinion, going beyond that and trying to move to a next level of fulfilling our responsible lending obligations.

25 And you say that it was intended to fulfil your responsible lending obligations, yet also on your evidence it was rejected in August 2016, and you finally got it through in the middle of last year; that's correct, isn't it?---“Got it through” is different to starting. You know, there's – there's a decision made today - - -

30 Well, it started in - - -?---It takes some time for a project to be mobilised, find the right experts, scope out what exactly has to be delivered. So it started delivering last year, not - - -

The - - -?---The decision was made some months before that.

35 The project that you say was to increase the level of compliance with responsible lending obligations started in the middle of 2017?---I didn't say that, and I didn't say it was compliance. I think there's – feels like we're really at cross-purposes here, but there's a minimum degree of compliance, and we have always driven to achieve that.
40 This Big Data For Risk project is trying to take that to the next level.

Commissioner, may I seek to tender the email from Ms Fiona Larnach to Mr David Cohen dated 23 August 2016.

45 THE COMMISSIONER: That will be exhibit 1.118, which is CBA.0002.0347.1582.

**EXHIBIT #1.118 EMAIL FROM FIONA LARNACH TO DAVID COHEN
DATED 23/08/2016 (CBA.0002.0347.1582)**

5 MR DINELLI: So how – that can come down, operator, thank you.

So how would you describe, at or around this time, then, CBA's - - -

10 THE COMMISSIONER: Sorry, which time, Mr Dinelli? I'm lost.

MR DINELLI: Thank you, Commissioner.

15 So the email I took you to was August 2016. At around this time – this is approximately one year after the notification in September of 2015 – so around August 2016, how would you describe the data management or the issue of data management within CBA?---That's a – can you be more specific in your question? That's a very, very broad question. Data management within CBA. Is there something specific - - -

20 The ability of the bank to manage its data according to its policy obligations and legal obligations: how would you describe that at around August 2016?---I would say in August 2016, broadly speaking, we – we certainly had areas that we had to improve. We know we've got a lot of work to do. I don't think we will ever get there and – and be able to put a full stop behind the sentence of saying, "We have got data management 100 per cent." But I do think against that qualification broadly, we were managing data reasonably well, and doing it in ways that were compliant with our obligations, with the exceptions that we've obviously discussed.

30 Can you describe for the Commission what the data governance committee is at CBA?---I'm not a member of it. I have knowledge – some knowledge of it. So I believe that the data governance committee is a forum at a group level which provides a degree of oversight over some of the macro-data governance aspects, and I believe – I may be incorrect – that it's – it's focused very heavily on the regulatory reporting data that we touched on earlier, for example, around our reports to APRA and other regulators, Capital, and the like.

35 Can I take you to CBA.0002.0351.4418. Now, this is a meeting of the data governance committee. In fairness to you, you weren't at this meeting. Those who were present are on the next page. I'm sorry, this meeting was held on 17 October 40 2016. And there's – the minutes of the previous meeting commence on the next page, and you will see that it's a meeting that is attended by very senior people within the bank. Is that right?---That's right.

45 Including the CEO at the time. Mr Narev was there?---Yes.

At least at the previous one, and he's a member of that committee. And Mr Cohen who we've heard about a moment ago, he's the chair of that committee?---That's right.

5 One of the issues that was raised on page 4423 was under the heading Near Term Oversight Focus Areas. Now, that committee there at 5.3, one finds:

10 *Data management is a strategic focus area and corporate discipline to prevent new instances of future asset value degradation continues to be unfunded and lacks effective sponsorship*

You see that?---I see that.

And then:

15 *A general decline is becoming evident as BU –*

That's business units, I think?---It would be.

20 Continuing:

25 *Governance forums are beginning to fail to get quorums. The use of delegates often to junior level appears to be increasing, perhaps highlighting the challenge of competing priorities and a lack of dedicated data management roles.*

?---I see that.

30 That seems to be a rather pessimistic view of what was being done about data management at the time within the bank, doesn't it?---It does look pessimistic, yes.

35 And of course, the issue that you've referred to was in September 2015, yet this meeting in October 2016, more than a year later, indicates that despite the fact that there has been two and a-half million in remediation of customers and despite what happened during the relevant period, these sort of things are still being said at CBA?---I don't think those two things follow, unfortunately. I think this – the statement says what it says, but I don't think the connection that you've drawn is – is apparent, as in the connection between the PODs error that we made and this conclusion. I'm not sure that this – this statement is referring to that - - -

40 I'm trying to explore with you – and I will put it clearly – what I'm trying – what I put to you is this, that why isn't it open to the Commission to take the view that the culture at CBA reflected here was that CBA just simply didn't care about these matters, and things like the PODs incident is merely symptomatic of a culture that wasn't giving adequate attention to this data management issue?---Yes, with respect, I think that would be the wrong conclusion. I think the facts of – certainly the PODs case that we've outlined do not support that conclusion. The fact that the issue was

identified ourselves, was fixed ourselves very quickly, was reported proactively to the regulator, we've taken steps to put customers right if they were impacted, I think that that case study simply does not support a conclusion that the culture of CBA is one that doesn't care.

5

Can we turn to – can I – your Honour – Commissioner, I will seek to tender that document. That is the meeting of the data governance committee on 17 October 2006.

10 THE COMMISSIONER: Sixteen. Agenda data governance committee 17 October '16, CBA.0002.0351.4418, exhibit 1.119.

15 **EXHIBIT #1.119 AGENDA DATA GOVERNANCE COMMITTEE DATED 17/10/2016 (CBA.0002.0351.4418)**

MR DINELLI: Thank you, Commissioner.

20 Can we move to a different issue. Your evidence is that you informed ASIC of this issue on 5 November?---I believe so.

Of 2015, I should say?---Yes. Yes.

25 You were first – you first became aware of it on 1 September, didn't you?---Yes. Not me personally, but - - -

The organisation?---CBA, yes.

30 It was fixed on 18 September. This is around the time that you're dealing on a regular basis with ASIC or ASIC is dealing with RBS, Retail Banking Services, on a regular basis in relation to responsible lending processes, isn't it?---Yes.

35 There's no explanation for why you waited from 1 September to 5 November to tell ASIC, is there?---Well, I've made inquiries to understand what the breach reporting obligations are in this type of instance, and my understanding is that there is no – this wasn't a breach under the Corporations Act. Therefore, section 912D did not apply. It was a breach under the NCCP Act. So technically, there was no, you know, 10-day reporting obligation. We had a meeting planned with – with ASIC, as I
40 understand it, on 5 November, and we used that opportunity to provide them with a detailed update.

THE COMMISSIONER: Sorry, what day was your meeting with ASIC?---I think it was 5 November.

45

The 5th.

MR DINELLI: So you are – but you are familiar with the obligations on licensees such as the CBA under 912D of the Corporations Act?---Yes, I am familiar, and, as I said, I made inquiries on the specific question as to what our breach reporting obligations were for this case, and certainly the – the advice from my legal
5 colleagues is that - - -

And I don't need you to trespass into matters of advice. But – subject to what counsel for CBA might say. But are you referring to discussions which occurred at the relevant time or more recently?---Do – do - - -
10

Are you referring to discussions you've had for the – are you referring to discussions as at September 2015? Or are you referring to discussions more recently?---Well, I wasn't in this role in September 2015, so clearly not that. But in preparing for the Commission, I did investigate was there any concern around the lag – the gap
15 between us identifying the issue, fixing it in September and discussing it, raising it with ASIC in early November, and the view that I've had is that no, it wasn't a technical breach obligation on our part, reporting obligation on our part. You know, cut through all of that, I think the substance of the matter is we moved pretty quickly to let ASIC know about it, and the subsequent process then took its course.
20

Well, you're well aware of the obligations on the bank to do all things necessary to ensure that the financial services it provides covered by the licence are provided efficiently, honestly and fairly?---Yes.

And that where there's a breach of that, and it's a likely breach or a likely breach and where it's significant, that ought be done within 10 days?---Yes. As – as I've just said, absolutely aware of that obligation. The – the legal view we had was that it was a slightly different set of reporting obligations. Nonetheless, we did what I believe is the right thing, and we reported it to ASIC pretty quickly.
30

Could have informed them earlier, though, couldn't you? You were in touch with them at the time?---Sure.

Can I take up one last issue with you, Mr van Horen, and that's the issue of - - -
35

THE COMMISSIONER: Just before you go from that.

Do we know whether the report that was made to ASIC in November was in form a report under 912D? Or was it a report in another form?---I believe that it will be part
40 of my exhibits, Commissioner.

Yes, that's what I'm asking for help with?---But from my recollection it wasn't – it wasn't framed as a breach notification.

Wasn't a 912D?---No, it was - - -
45

Report?--- - - - a report.

Yes?---Not a 912D report.

If you can just point to where that is in the documents, it will just help - - -?---Sure.

5 - - - close the loop - - -?---Yes.

- - - reading transcript. If it doesn't come up, Mr van Horen, I don't want to - - -?---Commissioner, I have found it while we were waiting. So in my exhibits, number 11.

10

Yes?---It's a PowerPoint document which outlines the conversation, and I believe that was followed up with a letter, which perhaps my counsel will assist me, but there was a letter as well which followed, and then - - -

15 Yes, I couldn't quickly identify it but, look, we don't delay?---Yes.

Leave it to Mr Scerri to sort it out later.

20 MR DINELLI: And in fairness, I think Mr van Horen's evidence is as well that there was a phone call which preceded I think the day prior.

THE COMMISSIONER: On 5 November, I think.

25 MR DINELLI: Yes, on the 4th.

THE COMMISSIONER: Or there was a conversation on 5 November - - -?---Yes.

- - - wasn't there, Mr van Horen?---Yes, I believe so. Yes.

30 Yes.

MR DINELLI: Can I go to CVH9 – sorry, I should give the court book reference. CBA.0001.0030.3791. This is a report from EY. Just to assist the Commission there has been some reference to EY already, but how was EY involved in this, Mr van Horen?---What we did was ask EY to come in as an independent party to review the way we had done the remediation. And so having set out the business rules, as you would appreciate, there's choices to be made as to exactly how you determine who is to be remediated and so on. Having done all that work and agreed the process with ASIC, so we had agreed everything with ASIC along the way, including the – the
35
40
45

And I think you will see in the second paragraph there's:

5 *A system error occurred on 5 June 2011 which led to incorrect expense data being used in the servicing assessment of several full-form POD applications. This overestimated some customers' capacity to repay. The bank identified the system error in September 2015 and deployed a system fix on 18 September 2015.*

Now, the remediation program EY go on to say – is it right they identified 10,593 accounts that were impacted by the system error?---Yes, I see that in the letter.

10 Did CBA know about those accounts on 30 September? Is that – 2015. Is that what's intended to be conveyed by that?---The way we did the remediation – and this was subject to some internal discussion – was, you know, the nature of an overdraft, it's a fluctuating facility, right, so therefore, how you determine what the appropriate refund or compensation is for customers is – is quite tricky because it's not like a – a
15 normal loan that has got an amortising balance, and so we had to draw a line in the sand on a particular day and say, "Okay. Well, we will take a particular day and look at all customers from that day backwards and see what the impact has been on them." So that was the way we identified who was in which category, because, as you would have seen from some of the correspondence, customers fell into different categories.
20 They might have closed their POD already or they might still have it or might be in hardship or in different groups, and therefore, we – we took a date – I think it was 30 September, but I would have to check if it was the exact date.

25 And the remediation that was given is indicated there to be \$2.1 million; is that right?---In this letter that's what it refers to. the final correct figure was closer to two and a-half million dollars. There was - - -

30 Yes. In fact, that was one thing I was going to deal with. Perhaps I can quickly call up RCD.0001.0003.0075. And this is a response that was made by CBA to the Royal Commission. Have you seen this document before?---Certainly saw the 29 January one.

THE COMMISSIONER: This is round 2, I think, Mr van Horen?---Yes.

35 This is the second one?---I have seen subsets of it. I haven't seen the whole document.

40 MR DINELLI: And if I can take you to paragraph 56. Now, for – I don't put this by way of a criticism, but is it put – is it the position that what is summarised there, that is, "The bank remediating 9161 customers", is actually the correct figure and two and a-half million dollars – is that why you referred to that, Mr van Horen?---I think they're two categories, and I think my witness statement is – is the one I would refer to which talks about the two categories I mentioned earlier to the
45 Commissioner, which was that there were a number of customers whose accounts were – were approved when they shouldn't have been, and there were another number where they were approved at higher limits than they should have been.

Yes?---We had different categories, and if you look at my statement at paragraph 28 it refers to the different categories into which customers fell. The total final number of remediation provided was the \$2.5 million number.

5 I see. Thank you?---And 10,000-odd customers.

And those – and the remediation was finalised then in October 2016?---Yes.

10 So in total, it took about 12 months from – or just over 12 months from when you first discovered the issue to the actual payment of the remediation. Is that right?---Yes, and if you look at all the documentation that went back and forth between us and ASIC, you would see there was a very, very detailed engagement around, for example, the – the wording of the letters that we sent to customers. There was also a fair bit of complexity in determining which bucket or category the
15 customers fell into based on what had happened to their account in the intervening period. So that did take some time.

THE COMMISSIONER: Is that settling the categories or allocating between them?---Yes, correct, settling which categories applied and what to do and there were
20 some complicated cases, for example, debt – customers were – were in hardship, and in some cases those debts get sold to third parties and, therefore, how to deal with those. So it wasn't a simple, you know, you've got 10,000 customers on the books today. We had to then understand where the – what their status was and calculate what was the appropriate response for each.

25 MR DINELLI: Perhaps, Commissioner, if I can tender that page of the CBA response. I should say the paragraph, actually.

30 THE COMMISSIONER: Paragraph 56 of CBA response dated 13 February '18, RCD.0001.0003.0075 will be exhibit 1.120.

**EXHIBIT #1.120 PARAGRAPH 56 OF CBA RESPONSE DATED 13/02/2018
(RCD.0001.0003.0075)**

35

MR DINELLI: Thank you, Mr van Horen. Nothing further, Commissioner.

40 THE COMMISSIONER: Thank you. Is there any party other than the CBA seek leave to cross-examine Mr van Horen on these issues? Mr Scerri.

<RE-EXAMINATION BY MR SCERRI

[12.03 pm]

45

MR SCERRI: Just a couple of questions, Commissioner.

Mr van Horen, Mr Dinelli has asked you questions about the error, and it has been variously described as a system error and a programming error. Just for the record, could you say in plain English what the error was?---I believe it was a programming error where we intended for the flow of data between different systems in our credit assessment process to – to – to flow in – in that designed way, and the programming errors meant that the data did not flow the way it was intended to do and, therefore, the incorrect fields were used in the final credit decision.

10 And what is meant precisely by a programming error?---What that means is the – the way you have to bring together all the components of that credit decisioning system, there are multiple systems and linking pieces of infrastructure, and you have to write code – somebody has to write code with suitable skills to make sure that the data flows correctly from each component of those systems to the other.

15 So - - -?---And so the programming error was one where the – the coding was incorrect and caused that data to flow through incorrectly.

Did you ever find out how many lines of code were incorrect?---I didn't.

20 And the code is written by human being, rather than a machine?---It's written by a human being, yes.

And it was corrected by human being?---Yes.

25 When it was discovered?---Yes.

30 And do you accept the proposition that the fact that the error occurred showed that the bank didn't care about the accuracy and reliability of its systems?---Absolutely not. I think, you know, we – we completely care about the accuracy and reliability of our systems and put in significant effort to get that right. We don't always, but it absolutely does not indicate that we do not care.

35 How many transactions, speaking in perhaps billions or trillions, would the data management systems process in a month, say?

THE COMMISSIONER: You might need to confine the question a bit. Are we talking whole of bank, whole of group? What are we talking?

40 MR SCERRI: Whole of the retail – the retail business unit.

45 THE COMMISSIONER: Yes. Right?---It's a very, very large number. You know, we've got close to 10 million customers who have, on average, three products each, so typically a transaction account, a day-to-day bank account and credit cards and home loans and the like. Many, many billions of transactions every month. Many, many billions.

MR SCERRI: Can you give a guarantee that there will never be an error in any of those transactions?---I wish I could. You know, we do our best to – to minimise those errors, but, clearly, it’s impossible to have a cast iron guarantee of it.

5 THE COMMISSIONER: I would have been very alarmed if you had been prepared to give a guarantee, Mr van Horen. Very alarmed.

MR SCERRI: I feel I got the right answer to the question, Commissioner. Thank you, Commissioner.

10 THE COMMISSIONER: Yes, Mr Dinelli.

MR DINELLI: Thank you. That concludes the - - -

15 THE COMMISSIONER: Are you done with Mr van Horen?

MR DINELLI: Yes, I don’t have anything further.

20 THE COMMISSIONER: I think we are going to see you again, are we not, Mr van Horen?---Yes.

Yes. You may step down, thank you.

25 <THE WITNESS WITHDREW [12.07 pm]

MR DINELLI: Thank you. Commissioner, would it be convenient to you for there to be a short break whilst Mr Scerri leaves us - - -

30 THE COMMISSIONER: We’re about to change parties again - - -

MR DINELLI: That’s right.

35 THE COMMISSIONER: - - - are we? It’s coming up 10 past 12. If I come back at quarter past 12.

MR DINELLI: Thank you, Commissioner. Thank you.

40 **ADJOURNED** [12.07 pm]

45 **RESUMED** [12.15 pm]

THE COMMISSIONER: Yes, Mr Dinelli.

MR DINELLI: Thank you, Commissioner. Commissioner, the next witness who I will invite my learned friend to call is Ms Heang Forbes from ANZ.

THE COMMISSIONER: Yes. Yes, Ms Brazenor.

5

MS BRAZENOR: Thank you, Commissioner.

<HEANG FORBES, SWORN

[12.15 pm]

10

<EXAMINATION-IN-CHIEF BY MS BRAZENOR

15 THE COMMISSIONER: Do sit down, Ms Forbes. Yes, Ms Brazenor.

MS BRAZENOR: Thank you, Commissioner.

Your name is Heang Forbes?---Yes, it is.

20

And your business address is 833 Collins Street, Docklands in the State of Victoria?---Yes, it is.

And your current role is Pricing Operations Chapter Lead at ANZ Banking group?---Yes, it is.

25

And, Ms Forbes, you've received a summons to appear before the Royal Commission today, haven't you?---Yes, I have.

30 Do you have a copy of it with you in the box?---Yes, I do. Thank you.

Your Honour – apologies – Commissioner, I tender that document.

THE COMMISSIONER: Exhibit 1.121, summons to Forbes.

35

EXHIBIT #1.121 SUMMONS TO HEANG FORBES

40 MS BRAZENOR: Ms Forbes, you've prepared a witness statement for the purpose of giving evidence to the Commission today?---Yes, I have.

Do you have it with you in the box?---Yes, I do.

45 I note for the Commission's purpose that that is document number ANZ.999.001.0025. Now, Ms Forbes, I understand that there's a correction that you would like to make to paragraph 58 of that statement?---Yes, that's right.

And if you just turn to that paragraph and let me know when you've reached it?---Yes.

5 In that paragraph you wish to correct a typographical error. The date 15 January 2015 should actually be 15 January 2016. Is that correct?---That's right.

Could you make that change to the statement in front of you?---Yes.

10 And could you please initial that change. Now, Ms Forbes, with that correction, are the contents of your statement true and correct?---They are.

Commissioner, I tender that statement.

15 THE COMMISSIONER: Exhibit 1.122, witness statement of Ms Forbes.

**EXHIBIT #1.122 WITNESS STATEMENT OF MS FORBES
(ANZ.999.001.0025)**

20 MS BRAZENOR: No questions for Ms Forbes, Commissioner.

THE COMMISSIONER: Yes, Mr Dinelli.

25 <**CROSS-EXAMINATION BY MR DINELLI** [12.17 pm]

30 MR DINELLI: Hello Ms Forbes. My name is Albert Dinelli and I am one of the counsel assisting the Royal Commission. Your current role at ANZ, Ms Forbes, is Pricing Operations Chapter Lead. Is that right?---That's correct.

Can you describe that role for the Commission?---My current role?

35 Yes?---Yes. So I manage a pricing operations desk. So I've got a team of seven pricing operations experts, and we receive pricing requests and requests for pricing quotes for retail banking products.

40 I see. And I will come in a moment to the subject matter of your statement, but at the relevant time – and when I refer to the relevant time, I'm referring to a period at the end of 2014 and the start of 2015. You were a product manager for Assured and overdrafts in personal loans and overdrafts between October 2014 and January 2016. Is that right?---Yes, that's correct.

45 And can you describe for the assistance of the Commission what that role involved?---So, as a product manager, I was responsible for four products. So ANZ Assured, 500 and \$1000 limit; the permanent overdraft and the temporary overdraft.

So the key focus of a product manager is to make sure that the product operates the way it's intended, that the processes are working the way they should, our front line staff members are able to understand the product, understand its features, and also responsible for fulfilment of the product and making sure the processes work well.

5

And does that involve marketing of the product, as well?---We work with a marketing team, yes.

10 So, as part of that, you work with a marketing team who market, relevantly, the overdrafts?---That's correct.

Now, your witness statement has been prepared, of course, to deal with an overdraft product called the ANZ Assured overdraft facility and certain preapproved offers for that facility in 2014 and '15?---Yes.

15

You had – your evidence is that during that time you had responsibility for two particular products, and that is the ANZ Assured \$500 overdraft and the ANZ Assured 1000 overdraft limit. Is that right?---That's correct.

20 And can you explain how each of those – perhaps we can start with those facilities?---Sure.

25 How do each of them operate?---They're, essentially, identical, with the exception of the 500 and the \$1000 limit. So it is an overdraft that is an arrangement with a customer that is attached to an eligible ANZ account for the amount of either 500 or \$1000.

30 So customers had to have an eligible ANZ account. And then if they had this product on top of it, they could, essentially, go into debt to the bank either \$500, if they had the \$500, or 1000, if they had the 1000. Is that correct?---Yes, it would be attached to their eligible ANZ account.

35 Now, in your statement you say that it's intended to operate as a safety net to cover customer's small and temporary cash shortfalls. Is that right?---Yes. Yes, that's correct.

40 And you also say that it's not designed to be used for a specific purpose or drawdown and paid back over an extended period of time. Is that right?---Yes, that's correct.

45 What's the difference between this sort of overdraft facility that we've been referring to and what's called the informal overdraft facility that ANZ provides customers?---It's my understanding that an informal overdraft facility is not a prearranged overdraft facility. That's, essentially, the extent of my understanding of an informal.

It may assist if I can take you to ANZ.800.255.7852. Can you explain what this document is that's up on the screen at the moment, Ms Forbes?---It's the Assured and personal overdraft terms and conditions document.

5 THE COMMISSIONER: You've got the screen beside you - - -?---There it is, yes. Thank you.

- - - which I hope is easier to read for you?---Thank you.

10 MR DINELLI: And if I can take you to 7860 of that document. There's a reference there to, at .8:

15 *Your linked account has an informal overdraft facility. The informal overdraft facility is a service provided by ANZ to give customers a convenient way to meet unplanned short-term borrowing needs.*

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

20 How is that different to the products we've been referring to, Ms Forbes?---It's different in that it's not a prearranged credit facility. So it's – it's an informal overdraft, if you like. So it's not something that is known or – sorry – prearranged with the customer.

25 Okay. So if you have this account, according to the terms and conditions, I go to .8, and I say – I look at this and I say my linked account has an informal overdraft facility. And that gives me a convenient way to meet unplanned, short-term borrowing needs. Is that right?---That's what it states there, yes.

30 And you would agree, certainly, that that's something that ANZ – that's akin to – or similar to the product we've been talking about, the 500 and \$1000 overdraft?---It's – it's not one of the products that I managed, but it – it does have similarities.

35 Once a person has an overdraft, whether it be one by way of an informal one or the 500 or 1000, you would agree that it's not how people use – that is not something that ANZ can control. It can be used for anything that the person purchases?---Yes. The intent of the Assured overdraft is to act as a safety net and to provide cover for short-term discrete instances.

40 And which is the same, as I understand it, as the informal overdraft. That's what that's intended to do, too, according to the terms and conditions?---Yes, it looks that way.

45 And once the customer starts using an overdraft facility, interest starts accruing, doesn't it?---Yes, it does.

What was the interest rate – if I go to that particular time – what sort of interest rate did the ANZ Assured product have?

THE COMMISSIONER: This is end '14, start '15, is it?

MR DINELLI: Sorry?

5 THE COMMISSIONER: End 2014, start 2015.

MR DINELLI: Yes. Sorry.

10 THE COMMISSIONER: Yes?---From memory, it was about 17 per cent.

MR DINELLI: And was there also an annual fee that was required to be paid in monthly instalments?---On the ANZ Assured, yes. Yes, there was.

15 And for that relevant period, 2014, 2015, ANZ was sending out unsolicited – or sent out some unsolicited – that is, they weren't requested – preapproved offers for either the 500 or the 1000 Assured overdraft. Is that right?---Yes, it did.

20 You say in your statement that you sent around – ANZ sent 330,000 of those. Is that right? In 2014?---Yes. So in my statement it – it mentions that for the year 2014, 330,000-odd Assured offers were sent out.

Do you know how many approximately took up those offers?---I would have to check my statement.

25 It's about – and it's not a memory test, but at paragraph 68 you say that 2992 ANZ Assured facilities were taken up in the period between 10 November 2014 and 27 February 2015. Do you see that?---Yes, yes, I do.

30 And that's right, is it?---Yes, that's correct, for that time period.

And when did ANZ stop sending the – these preapproved offers?---The preapproved offers ceased in January 2015. So the last letters were sent out on 27 January. The – there's a 30 day offer period. So the last date in which they could be accepted was 27 February 2015.

35 I see. Now, given your experience, and extensive experience at ANZ, you would be familiar that ANZ must, and was certainly required to at the relevant time, do certain things before entering into a contract with someone?---Yes, I am aware.

40 Those obligations include making reasonable inquiries about a customer's financial situation?---Yes.

45 Taking reasonable steps to verify that information. And making an assessment whether the credit contract, here and overdraft facility, would be suitable or unsuitable for the customer?---Yes.

Now, that comes from, as you know, the National Credit Act. I might call that up briefly, RCD.0022.0001.0001, and go to page 0099. And if you can take it from me, Ms Forbes, that the purposes of paragraph 128D that provides certain things that a licensee – that ANZ must do. It says it must do the things in section 130. And the
5 licensee – so ANZ – must, before making an assessment, do various things. One is:

Make reasonable inquiries about the consumer's requirements and objectives in relation to a credit contract.

10 Do you see that?---Yes.

And you understand that that means that there must be inquiries made by ANZ in relation to what the consumer requires for the credit contract – for the purposes for which the consumer requires the credit contract?---Sorry, could you repeat that.

15

Sorry. That's my fault, Ms Forbes. (1)(a) provides that ANZ must:

Make reasonable inquiries about the consumer's requirements and objectives in relation to the credit contract.

20

?---Yes.

And (d):

25 *Make any inquiries prescribed by regulations about any matter prescribed by the regulations.*

So there's also, as I'm sure you're aware, a set of regulations. And I might take you to that. It's RCD.0022.0002.0001. So these are the National Consumer Credit
30 Protection Regulations. Now, this is not a legal exam, Ms Forbes, but if you go to – sorry – if the operator could kindly go to .0104. You will see there that for the purposes of paragraph 130(1)(d) of the Act, that is what I took you to before:

35 *A licensee must make reasonable inquiries about the maximum credit limit that a consumer requires.*

Do you see that?---Yes.

40 And that suggests that, relevantly, ANZ must do that thing, doesn't it?---According to that document.

Yes. Well, it doesn't say "only if ANZ thinks it might be relevant"?---There is mention of reasonable inquiries there.

45 Yes. So must make reasonable inquiries. So that – would you agree with me that it means that licensee must make some inquiries, and those inquiries must be reasonable?---Yes, that's what it states.

And so – it is not intended, as I said, to be a law class, but, having taken you through that, none of that comes as a surprise to you, does it? You’re familiar with those obligations?---In preparation for the Commission in this hearing, I have made myself aware much more closely to the obligations, yes.

5

Well, in – thank you. And maybe I can take you to the ANZ – to ANZs credit card, which, basically, mirrors these obligations. They’re part of your statement. ANZ.800.077.0106.

10 THE COMMISSIONER: I think you said credit card. It’s the credit guide.

MR DINELLI: Credit guide. Thank you, Commissioner.

THE COMMISSIONER: Yes.

15

MR DINELLI: Thank you, Commissioner. I’ve got credit cards on the mind.

Can you perhaps explain what the ANZ credit guide is, Ms Forbes?---It’s something that’s handed out to customers when they do take up a credit product or a product.

20 And it’s intended to outline information about the credit.

I see?---Yes.

25 If I can take you to .0107, to the second page. And you will see that there’s a heading Our Obligations Before Providing Credit to You:

We are prohibited by law from providing credit that is unsuitable for you.

See that?---Yes, I do.

30

And do you see that it says, in the section that follows:

This means before we provide you credit, we must make an assessment that you can meet your financial obligations under the credit contract without substantial hardship, and the credit meets your requirements and objectives.

35

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

Now, relevantly, can I take you to this. It then says:

40

To help us to make this assessment we will –

First dot point:

45 *make inquiries about your financial situation and requirements and objectives that we believe are relevant to the credit you are applying for.*

Do you see that?---Yes.

5 If you go – if you remember what we were talking about before, it seems that that refers to something that wasn't in the provisions we looked at, that is, it doesn't refer to "that we believe are relevant". Do you see the distinction between what's there and what I showed you before?---Could you repeat that, I'm sorry.

10 Do you notice that it says that "we believe are relevant to the credit you are applying for"?---Yes.

That language wasn't in the sections I showed you, was it?---Not in the exact words, no.

15 Do you think that the requirement to make reasonable inquiries can be fulfilled without asking the client anything?---It's a – it's a broad question. It – I suppose it depends on the circumstances that's – that are in play.

20 So it says that – so you agreed with me before that broadly, the – I shouldn't be broad. I withdraw that. You agreed with me previously that there's a requirement to make reasonable inquiries before a credit contract is entered into, reasonable inquiries as to what the purpose of the contract is; do you recall that?---Yes.

25 How is it said – or perhaps I should say it in this way. How is it said that you can make reasonable inquiries if you don't make any inquiries?

THE COMMISSIONER: Is that a very fair question to put to her, Mr Dinelli?

MR DINELLI: Perhaps not.

30 THE COMMISSIONER: It's either – either the point is good or it's bad, and I'm not sure that I get anywhere by her - - -

MR DINELLI: No, I accept that. I withdraw the question.

35 THE COMMISSIONER: - - - agreeing or disagreeing with it.

40 MR DINELLI: Do you think – perhaps I will put it this way, Ms Forbes. Do you think that the customers' requirements and objectives can be assessed without asking the client about their requirements and objectives?---I think if I link this back to the ANZ Assured offers that were sent out, which is, I think, the subject of my witness statement. So the purpose of the offers that were sent out, or the inquiries that were made were, in our minds at the time, reasonable due to the intended purpose of an – of the ANZ Assured product that we owned and managed and sold, and also the size of the limit being 500 or 1000 dollars. It was deemed reasonable and scalable.

45 And we will come back to that language in a moment?---Sure.

Let's go to that letter, in fairness. So ANZ.800.255.7837. Is this one of the – there's a number of examples?---Yes.

5 And I might take you to a couple of them, but this is one of the ones that you had in mind?---Yes, that's correct.

And it says here – it says – this is obviously a sample. :

10 *Dear Mr Sample.*

Then the first paragraph is:

15 *Based on our assessment of your ANZ accounts, we would like to offer you an ANZ Assured 500 credit facility with no application fee and a low monthly fee of approximately \$5.*

Do you see that?---Yes.

20 And if you go then down slightly, it says:

You should read the letter of offer overleaf and the terms and conditions booklet. But after that's done, the good news is that with ANZ Assured, you're already approved.

25 Do you see that?---Yes.

You saw previously it said that you've been, in fact – in large type:

30 *You're preselected for ANZ Assured.*

Do you see that?---Yes.

And it says there's no application fee?---Yes.

35 Well, it's not an application, is it? There was no application made?---No.

And activation is quick and simple. And:

40 *One phone call is all it takes.*

?---That's correct.

And then it says:

45 *You only pay interest on the credit you use.*

?---That's correct.

Well, why would a customer pay for credit they don't use, it might be said?---That's right. So - - -

Now, if you go down slightly – a little bit further - - -

5

THE COMMISSIONER: Well, at that time did ANZ charge unused limit fees on some overdrafts?---The monthly fee would be charged regardless of whether the limit was actually drawn down upon or – or used. We didn't call it that, though.

10 You didn't call it - - -?---We didn't call it - - -

- - - an unused limit fee?---No.

But - - -?---There was a monthly fee.

15

In effect, would it have been an unused limit fee?---Yes, I think it operates the same way, Commissioner.

It may be inaccurate, but - - -?---There was a fee, yes.

20

MR DINELLI: And that was the \$5 a month fee that we saw on this, isn't it, Ms Forbes?---Yes.

25 Sorry, we will go down a little bit more if we could. You see here it says – and I might, in fairness to everyone being able to see that, it says:

I/we have read the ANZ Assured letter of offer.

30

And then the next thing is – sorry, not the next but the third thing is:

I/we also confirm that I/we can repay this credit limit of \$500 without substantial hardship.

35

Do you see that?---Yes.

And then there's a note:

40

If your personal circumstances have recently changed or are likely to change in the near future in a way that could adversely affect your financial position, please do not accept this offer but call us.

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

45

Because no inquiry had been made before this offer was sent as to customer's personal circumstances, had they?---The inquiries that led to a customer being sent a pre-approved offer covered off a number of different elements that ANZ had information about. So if I can go into that at this point?

Can I put it perhaps as a – we will come to that?---Okay.

5 But am I right to say that before this letter, however, no inquiry had been made, reasonable or otherwise – no inquiry had been made as to the purpose for which the person required or, indeed, if they did require a credit contract?---Not specifically to purpose, no. But the intention, as mentioned before, is that the ANZ Assured product is for temporary shortfalls.

10 I understand that's what you say the purpose of the product is, but the question I'm getting at is – I'm coming at it from the other side, from the side of the consumer. Receiving this, they haven't said to ANZ anything about what their requirements are for a credit contract, have they?---No.

15 If one – if I could go to RCD.0022.0001.0001. Sorry, I think I've given the wrong – sorry, I've taken you to the wrong thing. Excuse me, Ms Forbes. Now, we referred earlier – you referred earlier to the processes that occurred at ANZ before these letters were sent, and you deal with them in your statement. Now, some of the statement is confidential because it involves the processes applied by ANZ. And I will ask you about some of those things at a high level?---Okay.

20 So that we don't disclose that confidentiality - - -?---Thank you.

25 - - - unnecessarily or improperly. Am I right to say that the process of inquiries and verification criteria considered what amounts were paid into an ANZ account? Is that right?---That is an element, yes, that's correct.

30 And also consideration of other ANZ accounts and their use over the previous 12 months?---Yes, yes, I believe the 12 months – I would have to confirm that, though. I think there's an - - -

THE COMMISSIONER: I'm sorry, Ms Forbes, you dropped your voice?---I'm – I apologise, yes.

35 No, no, just can you give me the answer you gave again, I'm sorry?---There is a review of transaction history. The 12 months I'm – I'm not 100 per cent sure of, so I would have to check.

I see.

40 MR DINELLI: And look, nothing turns on it, but if we could just – but it is right to say that one looks at the ANZ accounts broadly for a period preceding the making of the offer?---Yes, that's correct.

45 But in so doing, there's no reference to any other financial information that might be relevant to the person other than their ANZ history, is there?---As far as the ANZ Assured is concerned, in terms of the accounts that it's eligible to be linked to, it's not able to be linked to your ANZ Basic account or if the customer's – or at the time

was part of the ANZ Saver Plus program. So those accounts are used and – and sold to customers who are receiving Centrelink benefits or – or benefits, if you like. So it – it does – I think look at those circumstances.

5 So is your evidence that the people who get offered these – the people who get offered these – or at the relevant time were offered the 500 or 1000 dollars weren't, for example – you used the example of Centrelink benefits because they wouldn't have had that particular account. Is that right?---That's correct.

10 And when we were talking previously about the requirements to make reasonable inquiries, you recall that that requires lenders to seek information from a customer, and it wouldn't, in and of itself, be enough just to consider what accounts it had with ANZ and no other details?---I understand that now, yes.

15 And likewise, ANZ didn't have any idea if the customer needed, as in required or wanted, or actually wanted as in, "I want to have an overdraft", ANZ made no inquiries to that, did it, before sending the letters?---No, no. It's a complimentary product.

20 Well, when you say it's "complimentary", it is a credit contract, though, is it not?---Yes, it is.

25 So once a person was filtered for eligibility using these references within ANZ's system, then if one went through that process and there was no ineligibility, it would – ANZ would send the letter to the relevant people offering them that overdraft. Is that right?---There was also an element of transaction inquiry that – that we mentioned before.

30 Yes?---So are you including that in that process?

Yes, there is – and again, without delving too deeply into some matters that ought not be disclosed, but there was consideration of amounts that had gone into ANZ accounts?---Yes.

35 But nothing was asked about, for example, if a customer had dependants or what their work status was at the time?---Not for the offers, not at the time, no.

40 Nothing about any potential changes coming up in their lives, if they were ill?---Apart from the statement that we saw at the bottom of the activation form.

In fact, is it a fair summary of paragraph 38, without disclosing its precise terms, that what you were considering was the creditworthiness of the person insofar as their ANZ accounts is concerned?---Yes.

45 And not the customer's needs or requirements?---No, that's – that's – sorry, that's correct.

Now, once the offer's sent – so the preapproved offer is sent, if someone responds to accept it, am I right to say that the check – the only check that is then placed on it is – or there's two checks, I should say, in fairness to you – that once they communicate their acceptance, ANZ staff would first check if the offer had not expired?---That's correct.

5
10 So if the offer had not expired and it was still capable of being accepted, it would be accepted save and except that you say that if there was a hardship flag on the customer's account which would prevent the product from being activated, that would prevent its acceptance; is that right?---That's correct.

15 And there would only be a hardship flag if the customer had himself or herself contacted ANZ to that effect, wouldn't there?---That's correct. So in the time between the offer having been sent through to when they chose to accept, if that flag had been loaded in that time, that's to make sure that we don't load the limit or activate the limit for the customer.

20 I see. But otherwise the check that is done is just to make sure that the date – the expiry date of the offer hasn't expired?---That's the first check - - -

Thank you?--- - - - of the two.

25 Now, I'm right in saying now – and you give some evidence about this – that the application form for overdrafts has now changed. Is that right?---Yes, that's correct.

And in fact, a question that's asked is:

30 *Usually we suggest ANZ Assured to provide cover for temporary unexpected expenses arising on your eligible account. Is this what you are planning to use the ANZ Assured for?*

And the customer is given the option of answering yes or no?---I don't have it in front of me, but I think they are the words.

35 If you go to paragraph 71(a) of your statement. You have probably got a copy there and it's up on the screen. 71. You can see that one of the questions that I asked you previously was whether or not ANZ asked about why the person wanted the ANZ Assured product?---Yes.

40 You recall that?---Yes, I do.

And that no questions were asked about that by ANZ at the relevant time?---Yes.

45 And a question is now asked, in the terms of 71(a)(i). Do you see that?---Yes, I do.

Can I take you to some of the correspondence that's exhibited to your statement, in particular at H1. In fact, the first document, which is ANZ.800.077.0001. Have you seen this letter before?---I have.

5 Sorry, this is exhibited to your statement. What this letter is is a letter from ASIC to ANZ about this – the ANZ Assured product. Do you see that?---Yes.

And you see that some of the terms that we've already discussed this afternoon are referred to there:

10

You're already approved. Activation is simple and quick.

Do you see that?---Yes.

15 And a series of questions are asked of ANZ in that letter?---That's correct.

Including how ANZ – number 5:

20 *How ANZ complies with each of its obligations in subsection 130(1) of the National Consumer Credit Protection Act in relation to its unsolicited offers for an ANZ Assured overdraft.*

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

25 Now, a response was sent to that letter by – which is the next document, which I will go to perhaps before lunch, if that's convenient – ANZ.800.255.7833. And you see that one of your – or two of your colleagues, I should say, Mr Shaw, Mark Shaw and Bob Ballon responded, if you can take my word for it, they signed the letter?---Yes.

30 They responded to Mr Thompson at ASIC?---Yes.

And there's an explanation there about the product. Can I take you specifically to one aspect of it, and that's at question 5 on page 7835. Now, you will recall this question was how ANZ complied with subsection 130(1) to make reasonable
35 inquiries about the consumer's requirements and objectives in relation to the credit contract. And you will see that at 5(a). Can you see that?---Yes.

And the answer that's given is:

40 *An ANZ Assured overdraft is a small line of credit which may be used for a wide range of reasons, with no particular purpose.*

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

45 That doesn't really answer the question, does it?---Not in black and white, no.

Well, it – in neither black and white nor any other colour. It doesn't answer the question, does it, Ms Forbes?---No, it doesn't. That's right.

Commissioner, is that a convenient - - -

5

THE COMMISSIONER: Certainly.

Ms Forbes, we will have to ask you to come back after lunch. If you can be back in time to resume at 2 pm. Adjourn until 2 pm.

10

ADJOURNED

[12.56 pm]

15

RESUMED

[2.00 pm]

THE COMMISSIONER: Now, Ms Forbes, can you come back into the witness box, please.

20

MR DINELLI: Ms Forbes - - -

THE COMMISSIONER: Mr Dinelli.

25

MR DINELLI: Thank you, Commissioner.

Ms Forbes, before lunch I took you to some correspondence with ASIC. Can I take you, please, to ANZ.800.077.0030, please?---Yes.

30

This letter was sent on 1 May 2015. You were still in your product manager role at the time?---Yes, I was.

And in the last paragraph on that page, if I can take you to it, it says:

35

ANZ's position –

If we go down to the third line, it's put:

40

The requirement to make inquiries into the consumer's requirements and objectives would be limited.

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

45

But it seems that limited though they may be, there still needs to be some inquiries that are made, don't there?---According to the Act, yes. Yes, there does.

Thank you. And if you go to the next page. And it's the second paragraph, you say:

ANZ's –

Sorry, ANZ said:

5 *ANZ's inquiries no a customer's financial situation for the overdraft offers were tailored to the nature of the product. We do not consider the process adopted for the assessment of overdraft offers was an example of ANZ scaling down inquiries due to the amount of credit offered.*

10 What do you mean by “scaling down” there? There were no inquiries made?---According to the criteria that was used to build the offers, I believe that's what that's in relation to.

15 But insofar as – is it your position – is what you're intending to say that because of the amount in issue, ANZ could scale down its inquiries such that it wasn't necessary to even ask if the person required or desired that particular product?---I didn't write the letter, so I'm – I'm actually unsure about the intent of that - - -

20 I see?---Of that sentence.

I see. And you've – well, you've given evidence that no inquiries were made in that regard, and in that – and you wouldn't – well, it's not your language to use the ANZ scaling down inquiries?---That's not my language, no.

25 If we could go down a little bit further, please. That's fine. I might take you, if I may, to another piece of correspondence briefly. That is ANZ.800.255.9420. Before I take you to that letter, Ms Forbes, the pre-approved letter offers, that was a major plank, was it not, of the marketing of the assured overdraft?---It was the only form of marketing in place for the overdraft.

30 Thank you. So the sending of these letters was important – was an important way for the bank to increase the uptake of this particular product?---It was the only way that we did market the product.

35 I see. And on the second page, you set out – sorry, ANZ sets out, if I could go to the next page – sorry, the third page of this document – just bear with me for a moment. Do you have a copy of your statement before you?---I do, yes.

40 I will have to take you to it because, unfortunately, there's some confidentiality on this – maybe it's the third page, actually. So 0003, please. Thank you. Thank you. And ANZ, I think it's fair to say, sent quite a lot of letters in the form of pre-approved offers over the years, didn't it?---Yes, the numbers state – state there.

45 Yes. So in 2011 there was nearly 600,000; 2012, 243,000; 2013, 372,000; and 2014, 330,000?---That's correct, yes.

Now, in a later letter you identified how many were – how many of those offers were actually accepted. So that’s ANZ.800.077.0011. In fact – I will wait for that to come up?---Sure.

5 I’m sorry, Ms Forbes, Commissioner. ANZ.800.077.0033.

This was in response to a notice that you had received from the – from ASIC under section 49 of the Act which enables certain questions to be put to licensees?---Mmm.

10 On the next page, if I can take you to 0034, during the course of the relevant period, that is, 10 November 2014 to 27 February 2015, is it right that 2992 offers were accepted? There’s a – those figures can be ignored. In fact, we could put the screen down, but if you go to paragraph 68, that accords with your evidence at paragraph 68?---Yes, that’s correct.

15 And that, however, was for a period of approximately three months, or - - -?---Yes.

- - - three and a-half months, perhaps?---And a-half months, yes.

20 Now, you say in your evidence that it’s not possible to definitively determine which offers were activated as a direct result of the customer accepting a pre-approved offer?---That’s correct.

25 Is it not the case that these offers that were accepted – sorry, is it not the case that during that period the amount of offers that were accepted were all accepted in relation – in response to the pre-approved offers?---Sorry, could you reword - - -

30 Is it not the case that the 2992 offers were all in response to the pre-approved offers?---That’s correct, yes. That’s what that number is referring to.

35 And in fact, that’s one of the ways that you would assess your marketing, to work out if it’s working, to measure the number of people who accepted a particular invitation, or offer in this case?---That’s something that the marketing and the analytics teams would use to monitor the – the – I guess the uptake.

40 I see. You go on to say that during your time as a product manager, the pre-approved offers typically had low levels of acceptance?---That’s correct.

45 Is it right to say that they were low levels of acceptance in circumstances

where there was that many people in the period of three months, that is, nearly 3000 people in three months?---I think the low level of acceptance would – is referring to the numbers – purely the numbers. So what was sent out and then what was activated. There wasn’t a target success rate or a – or an acceptance rate.

45 But as you said, that was the only form of marketing that was used in respect of that particular product?---That’s correct.

Can I take you briefly to ANZ.800.255.8729. In this letter, ASIC noted that if ANZ had complied with its obligations, ANZ might have found that the product was unsuitable for some customers, or it may have – ANZ may have provided them a lower limit?---Yes, that’s what it – that’s in the letter, yes.

5

And ASIC – well, that, first of all, as a proposition sounds reasonable, does it not? If ANZ had asked if people wanted this product or desired this product² and had regard to their particular requirements, ANZ might have found that the product was unsuitable for some of those customers?---Yes, that’s – that’s - - -

10

Might have, for example, instead of \$1000 said, “Well, actually, for this particular person \$500 is more appropriate”?---It could have been the case, yes.

And ASIC in that letter said that it considered it appropriate for ANZ to review the facilities in order to remediate customers who might be in that circumstance?---I’m not sure on that page - - -

15

Sorry, I might ask to go to the next page. They can put them next to each other – is it possible to put them next to each other, please. And you will see, just above Response Required, that paragraph says:

20

We consider that it is appropriate for ANZ to undertake a review of the ANZ Assured facilities provided in order to remediate customers who ought not have been provided with the facility or only provided with a facility with a lower credit limit.

25

That sounds pretty reasonable too, does it not, Ms Forbes?---Yes, I can – I can see that there, and – yes.

And then there’s a response given on behalf of ANZ, at ANZ.800.077.0172. And on the second page – again, I will ask – thank you. I think it might be the third page, actually, 0174. ANZ there said that:

30

ANZ is not clear on the basis of such a remediation program.

35

?---Mmm.

Sorry, maybe I can start:

ASIC has asked ANZ to review the ANZ Assured facilities for the purpose of identifying and remediating customers.

40

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

Continuing:

45

...who ought not have been provided the facility or ought to have been provided the lower credit limit. ANZ is not clear on the basis of such a remediation program.

5 And then they go on to explain some of the changes that have been made. And then:

However, notwithstanding our view of previous processes, ANZ would like to meet with you to seek to further understand ASIC's concerns and why ASIC believes a remediation is required.

10

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

And did that meeting occur?---I'm not aware of whether a meeting has – had occurred. I was not in the role at that time.

15

I see. The next thing that you refer to in terms of chronologically in your materials is a letter dated 10 January. And you referred to that in your statement; do you recall?---Yes, I do.

20

And I will come to that in a moment. So there was clearly an impasse of sorts between ANZ and ASIC. But what happened in the interim – and I am jumping in terms of dates, for which I apologise – but at the start of 2006 an infringement notice was given to ANZ. You're aware of that?---Yes, I am.

25

THE COMMISSIONER: Sorry, what year?

MR DINELLI: At the start of 2016, 5 February.

THE COMMISSIONER: Thank you.

30

MR DINELLI: Slightly out of order, Commissioner, but if one goes to ANZ.800.255.9022. And you will see that this notice was given to ANZ, an infringement notice, which set out that – and I'm – the third paragraph:

35

During the period 10 November 2014 to 27 February 2015 –

That's the relevant period, isn't it, Ms Forbes?---Yes, it is.

40

And there's then reference to you engaged in conduct contrary to section 128. We discussed that section, and I took you to section 130. And the final words:

Without, pursuant to section 128, having made the inquiries and verification in accordance with section 132 of the Act, in particular regulation 28JA.

45

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

And there were four infringement notices in that form, weren't there?---I believe there were - - -

Take - - -?--- - - - five.

5

I think it might be five. You are right, Ms Forbes?---Yes.

That were issued, and they were all issued at that time, weren't they?---They were.

10 And all dealt with the same conduct, that is, the conduct of the pre-approved credit offers – overdraft offers?---Yes, it did.

I said that I would come back to it, and I will now. You refer to the ASIC letter of 10 January 2017. Do you remember that letter? This is the last letter that you refer to, 15 and you actually refer to it in your statement - - -?---Yes.

- - - on two occasions at paragraph 65. In your statement at paragraph 65, you say:

On about 10 January 2017.

20

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

And you quote part of that letter:

25 *The letter also stated that on the basis of the information provided and the changes the ANZ has made, we do not propose to make any further inquiries at this time.*

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

30

And you repeat that, if you go to paragraph 73, where you again quote that part of the letter. Can you see that?---Yes, I do.

But the letter dealt with another issue, didn't it, Ms Forbes?---What do you mean?

35

If we go to the letter - - -?---Yes, please.

- - - itself, which is ANZ.800.255.8807. You've, in your witness statement to this Commission, referred to the last substantive paragraph there on the basis of the 40 information provided. But previously, the letter said:

We ask that the ANZ provide remediation on a case by case basis to ANZ Assured customers approved via the ANZ's previous application process (in response to pre-approved ANZ Assured offers).

45

?---Yes.

Continuing:

5 *For example, in determining what action the ANZ should take in response to any hardship, arrears, default by these customers, we seek that ANZ assess whether the income and expenses used by ANZ in its unsuitability assessment reflected the customer's actual financial situation and provide appropriate remediation.*

10 ?---Yes.

You didn't refer to that in your statement, though, did you?---No, it wasn't in my statement.

15 In fact, in your statement you were also asked – and you will recall you received – ANZ received an outline of some answers that were required in a statement. Do you recall seeing that for the purposes of this Commission?---The questions for the case study?

20 The questions that ultimately became your statement?---Yes.

One of the questions, if you go to page 10 of your statement – I'm sorry – I will have to go to – you see the questions, question 10 and question 11?---Yes, I do.

25 Question 11 says:

Explain how and when ANZ communicated with those customers and what was communicated?

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

You didn't answer that question in your statement, did you?---No, that wasn't addressed in my statement.

35 THE COMMISSIONER: I'm sorry, Ms Forbes, you will have to - - -?---I'm sorry.

- - - repeat your answer. What was your answer?---No, I didn't address that in my statement.

40 Yes.

45 MR DINELLI: That's because ANZ has never communicated with any of the customers affected by these pre-approved offer letters, has it?---If I can refer to my answer to question 10, if that's okay, we – the response there is that we haven't been able to readily identify the number of customers who have been impacted by our failure to inquire about a maximum credit limit. The information that we do hold with respect to hardship and complaints information is very difficult to link back – the failure to inquire about a maximum credit limit back to any hardship or any

collections activity experienced by the customer, unless it's specifically advised to us.

5 Have you told ASIC that?---I don't believe – I'm not aware of any communications to that effect to ASIC.

10 And you would agree with me that, if that's the case, there haven't been any inquiries made, for example, of even the five people who were subject of the infringement notices?---I'm not aware of any inquiries of the five people.

15 ANZ hasn't monitored whether people who were offered these pre-approved offers and accepted them are constantly in arrears or paying huge sums?---I'm – I'm not aware of any – any monitoring. I'm - - -

15 And in relation to the ones the subject of the relevant period or, in fact, any of the pre-approved offers that have been given?---No, I'm not aware of any monitoring.

20 And those – sorry – I referred to the people who were subject to the infringement notices. Were they ever remediated, those people?---Not to my knowledge.

25 It is ANZs position, is it not, that there ought be no remediation. Is that right?---I'm not sure about ANZs position on this. We do have hardship teams and – and teams that do hear from customers and are able to deal with any such situations as they arise.

25 In fact, if I can go to RCD.0001.0035.0088. Have you – have you seen this document before, Ms Forbes?---I have.

30 This is ANZs response to a letter – or the second letter, as it has been described, of the Commission dated 2 February. Do you see at 1.2(a) it says that, helpfully, ANZ has gone through this material and shaded some of the material that we will come to in a moment. And that relevantly, (3) says:

35 *Certain –*

So part 1 contains in tabular form the further detail sought by the Commission concerning – and I will jump ahead to 3:

40 *Certain instances where a question of misconduct has arisen, but not been determined and in the time available. ANZ has been unable to determine whether there has been misconduct but has disclosed the matter to assist the Commission with its work.*

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

And it's denoted by pink shading?---Yes.

If I can go to .0128. And item 153 – perhaps if that could be expanded, Mr and this is what we've been talking about this afternoon, isn't it, Ms Forbes?---Yes, that's correct.

5 That's right?---Yes.

And the pink shading suggests that it hasn't been determined here by ANZ, and ANZ has been unable to determine whether there has been misconduct in this circumstance. Are you aware of that?---I am. I have seen this. And, just as a
10 response to this, there's – the payment of the infringement notices by ANZ wasn't an admission of any contravention of – of the Act, hence the pink shading.

When - - -

15 THE COMMISSIONER: Sorry, you wanted to say something else? Were you cut-off?---No, I wasn't.

No. Very well.

20 MR DINELLI: Sorry, Ms Forbes?---I'm speaking very softly, I'm sorry.

You're aware that ASIC asked ANZ on numerous occasions about remediation, didn't it?---I recall two occasions, from memory.

25 And, in fact, there was a response to that – to the letter that's the last letter in exhibit HF1, so the letter dated 10 January. Are you aware that there was a response to that?---I don't believe I've seen that, no.

And – well, I will show you?---Okay.

30 It's ASIC.0012.0003.1696. Now, I'm not – you weren't on this email – I'm not putting it to you for that purpose. But it's a response from Mr Shaw, who has been the signatory to these letters on behalf of ANZ. And you will see, about halfway down the page, Mr Thompson, the ASIC representative with whom ANZ had been
35 dealing, had sent the letter that I've just been talking to you about?---Mmm.

And Mark responded some nine days later:

40 *Happy new year, Anthony. Thanks for this. We acknowledge receipt, including ASICs request re case by case remediation.*

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

45 But you're not aware of any remediation having occurred?---No, I'm not aware of any remediation having occurred.

You didn't put this email in your statement, did you?---No, I didn't.

Are you aware whether or not it has been provided to the Commission by ANZ?---I'm actually not aware, no.

Can I tender that, please.

5

THE COMMISSIONER: Yes. And what about ANZs response to the 2 February '18 inquiry?

MR DINELLI: Yes. Both of – both, if I may, I'm sorry, Commissioner.

10

THE COMMISSIONER: Item 153 in ANZs response to 2 February '18 inquiry, RCD.0001.0035.0088, will be exhibit 1.123.

15 **EXHIBIT #1.123 ANZS RESPONSE TO 2 FEBRUARY 2018 INQUIRY (RCD.0001.0035.0088)**

20 THE COMMISSIONER: Exhibit 1.124 will be email ANZ to ASIC 19 January '17, ASIC.0012.0003.1696.

25 **EXHIBIT #1.124 EMAIL FROM ANZ TO ASIC DATED 19/01/2017 (ASIC.0012.0003.1696)**

MR DINELLI: Thank you.

30 So you're not aware of any further communication from ANZ to ASIC?---No, I'm not.

And there has been no acknowledgement of any misconduct by ASIC after this letter, as far as you're aware.

35 THE COMMISSIONER: Misconduct by ASIC?

MR DINELLI: Conduct - - -

40 THE COMMISSIONER: You asked whether there was acknowledgement of misconduct by ASIC.

MR DINELLI: By ANZ, I'm sorry, thank you, Commissioner.

45 THE COMMISSIONER: That's rather different.

MR DINELLI: Has there been any acknowledgement of misconduct by ANZ after 19 January 2017?---Not that I'm aware of, no.

No further questions, thank you, Ms Forbes.

THE COMMISSIONER: Thank you, Mr Dinelli. Does any party other than ANZ seek leave to cross-examine Ms Forbes? Yes, Ms Brazenor.

5

MS BRAZENOR: No questions, Commissioner.

THE COMMISSIONER: Ms Brazenor, don't answer this if it will embarrass you, but at the moment I'm left with a question which this witness could not answer about whether exhibit 1.124 had been produced by ASIC. Now, that may be a matter that you want to take on notice. It may be a matter that you don't want to answer at all. But I simply note that a question was asked, this witness couldn't answer it.

10

MS BRAZENOR: Commissioner, just to clarify, produced by ANZ, rather than ASIC?

15

THE COMMISSIONER: Not produced by ANZ. If I said ASIC, I'm falling for the trap Mr Dinelli did.

MS BRAZENOR: Thank you, Commissioner. Noted.

20

THE COMMISSIONER: Yes. Thank you. Very well. Thank you, Ms Forbes. You are excused from further attendance.

25

<THE WITNESS WITHDREW [2.32 pm]

MR DINELLI: Thank you, Commissioner. The next witness that ANZ – I invite ANZ to call is Ms Sarah Stubbings.

30

<SARAH MARY STUBBINGS, AFFIRMED [2.33 pm]

35

<EXAMINATION-IN-CHIEF BY DR RUSH

THE COMMISSIONER: Thank you, Ms Stubbings. Do sit down. Yes, Dr Rush.

40

DR RUSH: Thank you, Commissioner. Ms Stubbings, is your full name Sarah Mary Stubbings?---Yes, it is.

And is your business address 833 Collins Street, Docklands, Melbourne?---Yes, it is.

45

And are you currently the head of Home Loan Product Australia at ANZ?---Currently, yes.

Did you receive a witness summons to attend to the Commission?---I did, yes.

Have you got that summons with you?---I do.

5 Commissioner, I tender the summons.

THE COMMISSIONER: Exhibit 1.125, summons to Stubbings.

10 **EXHIBIT #1.125 SUMMONS TO SARAH STUBBINGS**

THE WITNESS: Thank you, Commissioner.

15 DR RUSH: Ms Stubbings, were you requested to prepare a witness statement in response to questions from the Commission?---Yes, I was.

And do you have a copy of that witness statement with you?---Yes, I do.

20 Ms Stubbings, I understand that there are some corrections you wish to make to the witness statement?---Yes, I do.

There's three corrections. Is that correct?---Yes.

25 Is the first correction at paragraph 52(c) of your statement?---Yes.

Is the correction that you wish to make at the end of the second line to delete "March" and insert "July"?---Yes. So you would like me to do that now and just initial that?

30 THE COMMISSIONER: Yes, please?---Yes.

If you strike out what's wrong?---Yes.

35 Put in what's right and initial it?---Okay. Thank you, Commissioner.

DR RUSH: Ms Stubbings, the second correction I understand you wish to make is to paragraph 56(b) at the top of page 11 of your statement, and that is to delete the parentheses and all the words in the parentheses in subparagraph (b). Is that correct?---Yes, it is.

40

If you could do that, please, and initial it. Ms Stubbings, is the final correction you wish to make to paragraph 60 of your statement?---Yes.

45 And is the correction that you wish to make to delete the words in the parentheses on line 3 and to substitute them with the words:

...based on the information obtained in March and July 2017.

?---Yes, that's correct.

5 If you could do that, please?---Thank you.

Ms Stubbings, is your statement now true and correct?---Yes.

Commissioner, I tender the statement and exhibits.

10

THE COMMISSIONER: Exhibit 1.126, witness statement, Sarah Mary Stubbings and exhibits.

15 **EXHIBIT #1.126 WITNESS STATEMENT OF SARAH MARY STUBBINGS
(AND ATTACHED EXHIBITS)**

DR RUSH: No questions in-chief.

20

THE COMMISSIONER: Yes. Yes, Mr Dinelli.

<CROSS-EXAMINATION BY MR DINELLI

[2.36 pm]

25

MR DINELLI: Thank you, Commissioner.

30

Good afternoon, Ms Stubbings. My name is Albert Dinelli and I am one of the counsel assisting the Royal Commission. Your current role, we just heard, is head of home loan product. Is that right?---Yes, that's right.

And you've held that role since May of last year?---March last year.

35

March, I'm sorry. And – I'm sorry about that, it is March. We understand from the statement that from next month, you will be Australia division executive responsible for large consumer – sorry – customer remediation programs in the new responsible banking team. Is that right?---Yes, that's right.

40

At present, as head of home loan product Australia, you're responsible for delivering home loan products to ANZ customers. Is that right?---Yes.

45

It's fair to say that the size of that portfolio is very large, with a value of approximately \$265 billion. Is that correct?---Yes, that's correct.

Are you able to tell the Commission what proportion of the home loans on offer in Australia are issued by your organisation?---Our market share is about 15.7 per cent.

THE COMMISSIONER: I'm sorry, what number – you will need to speak up a little more, Ms Stubbings. Sorry?---All right. My apologies. It's about 15.7 per cent, I think.

5 Yes. Thank you.

MR DINELLI: Thank you. Now, in your statement – I might say helpfully – it has been necessary to distinguish between different issues that we're going to talk about today, and I will use that same descriptor that you've used, and, in fact, that flows
10 from – that flows from the responses that ANZ has made to the Commission. You refer to certain instances of misconduct in a shorthand way of items 137 or item 138. Can I take you, please, to RCD.001.0035.0088?---Is that in my witness statement?

I'm sorry, Ms Stubbings. I will - - -?---Okay. Thank you.
15

THE COMMISSIONER: It will come up on the screen we hope, if the system works?---Right. Okay. Thank you.

MR DINELLI: Now, if you would like, Ms Stubbings, we have also got some
20 hardcopies of some documents?---Yes, I wouldn't mind. If I could have the hardcopies, that would be helpful.

Yes.

25 THE COMMISSIONER: If you make these offers, Mr Dinelli, you've got to make good on them. I can hear ANZs submission about the Commission not delivering on its offers, Mr Dinelli.

MR DINELLI: Yes. I'm sorry. Maybe if it could be – what's on the screen could
30 be made - - -?---Yes.

- - - a bit larger for Ms Stubbings, please?---Yes. I'm struggling to read that. Thank you.

35 So if – and if it's easier for you, you can use the written version. If we can go to .0123.

THE COMMISSIONER: That's the doc ID in the top right-hand corner?---Okay.

40 It should be, I think. Have you got 00123 – or 0123?---I don't have any document IDs in the - - -

MR DINELLI: It's - - -

45 THE COMMISSIONER: Just to make like fun for you, Ms Stubbings.

MR DINELLI: It's item 137?---Okay. Thank you. That's helpful, thank you.
Okay. Yes.

5 So when we talk about item 137, it's, in fact, two issues. And one – the first one is
that:

*Between 2006 and July 2013, certain Breakfree home loan customers were
charged an interest rate higher than they should have been according to the
free Breakfree terms and conditions*

10

See that?---Yes.

And the second issue is that:

15 *In addition, between 2003 and December 2012, some offset accounts were not
properly linked to home loans, resulting in customers being charged excess
interest.*

?---Yes.

20

So when we talk – when you talk in your statement about item 137, you're referring
to two things. One is an interest – a higher interest rate that was applied than that
which had been the subject of the terms and conditions, and (2) a separate issue,
which is that some offset accounts were not properly linked to home loans. Am I
25 right?---Yes.

Now, the Breakfree package is something that you speak about in your statement,
obviously - - -

30 THE COMMISSIONER: While the witness has it, are you going to - - -

MR DINELLI: Yes.

THE COMMISSIONER: - - - later go to item 138 or - - -

35

MR DINELLI: It might be easiest to tender those – to go to them to identify them,
and then to tender those pages.

THE COMMISSIONER: Tender 137 and 138. It just declutters a bit.

40

MR DINELLI: Thank you. 138 should appear immediately below that. And that is
described as:

*ANZ identifying certain further issues with Breakfree packages following the
earlier Breakfree issues, and it was identified the earlier remediation has not
properly addressed the processes where customers selected a Breakfree*

45

package after drawdown or linked an existing home loan to a new Breakfree package.

?---Yes, that's correct.

5

That's what you refer to as the item 138 issue?---Yes.

And for convenience, we might go to them now, although I will deal with them sequentially?---Sure.

10

On the previous page, if that assists you, 135 appears, and that is that a period of six months in 2016, certain customers did not receive the correct interest rate margin discount on their home loan. That's what you call item 135?---Yes.

15 And then immediately above that, is item 134, which provides that:

Between 14 December 2012 and February 2016, approximately 4800 offset accounts had not been linked to an eligible retail home loan.

20 ?---Yes.

And finally, if I can skip ahead a few pages to what you describe as item 151 – you're probably quicker than us with the hard copy, Ms Stubbings. And that is – and I will read it out if you haven't been able to find it there, but that:

25

Some home loan and commercial lending accounts were not receiving the full benefit of offset arrangements due to the way the offset subsystem calculates interest as compared to the loan subsystem.

30 ?---Yes, that's right.

Okay. And that's item 151. So I'm going to ask you some questions about those five issues this afternoon, although you've identified that item 137 has two sub-issues within it?---Yes. You mean in terms of the fees and interest, do you mean?

35

Yes, that's correct?---Yes.

That's correct?---Sorry, 137 is the - - -

40 137 is the first one - - -?---Yes, sorry.

- - - which is the linking?---Yes, the linking sorry. My apologies, yes.

And the wrong interest rate - - -?---Yes.

45

- - - which, if I may say, is the most significant of the items that we're going to discuss this afternoon.

THE COMMISSIONER: And is it convenient to make items 134, 135, 137, 138 and 151 of ANZ response to 2 February '18 inquiry, RCD.001.0035.0088, exhibit 1.127?

5 MR DINELLI: That is convenient, thank you, Commissioner.

THE COMMISSIONER: Yes.

10 **EXHIBIT #1.127 ITEMS 134, 135, 137, 138 AND 151 OF ANZ RESPONSE TO 2 FEBRUARY 2018 INQUIRY (RCD.001.0035.0088)**

MR DINELLI: Okay. Ms Stubbings, you've referred in your statement to the
15 Breakfree package which has been in existence since February 2003. Can you assist the Commission by explaining what is, well, the nature of the Breakfree package?---So the Breakfree package provides customers with discounts on their home loans, on eligible home loans and fee waivers on a deposit account, so whether that's an offset account or just a transactional account, a credit card, and it had some
20 other sort of benefits around insurance sort of discounts and things of the like.

I see. So the benefits, just taking them one by one, is that you get interest rate discounts?---Yes.

25 Potential interest rate discounts, fee waivers for home lending accounts?---Yes.

And it's your evidence, or you've said in paragraph 12 – and it's your evidence that the package is designed for customers who want transparent discounted interest rates on their home loans, as well as access to a range of benefits and products across
30 ANZ. Is that right?---Yes.

And is that the main product – home loan product offered by ANZ?---Yes. I think – well, we say – well, 79 per cent of our home lending is attached to Breakfree packages.
35

I see?---So yes.

I see. And customers are charged a \$395 annual Breakfree package fee; is that correct?---Yes.
40

Thank you. And a necessary link as part of the – sorry, let me withdraw that. If a customer elects to have an offset account as part of the Breakfree package, then the offset account needs to be linked to the home loan?---Yes.

45 Is that correct?---It – regardless of whether it's a Breakfree package or not, if a customer elects to have an offset account, then it needs to be linked to an eligible home loan to be effective.

Just for my assistance, the linking: how does that operate and why is that of significance in the context of the Breakfree package and generally?---Yes. Well, the offset account is linked to the home loan. And effectively, it reduces the amount of interest you have to pay on your home loan. So if you have a \$50,000 offset account and \$100,000 home loan, effectively, you're only paying interest on net \$50,000.

I see. I see. And for the offset account to work effectively, it's your evidence that it needs to be linked to the home loan?---Yes.

10 Can I deal – of the two 137 issues, the incorrect interest rate and the linkage, I will deal first with the incorrect interest rate, being the way – this document can come down now. There were – if I understand it correctly, before 2012 there were ad hoc instances of customer complaints about the wrong interest rate being applied. Is that right?---Before 2010.

15

10, I'm sorry. Before 2010?---Yes, that's my understanding.

And is it right to say that ANZ identified that certain mortgage loan customers have been charged with interest rate higher than they should have been according to the terms and conditions?---Sorry, do you mean on an ad hoc basis or at the point when - - -

20

Yes, on an ad hoc basis there were some that - - -?---Yes.

25 - - - you had identified before 2010?---Yes.

And in 2010, in your statement at SMS1, which is ANZ.800.223.0977, I'm just calling it up – it's also easier – if it's easier for you - - -?---Yes.

30 - - - it's SMS1, Ms Stubbings?---Okay. So that's the ASIC letter, yes.

So this is a letter - - -?---ANZ to ASIC, yes.

From ANZ to ASIC on 17 June 2010?---Yes.

35

What is this letter?---Well, this is a letter from ANZ to ASIC, basically identifying that there were potential issues with the way our Breakfree package was working in the context of the application of the right interest rate discounts, and also the issue with the linkage of the offset accounts.

40

I see. If we can go to the second page, you deal with – sorry, the third page which is 0979, you deal there, under a heading 2 Mortgage - - -?---Am I – am I able to have a paper copy of the document?

45 It should be in your statement?---My apologies. You're right, yes. Thank you. Sorry.

SMS1?---My apologies. Yes.

THE COMMISSIONER: Page 3 of the letter are we at?---Yes.

5 MR DINELLI: Page 3.

THE WITNESS: Yes.

MR DINELLI: Which is - - -

10

THE COMMISSIONER: You've got that? Yes.

MR DINELLI: I don't think – they should be numbered in the top right-hand corner?---Yes, yes, yes.

15

I've been referring to these numbers which are all in the top right-hand corner?---Yes, thank you.

And it ends .0979?---Yes, I have it, thank you.

20

And you describe there the identification of the – of this issue?---The Breakfree package issue?

That's right, under 2?---Yes. Yes.

25

And if one goes over the page to .0980, you then explain the cause of the breach. And you go on to identify the fact that:

30

ANZ's current process of entering loan details, including the appropriate discounted interest rate, means that this error may have occurred at various spots along the process, that is, it could have been the branch staff initially entering the applicable rate.

Do you see that?---Yes.

35

Continuing:

It could have been credit assessors entering a price for a broker, mobile lender.

40

Yes.

Continuing:

45

A second way. A third way may be the way a centralised Breakfree team set up linkages of new accounts under an existing package, (d) when document preparation by staff generate loan documentation, or (5) when servicing staff undertake maintenance actions where rate changes may occur.

?---Yes.

Just for my benefit, are those five different steps that occur in different places at different times?---Yes.

5

And the outcome was that a higher rate of interest than that provided in the Breakfree package had been charged on their mortgage lending?---Yes. So – so effectively, a customer either didn’t receive a discount that they should have or they received the wrong discount based on the terms of the package.

10

I see. There was a meeting with ASIC to discuss this particular issue some time later. In fact, a meeting occurred in May 2011, which is – if you will bear with me – there was a meeting with ASIC in about May 2011 regarding this product. I don’t think you were at that meeting. You weren’t in the - - -?---No, I wasn’t.

15

- - - role. But are you aware there were discussions with ASIC?---I was aware there were discussions with ASIC throughout the course of the remediation period, yes.

I see. And I will come back to that in due course. In your statement, you say that the first instance of error occurred in relation to the wrong interest rate on 23 May 2006. Can you assist the Commission by explaining what that error was that occurred or how it came to ANZ’s attention on 23 May 2006?---The 23 May 2006 date is not the date necessarily of the first error. It’s the date that we had data available - - -

25 I see?--- - - - in order to be able to determine the impact for Breakfree customers.

I think you say in your statement that the instances of error were remediated on an ad hoc basis from 23 May 2006; is that right?---Yes.

30 And that then, if I understand your evidence correctly, there were various ad hoc remediations that occurred over a period of time?---It’s not so much it’s an ad hoc remediation. If there’s a customer complaint - - -

35 Yes?--- - - - and they didn’t – they ring up to say, “I thought I was getting a 50 basis point discount”, then they would ring up ANZ and we would reconstruct their loan on, you know, an individual basis and – and put them back into the position they should have been.

40 Well, I mean, the ad hoc is your language, though?---Yes.

You say relevantly at paragraph 50:

Instances of error were remediated on an ad hoc basis from 23 May 2006 until the implementation of system fixes in 2012 and 2013.

45

That is your evidence, isn’t it?---Yes, it is. What I mean by “ad hoc” as opposed to an actual remediation program of work.

Yes. So there had been some remediation as early as 2006. This is in relation to the wrong interest rate issue?---Yes, on an ad hoc basis.

On the ad hoc basis?---Yes.

5

I'm happy to use that language. In fact, at a later point in time – but I want to take you to this for the purposes of understanding how these issues arose over time – PwC prepared a report. This is ANZ.800.223.1056?---Is this one of the ones that's in my witness statement or is - - -

10

It's not actually in your statement. It's - - -?---Yes.

But I will see if I can assist you in a moment?---Yes, thank you.

15

This is dated 29 November 2013. Your – the barrister for ANZ indicated to me that you would prefer to read things in - - -?---Yes, if I can.

Which is absolutely fine. So we're trying to attend to that?---Thank you, I appreciate that.

20

And I apologise about that. So we will just get a copy of that to you. But I can ask you some questions before that arrives. You will see broadly – you will see on the screen that it's the MBORP – can you assist the Commission by explaining that acronym?---Yes, that's what the – the remediation program became known as, the

25

Mortgages, Breakfree and Offset Remediation Program.

I see?---So we just referred it to – it's quite wordy, so - - -

It is?---MBORP was easier to refer to.

30

That's okay. We will get into the lingo?---Thank you. Okay. Thank you. Thank you very much.

35

THE COMMISSIONER: Take a moment to make sure you've navigated to the right place, Ms Stubbings. Just take your time and find where you need to be, and then we will go on?---Thank you. Thank you, Commissioner.

MR DINELLI: This is a document dated 29 November 2013?---Yes.

40

It's a PwC report?---Yes.

I would like to take you, if I may, to page – ending .1071. Can you explain – and that's just coming up on the screen now. Can you explain to the Commission what that graph indicates?---It's my understanding that this is looking at just the error legs

45

around the offset refunds over the period 2003 through to 2013.

I assume 2013 is picked as the end point because that's what the relevant – what you describe as the fix has occurred?---Yes.

5 And so over the course of that time – and I'm not familiar with the term "error legs", but does that indicate – is that the term that you use to describe when an error has occurred that has required some form of remediation?---So an error leg is when – at a point when the offset has either not been linked, so it would have been a long – potentially a long error leg or it might have been linked, became unlinked and it was an error.

10 Yes?---And then it became linked again. So that's the error leg.

So does this graph deal with the application of the wrong – the incorrect interest rate?---No, this is about the offset.

15 This is the offset?---Refunds.

We will return to it for that purpose - - -?---Yes.

20 - - - then in due course. I might tender the document, though, whilst I'm there, if I may, Commissioner.

25 THE COMMISSIONER: Exhibit 1.128, PwC report 29 November '13, Mortgage, Breakfree and Offset - - -

THE WITNESS: Remediation program.

30 THE COMMISSIONER: Remediation program. Thank you. ANZ.800.223.1056.

**EXHIBIT #1.128 PWC REPORT MORTGAGE, BREAKFREE AND OFFSET
REMEDIATION PROGRAM DATED 29/11/2013 (ANZ.800.223.1056)**

35 MR DINELLI: Thank you, Commissioner.

40 So I can understand your evidence in this regard, when you wrote – when ANZ decided to write to ASIC in June 2010, am I right to say it wrote because it identified this as a systemic error, rather than one that was merely the product of a series of ad hoc instances?---Yes. At that point in time, ANZ made a call that it was systemic.

45 Thank you. Are you able to assist by indicating how much remediation was made in the period from 2006 to 2010 because of this issue, that is, on an ad hoc basis when someone complained?---I don't know exactly what it was between 2006 and 2010.

But it's your evidence that there was a number - - -?---Yes.

- - - of ad hoc events - - -?---Yes.

5 - - - that occurred where a customer would ring up ANZ and say, “I don’t think the right interest rate is being applied”?---Yes. So my – that wasn’t based on that time period. So mine was based on, I guess, sort of, throughout the period when they did the calculation to determine how much to pay to customers, they identified that there was between five to \$6 million in refunds that had already been paid to customers as a result of reconstructing their home loan accounts for either the offset reason or the interest rate reason, and that occurred between – anywhere between the period 2003
10 up to sort of July 2013.

Okay. Thank you - - -?---Yes.

15 - - - for clarifying that?---So that’s across both those issues.

So that deals with both?---Yes.

20 And that’s why I think – if I may say, I think that’s why item 137 is together, because it has been dealt with by ANZ internally - - -?---Yes.

- - - along the way in relation to both. Is that right?---Yes, that’s right.

25 Now, in fairness to you, you identify – you identify in your evidence that on the basis of the number of customer complaints about the 137 issues – I am referring plural to both of them - - -?---Yes.

- - - that arose prior to 2010, it’s your view that ANZ should have realised that this was a systemic issue earlier than 2010. Is that right?---Yes.

30 In fact, on the evidence that you’ve given, there was five to \$6 million of remediation which was done because of these issues even before the remediation that occurred at the start of 2014?---Yes.

35 And that was for the – that was for the period from 2003 to 2013?---Yes.

Now, 2003, for the assistance of the Commission, is an important date, because that’s the date where the first ad hoc, to use your terminology – the first ad hoc instances that you’ve identified in relation to the linking issue. Is that correct?---No – sorry – that September 2003 date is the date to which we had available data - - -

40 I see?--- - - - with regards to the offset linkage issue.

I see.

45 THE COMMISSIONER: Sorry. Can I just understand that better than I am at the moment?---Yes.

Are you telling me there was no data available to you that would enable you to go back pre-03 and say - - -?---Pre-September 2003.

5 Pre-September '03. You had no data that would enable you to go back pre-September '03 and find out whether there had been some problem or no?---That is my understanding, yes.

Yes. That's what I understood?---Yes.

10 I just needed to check that was so.

MR DINELLI: In paragraph 49, you say, Ms Stubbings, that for the offset linkage issue, instances of error were remediated on an ad hoc basis from 23 September 2003. And that's the date that you identified previously?---Yes, that's right. Yes.
15

Okay. And understand now I'm talking about the offset linkage issue?---Yes.

The fact that a number of accounts you realised had not been – you – I say “you”, ANZ - - -?---Yes.
20

- - - realised had not been properly linked to their home loans, the date at which that became, in ANZs view, a systemic error was 17 June 2010. Is that correct?---Yes.

25 And do you know how many – this is in relation to the linkage issue – how many of those ad hoc instances had occurred between 2003 and 2010 before a decision was made that that was a systemic error?---No, I don't know how many of the ad hoc complaints had arisen.

30 But, to the extent you can assist the Commission, it's in relation to the quantum of both of those - - -?---Yes.

- - - that it occurred from 2003 - - -?---Yes.

35 - - - to 2013. Now, I know that goes over 2010?---Yes.

But that's because the fix wasn't done until 2013?---Yes. That's right. Yes.

THE COMMISSIONER: Are you able to give me any feel – it may be no better than a feel – for the number of customers who were in that period '03 to '13? If you can't, you can't?---Yes. Look, it's hard to say. I mean, my evidence was on the basis we paid out five to \$6 million. That's not an insignificant amount - - -
40

45 Sure?--- - - - you know, over that period. In terms of how many customers sit underneath that, I – I don't – I don't know the answer to that.

Okay.

MR DINELLI: If – I might take you back to SMS1 in your materials. The Commissioner asked about these ad hoc instances and whether or not you had a feel for those figures. If one goes to the second page of that, which is ANZ.800.223.0978, that's the second page of that letter. Are you there - - -?---Yes, I am.

- - - Ms Stubbings?---I'm there.

Where you refer to the number of unlinked accounts, about three-quarters – .7 of the page, can you see number or frequency of similar breaches – (a) number or frequency of similar breaches?---Yes, I can see, the 6000.

There it says:

15 *The number of offset accounts currently unlinked from eligible loan accounts is >approximately 6000.*

Can you explain what – whether that is that figure at that time that were unlinked that ANZ discovered or is it some other figure?---I don't know exactly what that 6000 relates to or what time period. But I do know clearly we identified, you know, many more offset accounts that were unlinked.

Yes. And, in fact, we will come to that but, ultimately, there was a lot more where this issue arose, wasn't there?---Yes.

Staying with that chronology at that time – so this is in June 2010 that this letter was sent – if I can take you to ANZ.800.071.6787?---Is that in my – one of my witness statement items or - - -

No, but I might see if your - - -

THE COMMISSIONER: She has a bundle of papers which I assume it's in the bundle of papers, is it, or - - -

MR DINELLI: I assume it would be, although I don't know if I can assist.

THE COMMISSIONER: Dr Rush, is it in the bundle, do you think?

DR RUSH: We're just going to look, Commissioner. Just bear with me for one moment, if the Commission - - -

THE COMMISSIONER: Yes.

DR RUSH: - - - wouldn't mind. We've got a table of the documents and we're just going - - -

THE COMMISSIONER: I am glad someone has.

THE WITNESS: Okay. Could you give me – tab 38. Okay. Thank you.

DR RUSH: I understand it's tab 38.

5 THE COMMISSIONER: Tab 38, I'm told?---Thank you. Yes.

MR DINELLI: Now, a lot of that document you will find is redacted?---Yes.

10 Or at least you might be able to see it. But if I could take you to the first page, it's headed Report of the Chief Executive Officer. What sort of document is this, from your experience?---Look, I believe this would have been a report from the CEO to the board.

15 I see. And, as you can see, it's dated July 2010. Can you go to the third page, which is .6789?---Yes.

And this issue was sufficiently important that under the heading Legal:

20 *Compliance issues in mortgages: instances of overcharging customers in relation to offset accounts, Breakfree package discounts not applied and discounts loaded incorrectly. ANZ has been notified a provision of \$20 million*

Do you see that?---ASIC has been notified.

25 Yes?---Yes.

And a provision of 20 million has been raised?---Yes.

30 Now, with the benefit of hindsight, that was a very significant underestimate, wasn't it?---Yes. We ended up paying out 69.3 million.

And if I may tender that document.

35 THE COMMISSIONER: Exhibit 1.129, ANZ.800.071.6787 report of CEO to board July 2010.

EXHIBIT #1.129 REPORT OF CEO TO BOARD (ANZ.800.071.6787)

40

MR DINELLI: And, in fact, soon thereafter that same issue, if I can go to an audit committee report, ANZ.800.088.1244?---Yes, I have that.

And it's tab 39?---Yes.

45

I think it might be the next tab for you?---Yes, I have it. Yes.

Do you know what this type of document is, Ms Stubbings?---So this is a report from our auditors, KPMG - - -

Yes?--- - - - to the board, I presume as part of our year-end financial results.

5

Yes. For the year ended 30 September 2010, which was, of course, the year – the year which included the relevant date when this issue arose - - -?---Yes.

10 - - - as systemic issue. And if we can go to .1257, which hopefully you also have, which is about page 13 or 14 of the document?---Yes, I do. Yes.

And, again, you will see a mortgage offset provision?---Yes.

\$23 million?---Yes.

15

\$23 million. And there's a statement there in the second paragraph:

Management's present estimate of the number of current customer accounts is now less than 1000.

20

Are you able to assist in any way as to how that figure had dropped so significantly since the June disclosure to ASIC?---I can't comment on that.

25 You would agree that the figure that the then CEO had in his report to the board had a \$20 million provisioning. This is now 23 million, yet the difference between the amount of people in the June letter and this statement seems to have decreased significantly?---Yes.

30 And you don't – can't explain that in any other – in any way?---No, I can't explain that.

And you would agree, of course, that that is, as things transpired, a very, very significant underestimate of the number of customers affected?---Yes, absolutely.

35 I tender that document, if I may.

THE COMMISSIONER: Exhibit 1.130, ANZ.800.088.1244, audit committee report year-end of 30 September 2010, KPMG.

40

EXHIBIT #1.130 AUDIT COMMITTEE REPORT YEAR END OF 30 SEPTEMBER 2010, KPMG (ANZ.800.088.1244)

45 MR DINELLI: Thank you, Commissioner.

Now, I've asked you already about the cause of the – or I've identified already the second issue within 137, that is, the failure to link the offset accounts. I would like to ask you some questions, if I may, about a document which is SMS7 to your materials, and it is ANZ.800.223.1330?---Sorry, what were the last four numbers?

5

If you go to the first page?---It's the first page, yes.

And I will come to – I will ask you some questions in a moment. Now, you've said that customers were being remediated in relation to this issue on an ad hoc basis from 26 September 2003?---Yes, that's based on – that date is based on when we had data available from.

10

s

When you had the data?---Yes.

Thank you. And can you explain what this document here is?---Is it the whole document?

15

Yes, just the nature of this document that's headed Product, Strategy and Marketing Mortgage Breakfree and Offset Remediation Project Checkpoint 1?---So this was a review by our internal audit function. They came in and did a sort of full review of where the project was at.

20

Yes?---And, you know, provided a rating of amber, which indicated that, you know, that the project was at risk of missing its timelines. And raised a number of issues with regards to where the project was at.

25

Okay. So this is about a year after the systemic issue has been identified?---Yes.

And your internal auditors have said it's amber. What does – what exactly does amber mean within - - -?---So amber was that comment that I made that it's at risk of not meeting its deadlines.

30

I see. Do you recall what the deadlines were at that time?---Look, I don't - - -

I will take you?---I won't.

35

- - - to some other documents in a moment - - -?---Yes.

- - - but there was – I think it's fair to say - - -?---They moved around a little, yes.

40

Thank you. They did move around. If one can – if you go to .1335?---Yes.

There's a reference to:

CAP system solutions and the addition of manual processes to fully stop the offset errors from occurring.

45

What does CAP system mean?---CAP is one of our loan origination systems.

Yes. And this is one year after this issue has been identified, and the statement that's made in this document is:

5

Accordingly, there remains the risk that the remediation approach adopted focuses on manual and detective controls, rather than investing in system-based solutions which improve customer experience and help prevent errors being made.

10

?---Yes.

Is what is being – am I right to say that at this time the internal auditors were suggesting that there was a risk that what was being done was a Band-Aid solution, if I can use that term, rather than a proper fix of this issue?---I'm not sure I would say Band-Aid, but I think they're certainly suggesting that, you know, we should be looking at system fixes, as well as exception reporting or manual processes.

15

So what do you understand to be meant by “system fixes”?---So actually building automation into the system.

20

Yes?---So to prevent these types of issues occurring.

And at this time, the steering committee – the next sentence says:

25

The steering committee has not decided on the long-term fixes but discussions to date indicate a limited appetite for the significant technology investment, given CAP SME constraints, broader technology constraints and the required technology spend.

30

Does that help you to understand what was in the minds of those who were on the steering committee at that time?---Yes.

And they, at that time, had not decided on long-term fixes to this problem, because there was limited appetite to make the investment in significant technology to stop this happening. Is that right?---I can't comment, really, on the appetite. I can comment on what ultimately was done, and, you know, there was certainly investment in system and automation to, you know, reduce the occurrence of – of these issues.

40

Having seen, though, sitting here now – sitting here now, having seen how long this has gone on for, this is something that is concerning that this was what was in the minds of these people at that time, isn't it?---Look, I think they were still working through the impact from a customer perspective.

45

Because the – sorry, Ms Stubbings?---Yes, so I think they were still working that through. You know, as that became clearer over the course of the remediation, it became very clear that system fixes were needed.

5 In fact, the – it goes on to say – and this is the last section I will take you to of this page:

10 *The project is currently reviewing initial proposals for an interim fix to incorporation system fixes to CAP at an acceptable cost and within a shorter timeframe.*

Do you see that?---Yes.

15 And can I explore this and deal with this document in a little bit more detail. If one goes to .1337 – so two pages on?---Yes.

The second-last dot point:

20 *While the errors were identified –*

That paragraph?---Yes.

25 Do you accept, and is it the basis for your concession that these issues should have been identified earlier, that the complaints weren't properly tracked by product in the period before 2010?---Based on the information that's presented here, that would be indicative.

30 And that was one of the reasons why the root cause of the common complaints, as this said, it couldn't be identified – or took some time to identify it, I'm sorry?---That comment would indicate that.

I'm sorry?---That comment would indicate that.

35 Yes. But it's also a view that you formed yourself?---Yes.

40 And if one goes to the next page. This is, of course, in July 2011. And I accept I'm asking you about a long time ago and matters of which you don't have personal knowledge. But there's a reference here to residual risk, reporting of residual risk. And if one goes to the second paragraph:

45 *The business risks of the offset remediation was presented to the Mortgages Compliance Project Steering Committee in December 2010. This identified the risk of the offset error as having an extreme level of residual risk for the business. Provision of 23 million made, resulting in a moderate consequence with almost certain likelihood.*

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

Why is it that this goes on to say that:

5 *The risk has not yet been formally tabled at the Australian Risk Committee, and there are no additional updates to reflect key events that have occurred since the issue was first reported.*

?---I can't comment on that.

10 This is certainly something that ought to have been of concern to ANZ at that time, isn't it?---Yes.

And in fact, as - - -

15 THE COMMISSIONER: Sorry, at what level in the bank should it have – to what level should the concern have gone, do you think?---If it's an extreme risk, then it goes up to the Operational Risk Executive Committee. It may have been a timing issue in terms of that they haven't – you know, the timing of the meetings or whatever it may have been. I just can't comment on that chronology.

20 I understand that, but extreme risks are risks that you ordinarily would expect - - -?---Yes.

- - - would go to OREC?---Yes, exactly.

25 Is that right?---Yes, and there are papers in here that have been tendered to the OREC about the extreme risk, yes.

30 MR DINELLI: With the benefit of hindsight – and I am actually asking you, but, obviously, you're the person now in charge?---Sure.

35 But with the benefit of hindsight, these things should have been elevated and elevated at an earlier point in time, shouldn't they?---You know, the fact that it hadn't gone to OREC – you know, that – yes, I think that should have gone to them earlier. Yes.

40 Thank you. Can I ask you about the process to fix this issue. It took, I think it's fair to say, a long time to put a fix in place, didn't it?---There were various fixes that were put in place. The system fixes will take longer to put in place, so tactical fixes were put in initially, and then as - - -

45 THE COMMISSIONER: I'm terribly sorry, Ms Stubbings. You are going to have to - - -?---Speak up?

- - - speak up. Sorry?---Sorry, Commissioner. What I was saying is that there were a mix of tactical and strategic fixes that were put in place. The tactical are easier to do. The strategic ones take longer because they – they involve system automation.

MR DINELLI: So what do you mean by tactical as compared to strategic?---That might be building an exception report or something like that, as opposed to actually building into our core systems parameters to limit what our frontline staff or assessment staff can put in in terms of appropriate discounts.

5

One of the reasons you've described as a cause of these – both problems was the fact that the information was being put into the relevant system. I assume that's the CAP system, is it?---It could have been CAP, I know borrow or RLS as we call it or MOS, which – yes, there's various systems – origination systems that we have.

10

But they are – but the access to those systems is very – was at the relevant time very disparate. That is to say, there could have been any number of people who could have inputted the information, or forgotten, as the case may be, in relation to the offset, to link the accounts; is that right?---Yes, that is right.

15

And in fact, the offset issue arose predominantly because of that very thing, the failure to link the account which had to be done manually?---Yes.

You say at paragraph 33 that:

20

Processes and controls to prevent the recurrence of these issues were put in place progressively from April 2012 to June 2013.

Is that your evidence as to when these fixes were put in place?---That's my understanding, yes.

25

In – and I will take you to SMS2. You would be, obviously, familiar with this document, having prepared your statement?---Yes.

30

This is dated June 2014 - - -?---Yes.

- - - and is a document – a summary for discussion. Who would have prepared this document?---I don't know exactly who prepared it. I presume it was someone who was a member of the project team. I – I don't know.

35

The steering committee: is that what it was called? If one goes to the second page, there – and there's an explanation that due to the scale and complexity of the errors – sorry the third dot point, the identity and fix activities were not - - -

40

THE COMMISSIONER: Identify and fix, I think.

MR DINELLI: Sorry?

THE COMMISSIONER: Identify and fix.

45

MR DINELLI: Yes, I identify. Thank you, Commissioner. The identify and fix activities were not completed until 2013. And likewise, if one goes down to

preventative measures, there's a heading Preventative Measures Have Been In Place Since 2013. And on the third dot point it says:

5 *In addition, exception reporting was introduced to review 100 per cent of accounts, both offset and Breakfree, and identify and fix any errors which may still have occurred.*

10 Are you confident that by this time the error had been resolved?---I think – so we remediated offset customers up until December 2012, and we remediated Breakfree customers up until July 2013. So that was sort of at the point where we were comfortable that the indicators were telling us that the – errors had been resolved.

15 And I was coming to the remediation. Can you inform the Commission how many people it turns out were remediated in relation to both the offset issue and the incorrect interest rate issue?---Yes. So there were about 400,000 accounts identified as being impacted by the issue. 235,000 of those accounts received a payment, or a remediation payment. The other 165,000 accounts had an impact of less than \$2 for an open account, or less than \$20 for a closed account.

20 And your evidence is that the relevant steering committee was put into place in the second half of 2010 to deal with these issues?---Yes.

25 And the initial project – your evidence is that the initial project team made progress gathering the data necessary for the remediation from the start?---Yes, I believe so. Yes.

And at paragraph 35 of your statement - - -?---Yes.

30 It's your evidence in paragraph 35 that the process of extracting that data was time consuming. Is it your evidence that it took until 2013 to fix the problem and to remediate all people affected by it?---Yes, I – I believe I – yes, effectively, because that's when we remediated the Breakfree customers, up to July 2013.

35 When were you initially aiming to resolve this issue by? Do you recall what the initial timeframe was?---Look, there's a – there's a – various dates. I'm not sure which is the - - -

40 When in the latter part of 2010 – in the latter part of 2010 the committee was established –or perhaps if I can take you to a document to - - -?---Yes, that would be helpful.

- - - explain this. If one goes to – and I will try to get the relevant tab for you as well, Ms Stubbings?---Thank you.

45 But the document is ASIC.0011.?---So sorry, could you please say that again for me.

I'm sorry, Ms Stubbings, I won't be a moment. As at 16 August 2011, am I right to say that it was intended that the timelines for the process, refunds and fixes for this project were to be finished by August 2012?---Could I have the document, sorry.

5 Excuse me, Ms Stubbings, Commissioner.

Sorry, I won't be able to show you a document in relation to that, Ms Stubbings, but if I could describe it in these terms: there was an ASIC briefing pack on 16 August 2011 entitled Mortgage, Breakfree and Offset Remediation Project?---Mmm.

10

Would it accord with your recollection and your knowledge of these events that as at that time, it was intended that the process would be finished by August 2012?---Look, I've certainly seen documents that have had 2012 dates, so yes.

15 I see. Because – then if I can go to ANZ.800.223.0490?---Sorry, say that again.

Sorry, I will call it up on the system and I will hopefully be able to find - - -?---Yes.

- - - where it is for you. Tab 10 for you, Ms Stubbings?---Tab 10. Yes, I have that.

20

And if I could take you to the third page, I think it is, .0492?---Yes.

Now, in relation to the fixes – so this is the offset fix timelines – as at that time, it was intended to be fixed by 3 September 2012. Do you see that?---Yes.

25

In relation to the remediation, however, if one goes to .0498 – I will just turn that around. You should be able to see it there, I hope?---Yes, I can. Yes.

You see that the target date for that – this is the process, refunds fix accounts has become TBC. Do you see that?---Yes, I do. Yes.

30

Am I right to say that essentially, the timeline to actually resolve this only had any certainty when PwC became involved? Is that right?---We asked PwC to come in and do a review of where the project was at, and particularly – particularly around the refund calculation itself. That was an important piece. And also around the processes and controls that the project had put in place, and also around the next steps to really progress the remediation. So they were asked to do those three things.

35

I see. And the – in your – and their involvement started – am I right to say their involvement started in the latter part of 2012?---I believe it was August 2012.

40

Yes.

THE COMMISSIONER: What date is the briefing pack, do you say, Mr Dinelli?

45

MR DINELLI: The briefing pack to which I've just taken – yes, that has to be tendered, those two documents ought be tendered. The ASIC briefing pack – I don't

have a date. I will have to assist the Commission in a moment with a date for that, but there is two documents that I went to. The first is ANZ.800.223.3054, and that's the Mortgage, Breakfree and Offset Remediation Process ASIC briefing pack.

5 THE COMMISSIONER: Have we been to that?

MR DINELLI: Yes. I didn't tender two documents, Commissioner.

10 THE COMMISSIONER: Sorry, I have lost myself. You haven't lost me; I have lost myself. I hadn't caught up - - -

MR DINELLI: It appears that - - -

15 THE COMMISSIONER: - - - on the fact we had been to 3054. That's my fault, no doubt.

MR DINELLI: No, no, the two documents that I wish to tender, which don't have a date on them, is - - -

20 THE COMMISSIONER: We've got 0490 up. Can we deal with it first.

MR DINELLI: Yes. That - - -

25 THE COMMISSIONER: That's exhibit 1.131.

MR DINELLI: Thank you.

THE COMMISSIONER: ASIC briefing pack, ANZ.800.223.0490.

30 **EXHIBIT #1.131 ASIC BRIEFING PACK (ANZ.800.223.0490)**

35 MR DINELLI: Thank you.

THE COMMISSIONER: Now, it's the next one that's the mystery in my life, Mr Dinelli.

40 MR DINELLI: Yes. And the next one, which precedes it in time but is also undated, although we will get some dates, is also headed - has the same heading, Mortgage, Breakfree and Offset Remediation Project, ANZ.800.223.3054. And I don't think - - -

45 THE COMMISSIONER: Has Ms Stubbings been taken to that - - -

THE WITNESS: Yes.

THE COMMISSIONER: - - - briefing pack, that is, the 3054 briefing pack?

THE WITNESS: Is that an ASIC pack? Or is it the PwC?

5 MR DINELLI: Yes, I asked questions by reference to it, but I don't seek to tender the document at this stage.

THE COMMISSIONER: Very well.

10 MR DINELLI: I'm sorry, Commissioner. So I will just tender the one that you have tendered, if I may.

THE COMMISSIONER: That's exhibit 1.131. Yes.

15 MR DINELLI: Thank you.

Was it – so where we left, your evidence was that in April 2012 PwC was engaged by ANZ. Is that right?

20 THE COMMISSIONER: August.

THE WITNESS: August.

25 MR DINELLI: August, I'm sorry?---Yes. Yes.
2012?---That's fine.

30 And is it right to say that ANZ at this time was not pleased with how the remediation progress – process was progressing? Is that a fair summary of ANZ's position?---Yes, I think that's a fair summary.

35 And did you discuss the engagement of PwC with ASIC?---I believe ASIC were informed that PwC were – were doing the engagement. I don't think that was done before they were engaged.

And if I could – I might – and that was conveyed to ASIC at around the same time as when they were engaged?---I – I'm not – I'm not sure of the timings. I have seen evidence that they were informed. I just – sorry, I can't remember the date.

40 And the first task that they did, you described a moment ago, was threefold. Can you – that was to review the fixes for - - -?---No, it was more about the remediation. So it was more around the accuracy and validity of the assumptions underpinning the refund calculation for customers.

45 Now, am I right to say that having started in August 2012, PwC remained working on this project for quite some time?---Yes.

And in fact, if I can take you to a document ANZ.800 .223.1041. I will find out the - - -?---So that's item 12.

5 Item 12. This is a document dated 30 September 2012. By this stage, PwC had been engaged for over a year doing different parts of their project, weren't they?---Yes.

And if one goes to .1044 of this document?---Yes.

10 Do you see how it appears that as at 30 September 2013, various recommendations were being made by PwC? Do you see those there in the middle of the page?---Yes, I do.

15 Was it a cause of concern that at this stage, three years after this issue had been identified, recommendations of this nature were being made?---These weren't recommendations so much about the refund or the fixes. They were – these were more around some of the manual processes that – that sort of sat around the remediation approach, so things like how to deal with deceased estates, address validation, you know, manual payments, you know, things of that nature.

20 I think there's a reference to some of those issues above, including deceased check, etcetera. The purpose of taking you to it, though, is to identify whether or not this is – in September 2013, the process for the remediation occurring was still not resolved as at that date, was it?---I think there was about 12 or so smaller manual processes that sat around the border refund remediation calculation and payment piece, and we
25 asked them to come and do some recommendations to make sure, you know, that we were comfortable with those processes, and they provided some recommendations of further checks and balances that we should be put in place.

30 THE COMMISSIONER: Can I throw a spanner in the works, Mr Dinelli. What's the date of this document? Is it '12 or '13?

MR DINELLI: 23rd - - -

35 THE COMMISSIONER: I just went back through the transcript and - - -

MR DINELLI: 2013, I'm sorry.

THE COMMISSIONER: '13.

40 MR DINELLI: That might be the second time.

THE COMMISSIONER: No, I had a note of '12 and there was an earlier note in the transcript. '13. Okay.

45 MR DINELLI: It is.

Just to make that clear, that is after PwC was first engaged in August 2012 - - -?---Yes.

5 - - - on your evidence. And PwC were still involved in aspects of that remediation program then and, in fact, prepared another report - - -?---Yes.

- - - on 29 November, and I might take you to that. ANZ.800.223.1056?---Yes, I have that.

10 Now, this document I've taken you to before for the purpose of identifying that the graph at .1071, but perhaps before I do that, could I tender the previous PwC paper, if I may.

THE COMMISSIONER: Exhibit 1.132 - - -

15

MR DINELLI: Thank you.

THE COMMISSIONER: - - - ANZ.800.223.1041, PwC QA review 30 September 2013.

20

EXHIBIT #1.132 PWC QA REVIEW DATED 30/09/2013 (ANZ.800.223.1041)

25 THE COMMISSIONER: And you want to tender this one, which is - - -

MR DINELLI: This one here ought to have been tendered earlier.

THE COMMISSIONER: Has it? Thank you.

30

MR DINELLI: Yes.

I don't have any further questions on that. I would like to take you to a different issue?---Sure.

35

THE COMMISSIONER: It was tendered as exhibit 1.128. Yes, thank you.

MR DINELLI: Thank you, Commissioner.

40 Now, you gave evidence before as to when the relevant remediation occurred. Am I right to say that it was, in fact, in 2014 when the remediation was concluded?---The remediation payments were made to customers sort of across January to April 2014.

That year. And the main form of communication was letters with them?---Yes.

45

And you deal with this at paragraph 29 of your statement. Some customers also got phone calls - - -?---Yes.

- - - as I understand it. How was it determined those which got a phone call and those which didn't?---The customers who got phone calls were customers who either got a sort of a large refund, so over \$1000. The option was given to call customers who were maybe relationship-managed customers, so potentially, you know,
5 commercial banking relationship customers, and I believe a number of our collections customers were also called, and also some of the customers who had previously, you know, made complaints or spoken to FOS about some of these issues.

10 And if I'm correct in saying the – it ultimately was the case that in relation to the Breakfree incorrect interest rate, that affected 93,300 customer accounts?---Yes. I think I've said approximately 93,000, but yes.

15 Yes, and that was \$48 million, whereas the offsets were a total amount of \$21.3 million?---Yes.

And that was in - - -?---Just - - -

20 - - - relation to 307 – approximately 308,000 customers?---Yes, but effectively, payments were only – were made to a smaller group because we had those thresholds around open and closed accounts.

25 That's right. And what did you do in relation to those thresholds if they weren't satisfied?---So if a customer had an error of less than \$2 for an open account or less than \$20 for a closed account, those payments were aggregated and paid across to charity, and there was about \$716,000 payments made.

Yes, and I think that forms part of your evidence?---Yes.

30 So is it right to say, therefore, that in relation to some people who were part of this remediation process, they were being remediated in respect of matters that had occurred as much as 10 years earlier?---Almost 10 years. I'm just thinking the timeline. September 2003 and the offset customers – yes, yes, that's fair. Yes, 2014. Yes.

35 So customers of the bank who had accounts at that time were informed for the first time, then, with these letters at the start of 2014 that there had been errors in the application of ANZ's systems, the cause of which was that they had been overcharged interest or an offset had been not linked, the effect of which was also the
40 imposition of higher interest, when that had occurred over a period of, as I said, nearly 10 years, or in some cases even more than 10 years?---Yes.

45 That's not good enough, is it, to have a process that is only capable of being – or an issue that's only resolved after that period of time for customers?---Look, I – my view is that the remediation process did take too long. We had not done anything like that of that nature before. The first time we had done something like that. And it took us longer because we were learning and we didn't have things in place like

remediation frameworks or remediation principles. But what I will say is that we certainly learnt a lot as a result of the mortgages Breakfree and offset remediation program. And it has sort of formed the foundation of future remediations that we have done.

5

Yes. In fact, you, at the end of this process, had a key learnings document which was put together, didn't you?---Yes.

10

And you've seen that document, have you?---There's a few. So it would be good to - - -

Okay. Well, I'm taking you to one dated - - -?---Yes.

15

- - - April 2014, ANZ.800.223.1934. One of your colleagues – 22?---22. Thank you.

Have you seen that document before?---Yes, I have seen this.

20

It's quite – I think it's fair to say, based on your evidence, it's quite regrettable that it did take this long for customers to be remediated. Is that a fair analysis of what you just said?---Yes.

If one goes to .1952?---Yes.

25

It's concerning, is it not, that there's a reference there to key learnings, which is speed of refund payments, that ANZ as one of the learning said:

Stagger payments to lessen the business impact versus refund all customer ASAP once payments commence.

30

That's a matter of some concern, is it not?---Look, I'm not sure exactly what context they – they meant that when they wrote that, so - - -

35

That's right. Well, it does seem to consider that a relevant factor in the remediation of customers is whether it is – to consider in the course of doing – the impact on the business, isn't it?---One lens on this may be that, you know, they're trying to think through do you just do 235,000 payments on one day? And is that manageable? And the chance of things going wrong, as opposed to actually having a pilot and then doing it over a two to three month period.

40

I see. Although that's not what it says there. Staggering payments to lessen the business impact isn't suggesting that the payments are made over different days, as you say. It's suggesting that other factors other than refunding all customers ASAP are relevant?---Look, as I said, I can't comment on what, you know, the person who wrote that was thinking at that time.

45

If it was the case that it was being delayed by reference to the business impact or reputation of ANZ, that wouldn't be good enough, would it?---No.

That wouldn't be in the interest of customers?---No.

And it certainly wouldn't be in line with community expectations, would it?---No.

5 THE COMMISSIONER: The first item on that page, Ms Stubbings, there's reference to a statute of limitations issue. Whether or not there was a statute of limitations in this case played no part in the decisions the bank made?---The bank went back as far as it could - - -

10 Yes?--- - - - based on the data it had available.

Regardless of whether a statute - - -?---Yes.

- - - was engaged or not.

15

MR DINELLI: The next point refers to regulator engagement, and it poses a question:

Can you wait for detailed data to size the issue prior to notification?

20

It is put as a question. But, surely, in your experience, and having regard to the obligations on ANZ, the regulator ought be informed as soon as it's necessary for the regulator to be informed, shouldn't it?---Well, I think in this case – I mean, setting aside the fact that I feel it took longer to identify this as systemic, I think at the point they told the regulator they identified 6000 offset accounts. Obviously, we had a lot more than that.

25

You're familiar with the obligations on ANZ as a licensee under the Corporations Act, aren't you, Ms Stubbings?---I have some level of familiarity.

30

The requirements under the Corporations Act, if there's something to be notified under section 912A, requires notification to occur within 10 days. Are you aware of that?---I am aware of that.

35

Yes. So it would seem that if there was some need to inform the regulator – and I understand there – the regulator was here informed in June – and I am not dealing with that; I'm dealing with what's the subject of these key learnings – surely, a relevant consideration – the determinative consideration would be when ANZ is required by law to inform ASIC, wouldn't it?---Look, I mean, we work with our legal and compliance teams in determining the appropriate point, but there does have to be a level of analysis done to – to try and understand what was the root cause of the issue, to what extent the period, you know, extended over, you know, a sense of some level of customer impact.

40

45 If I could perhaps tender that document.

THE COMMISSIONER: Exhibit 1.133, key learnings document April 2014, ANZ.800.223.1934.

5 **EXHIBIT #1.133 KEY LEARNINGS DOCUMENT DATED APRIL 2014 (ANZ.800.223.1934)**

10 MR DINELLI: There was a similar analysis done – what was described as a post-implementation review. And you refer to this in your statement at SMS6. It is ANZ.800.223.1917?---Yes, that's right.

15 And the purpose of this document, was it not, was to review the process and some of the key findings and to learn for the future. Is that correct?---Yes.

On page .1921 there is a series of matters which are ranked, where – and you will see this at the bottom, where green means a great score, yellow a good score, and focus required if it's in pink?---Yes.

20 In relation to Project Governance, it's said that that was 8.5, which is a great score. Do you see that?---Yes.

And the last dot point says:

25 *The bottom line was very successful in difficult circumstances. The 2014 timeframe committed to ASIC in early 2013 was met and there was no negative media.*

30 ?---Yes.

Now, that – having gone through the extensions of this process and the fact that PwC became involved in it, took some nearly four years to get to the point of the remediation. Do you think that it's properly described as very successful, this process?---So this – this review was, basically, done from the point after the project reformed, effectively, after that first PwC review had been done. So it was really –
35 this is from the period, you know, October/November 2012 through to 2014 that this is referring to.

40 Is the fact of no negative media a very significant factor in determining whether or not ANZ is successful or otherwise in a particular project?---It's – it's one of the things – we want to make sure we manage the communication well, that customers feel that they're well informed, you know, so that would indicate that the letters we've provided to them, you know, addressed the information that they needed.

45 There's also – also, on your evidence, though, these very customers, the same customers that have had to wait 10 years for a refund of an amount they never should have paid. That's also a relevant factor, isn't it?---Yes, it is a relevant factor.

And that doesn't seem to be something that's the subject of any finding here or anywhere else, does it?---I think this is really around the project itself and how the project operated.

5 But the project is directed at ensuring the fair treatment of customers who have paid an amount that they never should have paid. Isn't that the position?---Yes.

Before I turn to the next issue, one other mark of the – of this project would be that these sort of issues don't occur going forward, wouldn't it?---Yes.

10

But, unfortunately, as your statement indicates, there has been a number of other issues that have arisen, haven't there, of a similar nature to that which was the subject of this, the major remediation, haven't there?---Similar, yes.

15 During the 137 issues which we've just spoken about – during those 137 issues, one of the things that was considered was the likelihood of repetition of these problems?---Yes.

20 And that, presumably, would have been something that was of concern to ensure that it didn't happen again?---Yes.

And I'm jumping to during the 137 issue, just to put this in context, but if one goes to ANZ.800.033.2545 – that's tab 3 for you - - -?---Tab 3, thank you.

25 - - - Ms Stubbings. And this is – or perhaps I can ask you to identify, first, what this document is?---So this is the operational risk executive committee meeting on 16 November 2012.

30 And what does the operational risk executive committee consider?---So they consider – they consider all risk across ANZs sort of market risk, operational risk – sorry – actually, that's not right. They consider operational risk. My apologies.

And there has been a reference to this before and the timing of informing this body - - -?---Yes.

35

- - - of what had occurred. And on .2639 there's an explanation. And I won't - - -?---Sorry. Let me just find it.

Sorry, 2639?---Yes.

40

Now this – and I am not belabouring this point, because I've dealt with it, but the action that was requested of – was to endorse the risk acceptance request for an additional period of 12 months. We've dealt with the fact that there was various extensions. But if I can go down to the bottom right-hand corner, it says:

45

Post-treatment, the likelihood of a similar systemic incident occurring is expected to reduce to unlikely.

?---Yes.

So one of the intentions during the 137 issues was to seek to avoid the occurrence of any related or similar issues going forward?---Yes.

5

Commissioner, if I could – if I could please tender that document.

THE COMMISSIONER: Exhibit 1.134, Operational Risk Executive Committee agenda, 16 November 2012, ANZ.800.033.2545.

10

**EXHIBIT #1.134 OPERATIONAL RISK EXECUTIVE COMMITTEE
AGENDA DATED 16/11/2012 (ANZ.800.033.2545)**

15

MR DINELLI: Thank you, Commissioner.

And, just dealing with – dealing with the level of – or the way that this was treated within the organisation, that was – I’ve just taken you to something in 2012. In your statement at SMS2, if I could take you to that, briefly. This is a document we’ve been to before, being - - -?---Yes.

20

- - - a review of the project. At 1968, there’s a later OREC paper, paper 2014. You will see that at 1967?---Yes, I can see that.

25

And within that – within that it’s – the next page, 1968, indicates that this is to be an update to OREC for noting following the completion of the OREC-approved Breakfree and offset remediation program.

30

Can you see that?---Yes, I can.

And:

The risk of incorrect pricing on offset accounts and Breakfree packages previously rated as extreme, as ANZ was yet to complete customer remediation and repayment.

35

Now, by this stage then the remediation had been made, hadn’t it?---Yes, it was being – it was finished in April 2014.

40

That’s right. So it’s about the time of - - -?---Yes.

This is April 2014. And the residual risk has now been reduced to medium. Do you see that?---Yes.

45

Continuing:

Following the implementation of all required controls, the remediation of historical issues and the payment of refunds to customers.

?---Yes.

5

Now, likelihood, again, at this time is said to be unlikely. Can you see that in brackets?---Yes, I can.

I would like to deal with the 138 issue now, to which I haven't yet referred, other than introducing it. For the assistance of the Commission, can you explain your evidence as to how this issue arose and its similarities, if any, with the issues we've been discussing?---Yes. So the – this issue arose when a team in our operational processing area was running some exception reporting to identify where customers had not received – or may not have received interest rate discounts or fee waivers. And off the back of that – and they ran those reports, I believe, between about July, November 2016. Off the back of that, they identified some customers who had not received interest rate discounts or fee waivers. Then the home loan product team then ran sort of two further extracts, and identified that there are about 1450 customers through to March 2017 who had not received fee waivers. And then there was about 1400 accounts that had not received interest rate discounts through to – I think it was July 2017.

And is that – when you say they hadn't received interest rate discounts, are you - - -?---Sorry – the appropriate interest rate discount. My apologies.

25

The appropriate. No. No. That was my fault. The appropriate discount. Is that the same as the first of the two 137 issues that we discussed?---Yes.

There was a Australia Division Compliance Incident Assessment dated 5 October of last year in relation to this issue. It's at SMS8. Now, by this time you have personal knowledge of this incident, don't you?---Yes, I do.

30

And on the first page of that document - - -

35 THE COMMISSIONER: Can you give a call number.

MR DINELLI: Sorry – ANZ.800.052.1345. For your purposes, this is SMS8, Ms Stubbings?---Yes.

40 And it's said there that in the second paragraph:

Since the completion of the program, ANZ has continued to review its processes and controls. ANZ has recently identified that errors have again been occurring in relation to –

45

And then:

Breakfree benefits and offset accounts non-linkages.

Do you see that?---Yes.

5 Now, on the next page, 1346, it says this – third paragraph:

10 *MBORP focused on the root causes and strengthening the controls and process for new Breakfree packages and/or new lending attached to a Breakfree package. While all Breakfree package holders who were not receiving package benefits, irrespective of root cause, were remediated as part of the MBORP, it does not appear that the MBORP considered whether the setup processes for existing lending and/or post draw down opt-in in a Breakfree package were resulting in errors.*

15 Why not?---So the MBORP – what it says is that MBORP, basically, remediated all Breakfree packages at that point.

20 Correct?---But the controls that were put in place were very much focused on new packages or new lending. The controls didn't contemplate customers who opt-in to a Breakfree package after draw down or two years down the track decide they want their loan to now be a Breakfree package. And the reason we weren't picking those up is that they weren't a sale as such. It wasn't – so it wasn't generating in our exception reports. It wasn't being picked up as a sale or renewal, because they were reverting to the package after that event had occurred.

25 I understand. And that's consistent with what you say in your statement about how this issue arose. But it goes on to say in the very next sentence:

30 *The review of these processes and controls were not in scope for MBORP and errors continue to occur notwithstanding the remediation.*

35 My point is a different one. My point to you is why, in circumstances where a four-year project – almost four-year project was undertaken, did it not – or was it not in its scope that errors such as these would be fixed?---I can't comment on why it wasn't fixed back at the time.

But it wasn't?---No.

40 And, in fact, in fairness, then on the next page, it said, as must be the case, in the second paragraph:

45 *The identification of the above issue has highlighted there are further issues with unlinked offset accounts that will need to be remediated, following similar issues that were remediated by MBORP in 2013 and again in 2016, home loans only.*

?---Yes, I'm just conscious my evidence doesn't refer to the offset linkage issue.

THE COMMISSIONER: Sorry, Ms Stubbings. I'm terribly sorry. Can you speak up just a little more?---Yes. I'm just conscious my evidence doesn't refer – the 138 issue doesn't refer to the offset issue that was a separate line item in the misconduct and CC table.

5

MR DINELLI: I understand that. I'm asking you, though, about this – I'm asking you how the program that was in place for that period of time didn't pick up these errors that I'm referring to?---Yes, these Breakfree errors, you mean?

10 Yes?---Yes.

Yes. Correct?---Yes.

15 And I think it's your evidence that they weren't within scope, because it didn't pick up circumstances where people swapped across from a different package. Is that right?---It wasn't so much a different package. It was – if you had already drawn down your home loan and then sort of 10 days later you decided actually, that Breakfree package looks good; I am going to opt into that, it didn't pick that up.

20 I understand. These errors that occurred in – that you picked up here, they were errors that occurred between the period from July 2013 to about July 2017, weren't they?---Yes. There's a – I think it's to March for the fee piece and July for the interest piece.

25 Commissioner, I think I will be another half an hour with Ms Stubbings. And there may be some questions in re-examination. If that's a convenient - - -

30 THE COMMISSIONER: I think it's probably better that we come back tomorrow, I'm afraid, Ms Stubbings. Is that going to inconvenience you unduly?---No, that's fine. No problem, Commissioner.

Okay. Well, we will adjourn until 9.45. If you can be back - - -?---Yes, no problem.

- - - in time to start at 09.45.

35

<THE WITNESS WITHDREW

[4.16 pm]

40 **MATTER ADJOURNED at 4.16 pm UNTIL WEDNESDAY, 21 MARCH 2018**

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