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TRANSCRIPT OF PROCEEDINGS

O/N H-959648

THE HONOURABLE K. HAYNE AC QC, Commissioner

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

SYDNEY

9.45 AM, TUESDAY, 20 NOVEMBER 2018

Continued from 19.11.18

DAY 61

**MS R. ORR QC and MR M. HODGE QC appear with MR M. COSTELLO, MS E.
DIAS, MR A. DINELLI, MR T. FARHALL, MR M. HOSKING and MS S.**

ZELEZNIKOW as Counsel Assisting

MR S.G. FINCH SC appears with MS Z. HILLMAN and MR P. KULEVSKI for CBA

<CROSS-EXAMINATION BY MS ORR

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THE COMMISSIONER: Yes, Ms Orr.

10 MS ORR: Mr Comyn, at the end of yesterday I had asked you some questions about the April 2015 audit report. You recall those questions?---Yes, I do.

15 And that audit report recorded that about 64,000 customers had been sold CreditCard Plus in circumstances where they weren't eligible or might not have been eligible to claim under the product?---Yes, that's right.

15 All right. Now, following that audit, in May 2015, CBA gave what it called a good governance notification to ASIC about those matters?---Yes, that's right.

20 Now, should CBA have made a formal notification of those matters under section 912D of the ASIC Act?---Yes, I believe we should.

25 And why didn't that happen, Mr Comyn?---Because at that point in time there was an evaluation done which felt that there hadn't been a breach, but, clearly, with the benefit of looking back on that matter, we were not treating our customers fairly and it should have been a – a breach of efficiently, honestly, fairly.

So you accept that there ought to have been a 912D notification?---Yes, I do.

30 Now, in the weeks after the good governance notification that CBA made, did you have a conversation with Mr Narev about the sales of consumer – I'm sorry, consumer credit insurance, particularly CreditCard Plus?---Yes, I did.

35 And what do you recall of that discussion that you had with Mr Narev, Mr Comyn?---I remember I had a – a one on one meeting with him. I think it was on 28 May 2015. And some of the notes that I prepared in advance of that meeting have been tendered.

I think you mean by that they've been provided to the - - -?---Provided, yes.

40 - - - Royal Commission?---Yes.

45 I want to take you to a document which may well be the one you are referring to. But can I ask you, before we go to that document, to just explain what you recall of that discussion you had with Mr Narev?---Yes, I had a scheduled one-on-one. I had a number of topics that I was going to discuss with him in that particular meeting. The one that was of primary importance to me was, as you just mentioned, the – to

cease the sale of consumer credit insurance products. I took some notes in advance of that meeting which I intended to articulate as – as part of that. And we had, I think, quite a robust discussion during the course of that meeting. And my recommendation to suspend the sales was not agreed with.

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Can you explain a bit more about that robust discussion, how that went, Mr Comyn?---I believe I referred to each of the points on – and the purpose of why I had recorded those notes was actually to try and structure the logic in which I intended to have that conversation, and after each of the points that I had there, I – I believe at that point I probably would have added additional detail and colour. I suspect we had quite a long conversation about that particular product. And I think we agreed to disagree at that point in time.

10

What did you think of that outcome, Mr Comyn? You were the head of retail banking services at CBA. This was a product that you were responsible for. How did you feel about agreeing to disagree with the CEO about your recommendation that CBA cease sales of the product?---I didn't think it was a satisfactory outcome.

15

Did you take the matter to the board at that point, Mr Comyn?---No, I did not.

20

Did you take any other action?---I had numerous other conversations with Mr Narev over subsequent meetings, particularly in 2016, I recall, in April 2016. I believe, again, at the end of May in 2016. And then I sent an email to him, I believe, on the weekend of 5 June 2016.

25

Okay. So I wanted to take you to those 2016 communications as well. But what do you recall, sticking with this meeting in 2015 first, of why Mr Narev did not accept your recommendation?---I genuinely think that he thought that the product was still relevant for customers, and I recall the logic along the lines of for a customer who claims on a product such as this, it's a very good product. It was not immediately – in fact, it wasn't clear at all that our product was in any way deficient to other products that are available in the – in the market. And I think he had the view that more work needed to be done to assess and determine, it was of course somewhat subjective, they were my views, which I tried to express clearly, and ultimately, he had a different view.

30

35

You said that he thought that it was a very good product for customers who made claims under the product. What about the 64,000 customers who had been sold the product in circumstances where they couldn't make a claim under the product?---Well, clearly not for those customers, and, of course, at that time – that was one of the catalysts for me having that conversation. Of course, there was, well, we need to fix that up, how could that have happened? How could we be selling a product where customers were not eligible. We need to be strengthening the control environment consistent with some of the comments I made yesterday. There were improvements to the product that were underway. It was not a static process at any point in time, from certainly 2015 onwards, despite our failures in terms of the way we remediated. That's – as a separate issue. In terms of product reviews,

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improvements to the products, benchmarking the product, improving the value, the – all of the processes around that, which ultimately were not sufficient either.

5 What about the profitability of the product. Was that discussed between you and Mr Narev in this meeting?---It certainly would have been, from the perspective of the retail bank, and I recall our exchange yesterday, Ms Orr, and I – you know, from – from my perspective – and I certainly accept that, yes, at a group perspective, \$150 million or even 20 or \$30 million to a single business unit sounds like a lot of money but from my perspective running the retail bank, which at that point we were
10 generating more than \$4 billion in profit, as I said yesterday, more than \$10 billion in revenue. From – I just did not think it was worth it.

You were - - -?---In - - -

15 You were - - -?---In any sense. Yes, obviously for customers but from a commercial perspective, why would – why would we risk it.

So I'm sorry to have interrupted you. You were prepared to let that profit go as the head of retail banking services. You were prepared to relinquish that
20 profit?---Absolutely.

And Mr Narev was not?---Well, as I said, that was from – I was dealing with it in the context of the business unit that I was operating. I do not for – I do not believe that the primary divergence of views between myself and Mr Narev – of course, he's
25 adopting a view for the group, I accept that, but I do not the commercial interests of the organisation were his primary focus. I'm speculating, that's my interpretation but I do not believe that was the primary focus. I think he genuinely was probably hearing a different – a view from me and I suspect a different view from a different part of the organisation.

30 Let's talk about that different view from a different part of the organisation. Was that the wealth management part of the organisation?---Yes.

35 And the head of the wealth management part of the organisation did not want to relinquish the profits from this product?---I would be speculating, because I had never had a direct question like that, but certainly my very clear view at that point in time on an ongoing basis was no.

40 Did not want to relinquish the profits?---Did not want to stop the sale of these products.

45 Yes, and did not want to relinquish the profits?---I'm reluctant to answer directly, only because I – it was never put as directly as that but clearly that would have been from – in my view a point of influence over that decision.

All right. Well, can I show you the document that I think might be the notes that you say you prepared for this discussion with Mr Narev?---Yes, Ms Orr.

CBA.1004.0250.0002. Is this the document that you were referring to in your evidence just before, Mr Comyn?---Yes, it is.

5 We see at the top it's headed IN, Ian Narev one on one, 28 May?---Yes, that's right.

So this is the document you prepared to assist you with conducting this conversation with Mr Narev?---Yes, that's right.

10 All right. Can I go through the points in this note with you. That the first point at the top of the page is a reference to Garry Kasparov?---Yes, which I have inexplicably misspelt. That is the grand chess master.

Yes, I'm aware of that.

15 THE COMMISSIONER: With you so far?---He had - - -

MS ORR: What was he doing in your notes, Mr Comyn?---Yes. That's a very fair question. He had – he had attended a client function or he had hosted a client function which Mr Narev had attended and he started our one on one by discussing that, and it sounded fascinating and it intrigued me so I just put a mental note there. He had come to an institutional bank client function, Mr Kasparov had and apparently was a very good dinner guest and I had just written his name down as a point of interest.

25 Is this a note you made after the discussion with Mr Narev or before the discussion with Mr Narev?---So the first one, two, three, four, five, six – first seven lines I had prepared before the meeting, I believe. The top – the Kasparov reference and that last sentence, are two notes that I took during the course of the meeting.

30 I see. So the very first entry “Garry Kasparov” you made during the meeting?---Yes.

And the last entry:

Temper your sense of justice.

35 You made after the meeting?---Yes.

What does that mean, “temper your sense of justice”, Mr Comyn?---That is what Mr Narev said to me.

40 And what did you understand him to be conveying to you when he said to you:

Temper your sense of justice.

45 ?---Calm down. I had, to give you a sense – so during the course of 2015 there were two ways a group executive is evaluated, one is through a performance feedback review, another is through a 360 – what we call a 360 process which is another form

of review. I recall at the end of 2015 one of the development feedback options or development feedback items I received was that I needed to focus more on my personal conviction. And to better – I’m trying to remember verbatim – better manage competing agendas. And to pick which battles. So I believe it was
5 consistent with that reference, which is I enthusiastically pursued the – at least as I recall – the notes in between and that wouldn’t have been the only thing that he said, but it was a – it was a significant comment from my perspective and - - -

10 How did you feel about that comment from the CEO at that time, Mr Comyn?---I suspect I was slightly irritated by it.

15 What was the sense of justice that you think Mr Narev was asking you to temper, a sense of justice for the customers of CBA?---No. He – he was referring to I was enthusiastically pursuing my argument which I thought was right. And he was telling me to temper it.

To pursue it less enthusiastically?---Yes.

20 All right. So as head of retail bank, you present these arguments to the CEO about why a product being sold by the retail bank should cease being sold and the CEO tells you, in your words, to calm down?---Well, his exact words were – and that’s why I wrote it down – and you can see I’ve sort of squiggled next to it – that’s his exact words and that’s my – my interpretation of “temper your sense of justice” is “calm down”, yes.

25 Calm down. And how would you handle this situation today if you were in Mr Narev’s position, Mr Comyn, and the head of your retail bank came to you and suggested that a product should not be sold to customers any more?---Well, I think – well, the – my obligation would actually be to get the two competing views together,
30 to hear both of those views and to make a clear decision.

Would you handle the discussion in the way Mr Narev handled this discussion with you?---No, I do not think so.

35 And when you say the two competing views, the two competing views are the retail bank view and the wealth management view. Is that right?---Yes.

40 All right. Now, we see from the notes that you made prior to the meeting, in the body of this document, that the first thing that you wrote for yourself was:

We have not met standards we’ve set for ourselves and we should suspend sales.

45 What were the standards that you had not met?---What I believed to be the standard we had set for ourselves for our customers.

By selling them a poor value product or by mis-selling them?---Both.

And you then wrote:

Poor value exchange, 15 per cent loss ratio.

5 I don't know what the next symbol means?---Yes, sorry, it's just a semi colon, so 15 per cent loss rate low by global standards as evidenced by KPMG.

That was the work of KPMG that you referred to yesterday?---Yes.

10 And the 15 per cent loss ratio. That is ratio that word?---I think it actually says rate but it would be interpreted the same way and as per the discussion we had yesterday.

And that troubled you, that loss ratio, in comparison to other insurance products?---Yes, I think I'm using that number possibly selectively to be the lowest of any of the products rather than the average across the three.

15 These notes were referable not just to the CreditCard Plus product?---It was a broader discussion but the catalyst in my mind was the – the audit specifically around CC Plus. But from my perspective, particularly the credit card product, the personal loan product – and I do have a different view notwithstanding that there are issues with the home loan product I genuinely think that is in a different category of need and benefit to customers.

25 And you've articulated that view in your statement?---Yes.

Yes. And the next point that you had made for yourself on this note was:

Opaque pricing mechanism. Product - - -

30 ?---Pricing not clear

And what was that point about, Mr Comyn?---I didn't think, in my view, that the pricing structure was understood by all customers.

35 And you then wrote:

Unclear inconsistently applied eligibility.

40 ?---Yes, "unclear and inconsistently applied". Sorry, that squiggle in between is an "and" in my shorthand.

Thank you. And some customers are ineligible for the primary unemployment benefit. So that was a reference to the findings of the audit report?---Yes.

45 Then you wrote:

Questionable customer needs.

What's the word after that?---I repeat the same word. So dash needs.

And can you explain what that point reflected?---I believe I'm emphasising the questionable needs – customer needs.

5 Questionable as to whether or not the customers who were being sold this product needed the product?---Yes.

Yes. And then:

10 *Weak channel control environment, multiple - - -*

?---Scripts.

15 Scripts –

Poor understanding of benefits, lack of demonstrable controls, inadequate monitoring and supervision.

20 These were all problems that you observed in relation to your sale of these products?---Yes.

And so you put all of these points to Mr Narev?---Yes.

25 And you made the recommendation that we see in the second last line which was that there be a suspension of the sales of the product?---Yes.

And as you've already told us, that recommendation was rejected?---Yes.

30 All right.

THE COMMISSIONER: You say "the product" - - -

MS ORR: I'm sorry.

35 THE COMMISSIONER: - - - which of the products?

MS ORR: I should say the set of the products. Is that what you were recommending?---Yes, I believe I would have been particularly – I would have been

40 satisfied with at least one of those products, but I believe I was dealing with multiple products, but in particular, as I said, my focal point was the credit card product.

Yes. All right. Could I tender that note, Commissioner.

45 THE COMMISSIONER: Note of Comyn 28 May for meeting with Narev CBA.1004.0250.0002, exhibit 7.19.

**EXHIBIT #7.19 NOTE OF COMYN 28 MAY FOR MEETING WITH NAREV
(CBA.1004.0250.0002)**

5 MS ORR: Now, around this same time, Mr Comyn, the audit report is April 2015. This meeting that you have with Mr Narev is May 2015. Around that time, CBA decided to introduce what's referred to as a knock-out question in its scripts for in-branch and telephone sales of the CreditCard Plus insurance product. Is that right?---Yes.

10 And that was to stop the sales process from continuing if a person, in answer to that question, revealed that they would be ineligible to make a claim under the product?---Yes, that's right.

15 But CBA didn't introduce that form of knock-out question into its online sales processes for the same product?---Yes, that's right.

And that didn't happen for two years. That didn't happen until May 2017?---Yes, that's right.

20 Do you accept that it should have happened back in April/May 2015?---Yes, I do.

And why didn't it happen, Mr Comyn?---Well, I think the rationale at the time, which is clearly inadequate, was that the online channel was different and we were, again, over-reliant on disclosure. It was a very poor decision.

25 Then CBA didn't - - -

THE COMMISSIONER: Sorry, just over-reliant on disclosure. What do you mean by that, Mr Comyn?---I think - I think the assumption at the time, Commissioner was the channel was quite different and, therefore, customers would read the disclosure and the information that was available to them online.

35 Through the PDS?---Through the PDS which is, clearly, not the case for the majority of customers.

MS ORR: On that point, Mr Comyn, you say in your statement that the view was formed that the risk of mis-selling was lower in the digital channel because the customer could read the application in their own time. You say you accept that this view was wrong and changes should have been introduced to both channels at the same time?---Yes, that's right.

45 All right. Now, CBA didn't introduce any knock-out question into any of its processes for the sale of the other consumer credit insurance products at this time either, did it?---No, that's right.

Even though the same risk of mis-selling was present for those products?---Yes, that's right. Again, the view, which is flawed, was that the – the other products were applying to customers who were taking out a loan generally, either a personal loan or a home loan, and so there was a view that they would – they would be employed because they would require employment or sources of income to be able to take out a loan. So the – the risk associated with that was dramatically under-estimated and it was approached sequentially when it should have been addressed concurrently.

So you accept that the scripts in connection with those products should have been amended back in 2015?---Yes, I do.

And you say in your statement that CBA approached the two loan protection products problems as a follow-up to the CreditCard Plus problems. CBA commenced dealing with the problems with those products two years later in 2017?---Yes, that's right.

Rather than treating them as a distinct problem that required a concurrent investigation and remediation in 2015?---Yes, that's right.

Were you involved in the decision to put the response to the issues with potential mis-selling of the loan protection products on hold for two years?---No, but ultimately there were people that worked for me that – that were, so it was, as I said, a very poor decision.

How could it have been thought to be acceptable within CBA to delay making important changes to sales processes to prevent further customers from being mis-sold your products for two years?---Well, the view at that time was that the risk – and clearly this is a flawed view – the risk would not manifest itself because the people taking out those products, under the circumstances of loans, would be employed and would have income associated with it. It was an incorrect assumption and at a minimum should have been disproven rather than relied upon to introduce those knock-out questions some – much later after they should have been.

Because the risk did manifest for those customers, didn't it, Mr Comyn?---Yes, it did.

And you've had to enter into a significant remediation program in relation to those customers who bought loan protection products in circumstances where they ought not to have been sold them?---Yes. Yes, that's right.

So what does it say to you about the culture of CBA at this time, that the fixes to the sales processes for these products were put on hold for two years?---Well, we dealt with this matter very poorly. And - - -

But what – I really would like you to consider what that reflects of CBAs culture, that those poor decisions were able to be made in your business on your watch at that time?---Yes. I – it reflects – it reflects badly the work that was being done between –

and this is examples of when the organisation is absolutely not at its best – between multiple divisions, negotiating with them ourselves. We’re interacting with ASIC; I think we’re doing that poorly in the context of delaying. There is – there is some complexity with the individual remediation, and resources are consumed by that, but, clearly, the matter of ensuring that this didn’t reoccur and that we were introducing knock-out questions to ensure that no other customers as a primary – that should have been given primacy, greater escalation, greater resource allocation and prioritisation. We completely underestimated the risk associated with that.

10 And - - -

THE COMMISSIONER: Well, can I just intrude. You say “we” – and I understand why you say “we”. Can I understand better at what level in the organisation?---Approximately, probably two – two or three levels below the role that I was in at that point in time. So we’ve got – if I look through and I’ve spent, obviously, some time in preparing for today across the full chronology, there’s a lot of backwards and forwards between various compliance teams, product teams, across multiple divisions. I – and also, I think, it’s an example of not understanding the root cause, not asking the second or third order question. From what I can ascertain actually a view was formed early on and relied upon to say could this reoccur in the other products, in home loan protection and personal loan protection. No, it can’t because we’re dealing with unemployed. Therefore, they have to be employed to be taking out that product, as opposed to are there any other benefits that are associated with the home loan and personal loan product because it’s a different structure of product. Are there other eligibility criteria that may apply particularly for joint borrowers. So we just didn’t understand and examine the level of the root cause of the issue. I don’t believe there was – at – at any of the things that I’ve seen a deliberate view by – formed by anyone that said the problem was there and they chose to ignore it. I think we just did not look hard enough. We didn’t actually assure ourselves that the problem didn’t exist, and that was a – a failure, unfortunately, that has been repeated, obviously, in this case, but was also present in some of the other matters.

MS ORR: I asked you to reflect on the culture that allowed this to happen. This was a culture that didn’t prioritise your customers. Do you accept that?---Yes, I do.

And how do we know that this sort of thing won’t happen again in CBA?---Well, there’s a great deal of focus on it, Ms Orr, and it’s – it’s very hard to provide any statement today that I think would be sufficiently persuasive. Ultimately, the organisation should and will be judged on our actions, and the evidence that we’re able to demonstrate over time that this sort of incident does not reoccur. But clearly the process for me but for the entire organisation of going through these matters in great detail and understanding the similarities, and the propositions that you’re putting to me are quite correct. We – we didn’t sufficiently prioritise customers, we didn’t understand the potential for harm, and I think I called that out specifically in the witness statement. One of the – some of the repeated failures was we didn’t actually understand our products and their use in life and sufficiently understand the

5 hazards that we were either creating or on other occasions that sometimes the way those products could be used by customers for harm in the context of the way credit cards may be used in problematic ways. We simply didn't have a good and sufficiently well-structured way of understanding those issues. And as a number of the matters also illustrate, we didn't sufficiently prioritise compliance and regulatory obligations which, of course, we should have. And it's not sufficient to say that we didn't understand them well enough or we hadn't read the 256 report or anything else. It's just not good enough.

10 Were there consequences for anyone at CBA as a result of the mis-selling of consumer credit insurance?---Insufficient consequences?

Insufficient?---Yes.

15 So there were consequences which you describe as "insufficient"?---Yes.

20 And what were the consequences, Mr Comyn?---I think for – I don't – I mean, I saw in the – as I was reflecting on the case end to end, there has certainly been reductions to short-term variable rewards for people associated with – on the product side within CMLA. And I can't recall specifically. I think there was at least two executives in distribution, obviously in the division that I led, but I – one of the – this is one of the primary matters that once I finish giving evidence today, I will be returning to when I get back to work because I have some unanswered questions particularly as the – the tender bundle ends with reference to the Ernst & Young report, etcetera. There's still
25 some more work to do.

I will come to the Ernst & Young report?---Yes.

30 I want to ask you about that. But the consequences that you describe as insufficient, you talked about reductions in STVR both on the product side and possibly on the distribution side. What volume of reduction in the STVRs are we talking about? How much of the bonus was withheld?---I would have to confirm, Ms Orr. I think it was in the order of 30 to 50 per cent but – and I don't recall it being 100 per cent and I don't recall anyone being terminated - - -

35 No?--- - - - from their employment as a result of any of these matters. I think principally that would have been on the basis that it wasn't deliberate action.

40 And based on what you know now, you've familiarised yourself with this matter in preparation for giving evidence today, what do you think the consequences ought to have been?---I still have some unanswered questions, particularly at – where the – the most recent report comes to, but certainly I would suggest greater than they have been applied to date.

45 Greater reductions to bonuses?---At least that, yes.

And possibly beyond that?---Possibly.

All right. And the people who were the subject of these consequences on the product side and on the distribution side, how were they chosen? What were their responsibilities that were said to attract these consequences?---So the process generally in the organisation at that point in time, and certainly today, is that there's something known as the RRRC, the acronym for the – the bank. The risk and remuneration reward committee, which is effectively what is done is a root cause analysis of the incident and the issue, the accountability of the executive that has been involved, and then there is both at an individual business unit level, each – there is a committee that deals with consequences, or certainly recommended consequences and depending on the severity, it also goes to the group. So the overall group. And there's at least the way the board operates now, there's a regular report on a monthly basis of what we call a misconduct update. But I think some of those – some of those processes evolved during that period of time and may not have been present, certainly during 2014 and '15.

15 What I'm interested in is how the people who had the reductions applied were identified, were they the people who designed the product, the poor value product; were they the people who were responsible for updating the scripts in response to report 256 and didn't; were they the people responsible for overseeing the sales processes generally in RBS? How did you decide who should get consequences? What was the conduct - - -?---Sure.

25 - - - that the consequences attached to?---So I wasn't directly involved in those, with one exception which I will come to. Certainly as at least I can establish, having read through all the material, the people who were involved in the product manufacture and particularly the failure to implement all of the recommendations from 256, it looks like there were clear consequences there. There were consequences for people who deliberately didn't follow the sales scripts which is the issue that I mentioned yesterday in reference to direct bank or better customer outcomes project. So that was – so for staff members not following the script, I - - -

30 Are you talking about frontline staff there?---Yes, I am.

35 Okay?---Yes, I am. I'm not aware but I couldn't say for certain whether anyone on the – on the overall supervision of distribution received consequences. I think a paper may have come to the – the RRRC for the retail bank on that but I would need to double-check which group audit would have had an input in. But, again, I would need to confirm, Ms Orr.

40 So you're unable to say at the moment whether it was the people who designed the product, the people who sold the product, the people responsible for the scripts, exactly who it was - - -?---Well, certainly the people who designed the product, certainly the people who designed the scripts. Certainly the people if they had failed to perform the scripts. The question is the supervision of the people who were distributing the product.

45 You're unsure if there were consequences for those people?---I'm unsure, yes.

I see. Now CBA has provided the Commission with a paper for the remuneration committee in August this year, which related to potential remuneration consequences going forward. These matters seem to be under consideration still within the organisation. Is that your evidence today?---Yes.

5

And that paper does the sort of root cause analysis that you've just described and it attributes the mis-selling not to any wilful negligence by anyone at CBA but to a far bigger problem. The paper says:

10 *A higher priority was given to product development and shareholder matters than the customer issues raised in report 256.*

Do you agree with that characterisation?---I do, but I don't specifically recall that. Could you take me to that document?

15

Yes, I can. It's CBA.1004.0121.3789. So this is the agenda for that meeting of the remuneration committee on 3 August. And the part that I've just read from is at 3900. Now, I was reading from the heading:

20 *Was there wilful negligence by the individuals?*

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

And I was going to take you to the next part of that paragraph:

25

The context of priorities within the bank culture at that time is relevant and the circumstances and constraints at that time, for example, systems, resource and engagement model with RBS and CBA.

30 ?---Yes, I see that.

You see that?---I do.

35 What were the priorities within the bank culture at that time that are regarded as the context for the assessment of remuneration consequences?---I'm not exactly sure what that is referring to beyond what you and I have already discussed, insofar as sufficient weight and priority was not given to very important compliance matters. I'm not aware of any specific priorities that would have been competing. Whereas, certainly, yes, there's complexity in the systems but that's no excuse. Could we have
40 put more resources on it? Yes. And I believe that – I'm not exactly sure what that engagement model is referring to but I believe that's between the retail bank – I assume that's the broader group, as in wealth.

45 Do you think this is an appropriate way to characterise the conduct for the purpose of considering remuneration consequences?---No, I don't think it's sufficiently thorough.

And that's something, I understand from your evidence today, you're going to take up and consider further?---Yes, it is.

Yes. Could I tender that document, Commissioner.

5

THE COMMISSIONER: Agenda for remuneration committee meeting 3 August '18, CBA.1004.0121.3789 exhibit 7.20.

10 **EXHIBIT #7.20 AGENDA FOR REMUNERATION COMMITTEE MEETING
3 AUGUST '18 (CBA.1004.0121.3789)**

MS ORR: Now, after the identification of the - - -

15

THE COMMISSIONER: Just before you leave that - - -

MS ORR: Yes.

20 THE COMMISSIONER: - - - Mr Comyn, uninformed, I would read the second sentence that's in the pop-up there:

...the context of priorities within the bank culture at that time is relevant.

25 I would have taken that as suggesting that profitability was what was driving decision-making at that time. Am I wrong to read it in that way?---No. I – I don't think you're wrong to make that conclusion at that point in time, and I think, as I also referenced the same point in my witness statement, there are specific examples where we did not sufficiently prioritise customer interests over shareholder interests. Yes, I agree.

30

Well, short-term shareholder interests, perhaps?---Yes. Absolutely.

Yes, Ms Orr.

35

MS ORR: Mr Comyn, after the mis-selling was identified in April 2015, another thing that CBA did was start talking to ASIC about remediation of the customers who had been mis-sold the product. Do you recall that?---Yes.

40 Now, there were very protracted negotiations with ASIC about a remediation program?---Yes.

They continued for almost two years?---Yes.

45 And in April 2016 when the negotiations had been going for about a year, you exchanged some emails with Mr Narev about CBAs position in those negotiations. Do you recall those emails?---Yes. If that's around the end of April 2016?

Yes, it is?---Yes.

I will show you those emails. CBA.1004.0168.0743. Now, this is an email chain between you, Mr Narev, Mr Cohen, who was then group general counsel, and
5 Annabel Spring, the executive general manager of wealth in April and May 2016?---Yes, that's right.

And we see that the email chain is entitled ASIC Meeting. If we go to the first email in that chain at 0744, we see that the first email was an email from Mr Narev to Mr
10 Cohen copied to you and Ms Spring?---Yes.

Now, Mr Narev referred in that email to a discussion that had taken place at a CBA monthly risk and compliance meeting about the CreditCard Plus product?---Yes.

15 And he then went on to say, in the third paragraph:

This is an area of major risk overseas and we have been talking about it for some –

20 Perhaps "time" is omitted there:

...perhaps some time here.

?---Yes, I think that's right.

25

Continuing:

*As always, we must be guided by what is right. We also need to understand that the combination of the overseas experience, a newly empowered regulator and a very volatile stakeholder environment heightens risk and demands
30 caution and careful thinking.*

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

35 Now, he goes on to say:

*I am happy to challenge views ASIC may have. But if we are to do so we must be on very firm ground and have made very conscious choices as to risk appetite. Rightly or wrongly, I did not get the sense from today's meeting that
40 this is yet the case (though importantly, whilst I have briefly mentioned this topic to Matt and Annabel today, I have not yet had the opportunity to hear their views). And therefore there is a risk that Monday's meeting with ASIC will not be constructive. That would be a very poor outcome.*

45 And he then talks about what he thinks needs to be done to mitigate that risk?---Yes.

And in the first dot point there:

5 *We should not agree to anything uncommercial, but at the same time be careful not to be defensive and argumentative. In short order, after the meeting I will want to hear from you and Matt and Annabel, as business owners, about our ongoing risk appetite for this product and, therefore, our recommended ongoing tactical approach with ASIC.*

?---Yes.

10 So in this email, he was providing instructions about the approach that he wanted CBA to take in the upcoming meeting with ASIC?---Yes.

But he was also making clear that he wanted to hear from each of you about the business's ongoing risk appetite for the sale of these products?---Yes.

15 Now, did you subsequently have another discussion with Mr Narev about your views of CBAs ongoing risk appetite for the product?---Yes, I had spoken to him at 8 am on that day he wrote that email.

20 So you had spoken to him prior to this email being sent?---Yes, I understand that's the case. I had a scheduled one-on-one with him that morning.

25 And what do you recall of that discussion, Mr Comyn?---We agreed, and it comes up in the email chain, that he would ask David Cohen to do a review independently of these products. He's referring to the – I don't know because at that point in time, the operational risk and compliance meeting was held between the head of operational risk and the head of compliance directly with the chief executive. There was no non-financial risk committee. So I was not in attendance. But I believe – I certainly infer, from reading through this and knowing what was going on at that time, they were actually just discussing the remediation approach, and at that point in time there was disagreement between ourselves and ASIC about how to appropriately remediate customers, particularly on the – the balance and the set of assumptions in terms of which customers would be auto-refunded, because it's a bundled product, what proportion of the benefits should – could they have received, even though they weren't eligible for one. So I think he's talking about that in the context of that email, which is a – a narrower - - -

35 Yes?--- - - - topic than I'm focused on that point in time.

40 Did you take that opportunity in that 8 am meeting with Mr Narev to re-put your views about the cessation of sales of the product?---Yes.

And what was Mr Narev's response?---As I understand it, he said that he would ask David Cohen to do a review, and hear from both myself and Ms Spring.

45 And did Mr Cohen do that review, Mr Comyn?---No, he did not.

Why not?---I don't know whether he ever received the instruction from Mr Narev – Mr Narev. You can see in the chain I speak to Mr Cohen about it, and to be entirely fair on Mr Cohen, he's changing roles about a month later. He's covering the chief risk officer – he's going into the chief risk officer role, as I recall, at the end of June or from 1 July. He's also covering the chief legal counsel because his successor in that role, which is Ms Lenahan does not start until the end of that calendar year, as I recall it.

So the review of the product that was Mr Narev's response to your further go at cessation of the product never happened?---No, that's right.

Okay?---That's why I sent another email.

Let's come to that. So I will tender this email, Commissioner.

THE COMMISSIONER: Is it the whole chain, Ms Orr?

MS ORR: Yes, thank you, Commissioner.

THE COMMISSIONER: Emails between Comyn, Narev, Cohen and Spring, April/May '16 concerning ASIC meeting, CBA.1004.0168.0743, exhibit 7.21.

EXHIBIT #7.21 EMAILS BETWEEN COMYN, NAREV, COHEN AND SPRING, APRIL/MAY '16 CONCERNING ASIC MEETING, (CBA.1004.0168.0743)

MS ORR: So we have an email that you sent to Mr Narev about a month later, Mr Comyn. It is CBA.1004.0173.1209?---Yes.

I will just wait till you have that on the screen to assist you. Is this the email that you were referring to, Mr Comyn?---Yes.

Yes. And what prompted you to send this email?---Two things. I recall having a meeting on – I think it was in late April – or it may have been May – with Mr Narev and Ms Fiona Guthrie who was the chief executive officer of the Financial Counsellor's Association. We were there to discuss another topic entirely. But we heard Ms Guthrie's negative views about this product. I had a one-on-one with Mr Narev, from recollection, perhaps five or so business days before it was in that – in the week leading up to that, and by that stage it was clear to me that Mr Cohen was not going to be able to conduct the review, given his – his workload. And my suggestion in that meeting would be if I sent a list of questions, he could then send those questions to both myself and Ms Spring, and we could use that as the basis of a discussion to – to form a decision.

I see. So your idea for how to move this forward at this point was that you would give the CEO a list of questions that both you and your opponent in this debate could answer?---Yes, he would send those questions to me and he would send those questions to Ms Spring.

5 And did he do that?---No.

Why not, Mr Comyn?---I don't know.

10 All right. So can we look at the questions that you suggested Mr Narev put to Ms Spring, I assume. Is that who we're talking about?---Yes, well this is the list of questions that I wanted him to send to - - -

Sorry, I might have put that awkwardly. This is the questions you gave him?---Yes.

15 With the suggestion that he pass them on both to you – back to you, I suppose?---Yes.

And on to Ms Spring?---Yes.

20 So that you could both answer the same set of questions, giving him the information he needed to make a decision?---Yes.

Sorry, have I got that right?---Yes, you have.

25 But he didn't send them to Ms Spring?---No, he – as – as best I understand, he – he did not reply to my email.

I see. And did you discuss these matters again?---Not in as structured a way after this point in time, no. I think they continued to be a – a topic, but I had – I suspect by this time, or not long after that, at least in my view I couldn't think of too many other options.

30 Did you end up giving up, Mr Comyn?---I wouldn't say I gave up, but I was struggling to find another path.

35 And this was the last attempt that you recall of you trying to persuade the CEO to cease the sales of these products?---I think we may have had references to it at that point in time. Of course, ultimately, I'm involved in the decision to cease the sale of these products in March where I have the clear or certainly I'm a month away from having the clear decision rights.

40 But up until that time you lost the battle to persuade the CEO to cease the sales of these products?---Yes, I was insufficiently persuasive.

45 And what about the head of wealth. Was she sufficiently persuasive?---I was not involved in any interactions between the two of them.

And at any point in this sequence of events did you raise these matters with the board?---No, I did not.

5 Why didn't you do that, Mr Comyn?---I did not think the prospects at that point in time, with that board, given it's a management matter – and I've obviously given this a lot of thought over many, many months about whether that was the right decision – I didn't think it would be successful. I thought it would be pushed back to the CEO to oversee it. It's quite a – it shouldn't have been but I would have seen it as a – quite an extraordinary course of action at that point in time.

10 You said there you emphasised “with that board”. Do you think things would work differently under your current board?---Yes, I do.

15 And what are the differences between that board at this point in time and your current board that give you confidence that an issue like this could be escalated to the board and appropriately dealt with?---Well, without wanting to cast aspersions on any former directors, I think the chairman is very different. And secondly, there is an enormous focus on, as you would both expect from the individuals that are on the board but also in the context in which we operate, there is enormous focus on non-
20 financial risk, being fair to our customers, a much greater focus than there was at that point in time, not that it was explicitly not focused. I – I judged and it doesn't mean that it was right, but I certainly judged my chances of success at that point as being very unlikely.

25 And what are the key differences between the present chairman and the chairman at this time that give you confidence that this would be handled differently by the board now?---I think the chairman at that point of time would have relied on – solely on Mr Narev's recommendation.

30 And the chairman today?---I think the chairman today – I'm sure – would be influenced by my recommendation but would be very interested if anyone on my team had an alternative view and one of the things that my chairman and I discussed during both the course of the interview process is how I would ensure that there would be complete transparency and candour to the board, and one of those is to
35 show where there are areas of disagreement, then it's important, actually, for the board, particularly in areas such as this which have enormous – both harm to customers but also reputational impact, that even if I have a view, I think it's also helpful for the board or certainly, perhaps, the risk committee to hear both sides of the debate.

40 And how do you ensure that the other side of the debate finds its way up to the board now?---It's a very different construct. Even as you see, the way the operational and compliance risks, they're presented by risk executives. They should be presented by the business unit executives. So something like this, I would have the two business
45 units that are there who are responding to the regulatory issues that are occurring in their business units, not leaving it to – with no disrespect to risk executives in the

organisation, it's a very different function ultimately. The decisions need to be owned by the – the executives of those respective customer-facing business units.

All right. Could I tender this email from June, Commissioner.

5

THE COMMISSIONER: Email Comyn to Narev 5 June '16 concerning CCI, CBA.1004.0173.1209. exhibit 7.22.

10 **EXHIBIT #7.22 EMAIL COMYN TO NAREV DATED 05/06/2016
CONCERNING CCI (CBA.1004.0173.1209)**

15 MS ORR: Mr Comyn, do you accept that over the course of the events that I've explored with you in relation to the sales of consumer credit insurance by CBA, CBA prioritised financial objectives over customer outcomes?---Yes.

20 And you've told us, both in your statement and in your evidence, that when you had the decision rights, you made the decision to cease the sale of two of the consumer credit insurance products?---Yes.

25 And in that way, did you feel that you were ceasing the prioritisation of financial objectives over customer outcomes in relation to those products?---Yes, I have firmly entrenched views about those products.

30 And apart from the concerns that you've outlined, the firmly entrenched views that you have about those products, were there any other reasons that contributed to your decision to cease the sale of those products?---There was broader context at that point in time, certainly I had a – participated and assisted in discussions about moving to a deferred sales model. We had – we're in the process – by that stage we had announced the sale of our insurance business. I had engaged directly with both the local and the regional chief executive of the acquiring company. And of course a decision such as that has economic value consequences to them, which, of course, we would look to compensate, but I was actually very impressed with the way they dealt with the matter. And we agreed that there was, I think, a way to construct a better proposition for our customers over time. And there was also Mr van Horen's evidence at the Commission. That was one of the factors – not so much around the cessation, because I think the wheels were very much in motion there from the end of 2017 but I remember there was certainly some dialogue at that point in time about –
40 in his witness statement before he had appeared we had agreed that we would cease the sale of those products. And we wondered internally whether the best way to make that announcement was via his evidence or whether we should actually make a more proactive announcement.

45 You initially decided not to include the decisions about the cessation of these products in Mr van Horen's witness statement. Is that correct?---Yes, that – yes, that might – I don't remember the specific versions of – but there was definitely some

discussion, and I questioned whether it was a good idea to put out a media release in advance of the Commission's hearing. We just – we weren't – it wasn't abundantly clear to me about what was – what was the right approach.

5 Originally, the plan was for it to come out in Mr van Horen's evidence. Is that right?---Yes, I – I don't recall, as I said, specifically the sequencing, but I certainly recall discussion about what, if anything, that we would say. There was also then at that time discussions around the remediation for personal loan protection insurance, was the – we – as I said, we were engaging closely with AIA. I think ultimately, on
10 balance, obviously, we decided to issue a release. I think it was something like 6 March 2017.

So in the days before - - -?' 18.

15 - - - the first round of public hearings commenced in which this was the subject of a case study, a public announcement was made about the cessation of the sale of these products?---Yes.

20 And Mr van Horen produced a supplementary statement dealing with that decision?---Yes.

Yes. You mentioned the deferred sales model that was coming in for credit card insurance. You tell us in your statement that you believe that that was likely to extend across to the personal loan insurance product so that you would be facing a
25 deferred sales model for both of those products?---Yes.

That was going to make it very costly to continue to sell these products, wasn't it?---Certainly further investment if we had thought we wanted to continue to sell those products, yes.

30 You tell us in your statement that it would have required significant reengineering of the sales processes for those products?---Yes.

35 And that was another factor in your decision to cease selling the products at that time?---Yes, it was a factor.

Yes. Now, Mr Comyn, can I ask you to reflect on whether there have been other times in recent years where you feel that CBA has prioritised financial objectives over customer outcomes?---Yes.

40 Yes. Can you give us some examples of that?---Yes. I mean, a number of the matters in my witness statement, fees for no service, in particular, would stand out. Less so Essential – Essential Super. Very different flawed thinking ultimately that supported that. AUSTRAC, I don't believe, was around commercial prioritisation or
45 interest, notwithstanding, of course, we could have invested and should have invested much more but that wasn't the rationale of why we didn't ultimately avoid failures in contravention of AML/CTF. The heart attack definition. I - - -

Those are the examples you would give?---They're examples. I am not suggesting they're exhaustive.

5 Well, that last one you gave, the reliance by CommInsure on outdated medical definitions, you accept that was an example of CBA prioritising financial objectives over customer outcomes?---Yes.

10 Because CommInsure failed to update the definition of heart attack in 2012, and, again, in 2014 to accord with accepted medical definitions at those times?---Yes, that's right.

And there were financial objectives that led to and underpinned those decisions?---Yes, that's right.

15 You say in your statement that CommInsure failed to have sufficient regard to the interests of good customer outcomes?---Yes, that's right.

20 And a consequence of that was that a number of your customers who suffered heart attacks were not covered by their insurance policies?---Yes, that's right.

What steps is CBA taking to ensure that it does not continue to prioritise financial objectives, profit, at the detriment of its customers?---Specifically insurance or more broadly?

25 No, more broadly?---Again, Ms Orr, it needs to be obviously a comprehensive piece of work. I mean, first and foremost one of the things that I am very reliant upon is I do believe the product governance frameworks that now exist which explicitly consider those factors but a number of others across all of the product portfolios are a very important element of that. Clearly, there's a number of ways in which the
30 culture of the organisation must change. And, of course, trying to ensure that we are at all times striking the right balance between delivering good customer outcomes, making a contribution in the communities that we serve, supporting our people, and delivering sustainable, long-term returns for our owners.

35 Can I ask you a bit more about culture and what you're doing to change culture. It's something that you've mentioned a number of times in your evidence so far. In your statement you tell us about four changes that have been made to ensure a greater and consistent customer focus and address cultural failings?---Mmm.

40 Do you recall that part of your statement?---Yes.

45 Now, four changes that you mention, three of them involve the creation of a new document. The first is a new code of conduct, the second is a new CBA purpose and refreshed values expectations, and the third is the new group customer remediation policy. What I want to understand is how you will ensure that the creation of these additional pieces of paper translates into meaningful changes in the way people in your organisation behave?---Yes. And the first thing I would offer is that they are

necessary but certainly not sufficient steps. Clearly, there are a number of things – elements that will contribute to a different culture over time, everything from the tone, from the top of the organisation, of course, from the board, from myself, in terms of the – what I role model, what I reward, where I allocate consequences, who I hire, who I fire, who we promote inside the organisation. The – the values that not only we espouse and put on a piece of paper that are actually demonstrated, the way we talk about the things that have gone well, the way we respond to things that have not gone well. All of those things, ultimately in my view – and it’s obviously a complex topic, culture – perhaps small incremental but cumulatively large impacts, the way we go to market, the products and services we offer to our customers, the way we deal with those customers, the way we deal with them both during the good times as well as during difficult times, the way we deal with customer complaints. Certainly, I’ve spent time since coming into the role with many customers. I’ve personally dealt with some very longstanding customer complaints, and one of the things that I have learned and observed – we mentioned Storm yesterday – one of my key learnings in Storm because I had something to do with the remediation of that was – and if you look at the contrast, the position that the organisation first took is when we allowed ourselves to investigate ourselves versus having a forensic and independent review, and I dare say the work of the Commission has helped us do forensic and independent reviews of a number of different matters. I’ve applied some members of that team to some of the customer cases that I’ve been dealing with, and in some of those cases – not all – but we come up with a different answer when people are looking at it with a clean fresh set of eyes. From each of those different cases it is important that I’ve certainly learned a lot of things. I think there’s no substitute for senior leaders dealing directly with customers, dealing with the failings of the organisation, responding appropriately to those, and making sure that they don’t reoccur. But I do not underestimate the magnitude of that task.

You’ve mentioned a number of different things in that answer that are part of that task of the magnitude that you’ve identified. How are you proposing to evaluate, if all of those things have worked? How will you know if they’ve been successful?---Through a number of different sources that hopefully ultimately we will triangulate. One, what are our external stakeholders saying about us: regulators, customers, community groups. How is the reputation of the organisation being regarded, what are things like our net promoter score, not just are we trusted but also are our actions trustworthy. We, of course, evaluate internally through a variety of different mechanisms, so we have a way of measuring both engagement, which is not necessarily a – as a contributor to culture. Group audit has a view around things like risk culture. It is very important. Ultimately, I need to bring together a number of different sources, so that the board can form a view on the culture and the progress of the culture over time. As it specifically relates to the remedial action plan in response to the prudential inquiry, there are 35, as I said yesterday, recommended actions. We have an independent expert problem entry who is overseeing that which will provide another source of independent assurance and reporting to the external market about our progress. And as hard as we try, I am sure there will be missteps – I hope there won’t be – along the way but it’s also going to be how we respond and react to those transparently and quickly and learn from the failures in the past.

You mentioned in that answer the obligation that you have to bring together the sources of material to present to the board to allow them to fulfil their function of assessing the risk culture within the organisation?---And the culture more broadly.

5 And the culture more broadly?---Yes.

10 What are the sorts of sources that you are going to bring together to present to the board?---So all of those. So in the context of regular staff surveys, examples of – let’s say misconduct, they have access to, where it’s appropriate, and a whistleblower is given permission, they get to hear from that. Of course, the board meet both with all of our key regulators. Some of those meetings I’m in, some of those I’m not. I’ve set up a separate advisory group, chaired by Patricia Faulkner who is going to provide, at least for me, another source of independent challenge. Each one of the ways we – we call it we measure risk culture, the observations of those will be
15 brought to the board. There are opportunities for the board to hear from executives inside the organisation separately from me. The board under the leadership of our chair also meets directly with staff. They go on site, they have just the directors where I’m not present with senior executives to hear – to hear views. Feedback and insights like some of the ones that you went through yesterday in the context of those
20 500 letters, some of those things are invaluable.

And, Mr Comyn, what is it that you’re personally doing to change the culture within the CBA?---Well, hopefully, all of the things that I – that I just mentioned. I mean, I

25

You sit over the top of a lot of them?---I do.

30 - - - obviously. But what are you personally going to do to try and change the behaviour of the people in your organisation?---Yes. Well, to date I’ve been very focused, of course, on getting the team in place, getting the seven appointments. I’ve taken personal accountability and responsibility for the engagement with all of our regulators and have had a number of meetings with our key regulators. Other areas where I think we had failed in the past in the context of just law enforcement, making sure I’m understanding trends and things that we’re seeing more broadly. As I said,
35 direct access to Patricia Faulkner who I have asked to set up an external advisory group. And then, of course, leading and spending time with people inside the Commonwealth Bank which can be everything from going to a branch, I’ve served in branches. I quite like doing things like that, going out, speaking to our staff and our people. It’s amazing what you can pick up just inadvertently, what people will write
40 to you. Obviously, I try to respond to as many emails, letters, that I get, but there’s a – there’s quite a volume of those at the moment.

45 What, in your mind, is the single most important thing for you to do personally to change the culture within your organisation?---The leaders inside the organisation.

To pick the right people?---Yes.

That's the most important thing?---Yes.

Yes. And do you feel that CBA has had the right leaders in the past?---No.

5 Do you feel that they have the right leaders now?---We will see. I hope so. Yes.

And what is it that – that makes you think that you're in a good position with those leaders going forward? What is it about them that gives you confidence to attack the task of this magnitude that you've described?---Well, it's obviously early days, Ms
10 Orr, but I believe that – and I've certainly attempted to select people who I think will both challenge but will also work very constructively as a team who will be individually accountable for their own responsibilities, and many of those are directly mapped under – under there but also will have direct thought and
15 consideration for the overall reputation of the organisation, that of course I think and hope will work constructively with me and set the right team throughout the organisation. And of course I hope that I'm a good leader of the organisation overall, which I think will be judged by others very clearly.

And could you describe in simple terms for us what is the culture that you are trying
20 to create within CBA?---Accountable, more customer focused, more transparent, and energised around our purpose, which is to improve the financial wellbeing of our customers and communities.

And just before I leave this topic, I've asked you about how you will evaluate how
25 you've gone with changing the culture, but can I just ask you to consider what you think the hallmarks of success will be for you?---Well, in a lot of ways, perhaps not entirely comprehensively but I do think the starting point that the prudential inquiry and the panel observed, in terms of their observations – I think they're very important markers – but, of course, ultimately, I will be judged on the outcomes that
30 I deliver for our customers.

What are those outcomes? What are the hallmarks of success in terms of customer
35 outcomes? What are you looking for from your organisation?---Well, ultimately, I want our customers to be satisfied that we're providing not only great service and products, but we're delivering good customer outcomes, we help them make better decisions, we're seen as a great Australian company, which we certainly many years ago once were, and it's very sad for people that, including myself, that we're not. That means a great deal to me.

40 Can I just take you back, very briefly, to the consumer credit insurance products in connection with these topics we've been talking about?---Yes.

I want to just explore some additional root causes that you identified in your
45 statement which relate to slow customer remediation and your relationship with regulators?---Yes.

Has CBA completed its remediation of the customers who were mis-sold CreditCard Plus insurance or the loan protection products?---No, we have not.

5 When will those remediations be complete?---As soon as I – we possibly can. At the moment, on credit card insurance we're – we're well advanced. On the personal loan protection insurance product – there are 116,000 policies, 90,000 customers that are affected – by the end of the calendar year, the current plan which may not be the plan in – shortly after I finish my evidence, is 15,693 of those customers to be remediated. And the topic that you're asking about is an important one in the context of some
10 discussions I've had with ASIC around not only the way we breach report but also the approach for customer remediation. And we, along with a number of the financial institutions, were called out for delays. I think in many cases, those delays are because we've preferenced precision and comprehensiveness, but it is – if you look at the average time to remediate customers where something has gone wrong,
15 it's completely unacceptable.

What is that average time, Mr Comyn?---It's well in excess of a year. And certainly, at least as a starting point, we've set ourselves an objective of – I'm not suggesting this is where we end – from when an issue is identified to the first customer paid of
20 90 days, which is, I believe, at the lowest point of the range or the best performing, as I recall, the breach reporting paper from ASIC. Which would be a big shift for the organisation from where we are today.

From well over a year down to 90 days?---Yes.
25

Yes. And why does it currently take so long in your organisation to put customers back in the position that they should have been in?---One of the reasons has been in the past that we had taken false comfort from, again, this sense of precision, comprehensiveness, and the fact that we paid for the time value of money. So we –
30 we pay, basically, an interest rate. So a prevailing view may have been we're compensating customers, and, you know, paying them well – I think it's six and a half per cent on top of whatever we owe them but that of course presupposes the customers didn't need the money in the meantime which of course is a ridiculous assumption. I think that was part of it. We had a general complacency and inability
35 to be able to sufficiently prioritise. And one of the things that you mentioned earlier was the establishment of a group remediation policy. That's to ensure there's consistency across all parts of the organisation. A second is to ensure, and hopefully at some point this will – in the near future, it won't be needed but we will have a remediation team in each of the business units with allocated resources to
40 specifically focus on ensuring that where something has happened – has gone wrong that we're remediating customers that have been impacted as quickly as possible.

How much - - -?---There's other reasons - - -

45 Sorry?---When we say we've got complex systems, etcetera, but that's not a satisfactory - - -

These are all the reasons that have been given - - -?---Yes.

- - - which you say are not acceptable reasons?---Yes.

5 And which will change when you work towards getting down a 90 day remediation period?---Yes, I suspect it's going to take quite a bit of effort to overcome some of that complexity.

10 Realistically, how long do you think it will take for your organisation to move to that position?---Well, I discussed it at the last non-financial risk committee, which is probably about three or four weeks ago, and a number of my team understandably said that was going to be challenging but we've set our objective to work from that, effective immediately. And I'm certainly going to measure our performance against that. But I'm not – I suspect that we're in some instances that we will have some
15 difficulty. And that's to start the remediation, depending, obviously, on the – the scale. But I accept that there is a lot of room for improvement in this particular area.

How much money do you expect to pay out to customers under the consumer credit insurance remediations?---Approximately – well, from the CreditCard Plus
20 approximately \$15 million. So we've paid out about 10 and a – 10.5 million. And there's about 4.3 remaining.

And to how many customers, across the entire amount?---That's – that's across the
25 64,000.

Thousand customers?---Yes.

And for the loan protection products?---Provided for \$31 million in our last quarterly
30 result, which is the year ending 30 September. I'm only saying that formally in case from an investor perspective people are wondering whether I – my evidence is giving rise to additional provisions. So that's – that's what – when it was last assessed, that was the estimate at that point. It would be \$31 million.

And to how many customers do you estimate that \$31 million will be paid?---That's
35 to the 90,000 customers across 116,000 policies, as I understand.

So the loan protection product problems, the ones that were put off for two years on
40 the understanding that they would give rise to a smaller problem, ended up doubling the amount of remediation that you had to pay out under the CreditCard Plus problems?---Yes, that's right.

And ASIC has been expressing concerns to you recently about the status of those remediations?---Yes, they have.

45 And as part of those concerns and as part of a broader piece of work, ASIC asked CBA to conduct an independent review of the sales of its consumer credit insurance for the last five years?---Yes, that's right.

And that was the piece of work that you referred to earlier that had been done by Ernst & Young?---Yes, that's right.

5 Now, I want to ask you some questions about that piece of work. But I see the time, Commissioner. I wonder if it might be useful today to have a brief morning break.

THE COMMISSIONER: Yes. If I come back at, what, say 10 past 11?

10 MS ORR: Thank you, Commissioner.

THE COMMISSIONER: Yes.

15 **ADJOURNED** [11.02 am]

RESUMED [11.10 am]

20 THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Mr Comyn, I said I wanted to take you to the piece of work done by EY. That's at ASIC.0082 - - -

25 THE COMMISSIONER: Just a moment, Ms Orr. Yes. Go on.

MS ORR: That document I will bring up for you is ASIC.0082.0001.2712. You're familiar with this document, Mr Comyn?---Yes, it's quite a long document.

30 Yes?---Would I be able to ask for a copy of it.

I'm only going to take you to a couple of pages?---Okay.

35 If you feel that you can't answer my questions without going to other pages, then please let me know?---I did had some difficulty when I was reading through it myself trying to reconcile some of the statements in it. So depending on where you're going to take me to it.

40 Why don't we see how we go?---Okay

And if you tell me if you feel - - -?---Fine.

45 - - - that you need the other parts. We have one here if you do need it. Can I ask you to look, firstly, at 2715 which gives the executive summary of the report. And we see from that page that EY was engaged to assess the extent to which CBA had adopted the 10 recommendations from report 256. Do you see that in the second paragraph?---Yes, I do.

And to consider a number of concerns held by ASIC about sales of consumer credit insurance products, including concerns that customers were mis-sold the product?---Yes, I see that.

5 Could I ask you to look at the following page, 2716. And at the top of the right-hand side of this page we see that EY found that CBA sold consumer credit insurance to 933,535 customers and that's during the previous five-year period that EY looked at. Does that accord with your understanding?---Yes, it does.

10 And of these 933,000-odd customers, approximately 147,451 were identified as having been sold a consumer credit insurance product in circumstances where they were under the age of 25 with no dependants?---Yes, I see that.

15 And 227,845 customers were identified as being at higher risk of being affected by one of ASICs other concerns?---Yes, I see that.

20 And a further 440,000-odd customers were at risk of being affected by those same concerns but at a lower risk. Is that how you read this?---Yes, it is. I haven't had the chance to discuss this report with the partner that prepared it, which is one of the things I would like to do after we – after I have finished giving evidence. But, yes, that's clearly what it says in the report.

25 Is that because you're concerned by these numbers, Mr Comyn?---No, some of the numbers that are in the executive summary when I go through into the key findings and then I look at the management response, as I was preparing for today, I find – I found it hard to reconcile some of those numbers.

I see?---But I accept the facts that are written there are accurate.

30 And those numbers of customers that I've just taken you to within the cohort of 933,000 customers didn't include customers who had already been remediated. They're dealt with separately?---Yes, that's right.

35 And EY said that while their high risk classification didn't equate to actual customer detriment, it recommended that you investigate customers in that category and consider whether remedial action was required?---Yes, that's right.

40 So the upshot was that EY raised concerns about the sales process or value of the product for about 374,000 customers – I'm adding the 227 and the 147,000 – who have not yet been remediated?---Yes. This is their report, as you said, 5 September 2018. Yes.

45 Yes. And is CBA going to extend its remediation program to consider these customers?---We certainly will consider these customers, yes, Ms Orr. I haven't had the – the chance yet to discuss this – this report and the management in the tender bundle for mine – the EYs report is there as well as there's a management response which has been prepared by executives in the bank. I haven't had the opportunity to

meet with them yet and go through that but, yes, of course, we will consider EYs findings.

5 And the plan is to extend your remediation program, if necessary, to cover these customers?---If it is necessary, yes.

10 And is there other further work that is to be done in response to this report? You said earlier in your evidence that in light of this report and the tender bundle ending with this report there was more to be done?---This is principally exactly what we've just discussed, is understanding exactly the findings and recommendations and how we intend to respond. And I would like to go through it in – in some detail with my team.

15 But there's the clear potential, based on EYs work, that you will need to remediate a significant number of additional customers over and above those who are currently covered by your remediation programs?---That's a reasonable conclusion from reading that piece of paper, yes.

20 And does that concern you, that your organisation hasn't detected these additional customers?---Yes, it does, if that's proven to be true, yes.

All right. I will tender that report, Commissioner.

25 THE COMMISSIONER: An EY report on review of sale of consumer credit insurance, 5 September '18, CBA.0082.0001.2712, exhibit 7.23.

30 **EXHIBIT #7.23 EY REPORT ON REVIEW OF SALE OF CONSUMER CREDIT INSURANCE DATED 05/09/2018 (CBA.0082.0001.2712)**

MS ORR: And you've now got at CBA, Mr Comyn, your new group customer remediation projects policy?---Yes.

35 Can you tell us, in simple terms, what are the key things about that policy that are going to improve the way that you remediate your customers?---There's a consistency in terms of approach, what to be included, how to engage, what appropriate level of penalty or compensation to be paid. That the approach more broadly, as I said, of standards for them to be implemented in each of the individual
40 business units. We had a remediation team under the better customer outcomes program in the retail bank and there's a centralised remediation capability. So I rely on that team to ensure that the standards that we're setting for ourselves in the organisation are consistently applied across all aspects of our operations.

45 And does that mean that there's a framework within which all of your remediations will now occur so that you don't start negotiating from scratch about each remediation?---Yes.

Yes. All right. Now, you acknowledge in your statement that the way that CBA dealt with the regulator in relation to the mis-selling of consumer credit insurance was problematic?---Yes, that's probably a generous description.

5 You tell me how you would describe it, Mr Comyn?---I would say it was certainly problematic and poor, and some of our more recent interactions and the failure to connect between a FOS matter, which I saw for the first time as I was preparing for my appearance today, gave me concern.

10 You tell us in your statement that the approach that CBA took in its dealings with ASIC about remediation for consumer credit insurance was narrow and legalistic?---Yes, that's right.

15 And that resulted in the protracted negotiations that went for almost two years?---Yes, that's right.

And remediation is still not complete?---Yes, that's right.

20 Do you accept that CBA wasn't cooperative or constructive in its dealings with the regulator?---Certainly not as cooperative and constructive as we should have been. I haven't been closely involved in those, but certainly by the protracted nature of the discussions and certainly as it relates to personal loan protection, the fact that – and I can see that in the correspondence from ASIC, the fact that we didn't detect that until – or it was around the same time as they had written to us and they expressed their
25 clear dissatisfaction, understandably, that we didn't concurrently investigate that at the same time as CCP, as you and I have already discussed, Ms Orr, and similarly that FOS had raised a systemic issue with us and we hadn't advised ASIC, nor had we advised and integrated that into the EY report.

30 Right. I want to be clear about this, Mr Comyn. You say that with the personal loan protection product, you didn't detect it until around the same time as ASIC notified you of it. Is that your evidence?---Yes. My understanding is that we were investigating it at that point in relation to a – a FOS or a customer complaint.

35 But you knew – this was in 2017 - - -?---Yes.

- - - that you were talking about?---Yes.

40 But you knew from April 2015, because of the miss-selling problems with CreditCard Plus, you knew that there was a risk of miss-selling that needed to be investigated across those products as well?---Yes, we're agreeing with each other, Ms Orr. Sorry if I wasn't clear. I'm saying at that point in time ASIC were and did express their frustration in writing to us that we hadn't done exactly as you have just said at the time we were investigating.

45 You didn't detect it around the same time. You detected it two years before you told ASIC. Do you agree with that?---Yes, I do. Sorry. I am talking specifically not

about – we should have investigated at the time we detected the CreditCard Plus issue but actually I was referring to even when we notified ASIC of personal loan protection, there were also some issues about the way that was communicated. That’s my recollection.

5

Yes. Well, the way I understand that worked – and you will correct me if I’m wrong – these issues were detected back in April 2015 as being risks across the full suite of products. And insofar as they related to the loan protection products, no notification was made to ASIC until 2017 after ASIC came to CBA and said, “We’ve got a customer complaint about your loan protection products. Do you think what we’ve seen with CreditCard Plus might also have extended to your loan protection products?”---Yes, that’s exactly right.

10

That’s what happened?---Yes, it is.

15

And ASIC was very unhappy to hear that you had been aware of these problems since 2015 and didn’t say anything to the regulator about them?---And we hadn’t investigated them concurrently, yes, that’s correct.

20

And it was only after ASIC came to you with the customer complaint that CBA then lodged a breach notification?---Yes, that’s correct.

What do you say about that sequence of events, Mr Comyn?---Well, it’s completely unacceptable.

25

You accept that ASIC should have been notified by CBA in relation to the full suite of products back in 2015?---Yes, we should have done a thorough investigation, and established the root cause across all of those products. And given that I’ve already conceded on the CreditCard Plus that a good governance notification was not appropriate against efficiently, honestly, fairly, then I would apply the same logic to those products at that point in time.

30

Now, the engagement with ASIC about the consumer credit insurance products is, by far – it’s far from the only poor or problematic engagement that CBA has had with the regulator in recent years. Do you accept that?---Yes, I do.

35

Can you give some other examples of what you regard as poor engagements by CBA with ASIC?---I would think across the advice business for many years.

40

Are you referring there to inappropriate advice or to the fees for no service issues?---Both.

And in what way was your engagement with ASIC poor in relation to those matters?---In a similar way to – and I’m not limiting my comments around at times narrow and legalistic, to those matters, but I suspect that that was – that was a similar lens that was applied, quite rightly one of the findings that was – that came out of the prudential inquiry was that we were narrow and legalistic, defensive, and arrogant in

45

our dealings with regulators, and often we left it to our lawyers and compliance people in the organisation to deal with our regulators. And I think not – I think it should have been much greater business ownership with a much greater level of transparency in the way that we're dealing with our regulators. We tended to inform them, as someone from ASIC said to me recently, on a very narrow bound of what the actual issue was.

And frequently, you didn't inform them of anything at all. Do you accept that?---Yes, I think there have been instances where we have failed to notify ASIC.

Do you accept that CBA should have notified ASIC that it had been charging customers fees for financial advice services that had not been provided much, much earlier than it did?---Yes.

And do you know why that didn't happen, Mr Comyn?---Yes, because as I have read through and – in preparation for today because we had a – we had an – we had formed a view around those – I think it was the 297 clients or customers where it was clearly evident that that was a – a limited analysis, that should have been at that point in time the source of a – a notification. But as I've learnt, I think the issues as it relates to fee for no service commence well before that.

Yes, and - - -?---Well before that.

- - - why weren't they reported to the regulator?---Why weren't they?

Yes?---I think the people that were involved with that didn't understand the significance, as I said yesterday, around the customer relationship and the obligations and duties that they had to their customers to ensure that they could only provide a service if they were entirely satisfied that they were actually providing that service, not charging for a service and then waiting for a remediation of systems and processes later to ensure that it was being done accurately.

And do you say that it wasn't understood that the law was being breached?---Yes. It should have been. Absolutely. I wasn't close enough to the individual decision-making but there's little doubt in my mind that it should have been thought about in a different way.

And are there other examples that you would give, things in your mind that are poor engagements by your organisation with ASIC in recent years?---That – they would be the – perhaps in the way we dealt with insurance would be – would be one.

Which insurance issue?---The CommInsure.

Yes?---Yes. They would be – they would be the main ones that I would think of.

Do you accept that CBAs engagement with ASIC in relation to its sales of Essential Super wasn't proactive and transparent?---Yes.

And do you accept that CBA didn't tell ASIC about the instances that it had uncovered of branch staff making unauthorised deposits to Dollarmites or Youthsaver accounts?---Yes, I do.

5 Do you agree that it should have done so?---Yes, I do.

Now, in your statement you identified two steps that you say CBA has taken to improve the way that it engages with the regulator – with regulators more generally, I think?---Yes.

10

And the first of that is that you say you have assumed ultimate ownership of and accountability for regulator relationships in your organisation?---Yes, that's right.

15 And that's a change, is it? Is that not something that CEOs before you had ultimate responsibility for?---I don't think as explicitly as I've expressed, particularly in the engagement principles which we've sent to, in this case, ASIC.

20 Yes. So that's the second thing you refer to in your statement, that you've developed and adopted 10 principles for how you're going to deal with ASIC going forward?---Yes, that's right.

25 And you've annexed a copy of those principles to your statement. I will take you to that, but can I ask you, firstly, why did you create those principles?---Because with the discussion with incoming chair of ASIC who started, I think, a couple of months before I did, I had the opportunity to sit down and discuss the history and relationship between our two institutions, and I thought with discussion with my team that it might be worthwhile to suggest a set of principles that we would like to be held to on an ongoing basis, and Mr Shipton, in my view, welcomed that, and so I provided the set of engagement principles asking for feedback, and he and I agreed to – what I suggested was that we got together on a quarterly basis. Of course, we speak more frequently than that but on a quarterly basis and actually assess our performance against those principles.

35 And when did they become operative, Mr Comyn?---Well, in – in my mind when I sent them the first draft, we've certainly been trying to work and engage in – in a very different way. I'm aware that there's a weekly call between the compliance – at my compliance team, which generally, centrally coordinates the interaction with ASIC. I also have – we volunteered to go first in the close and continuous monitoring process, which they may have selected us anyway. But we have six representatives onsite. I have met with the head of that onsite supervision team as recently as last week, and I think I'm seeing him again next week. So sort of probably fortnightly in the context of – of onsite. Weekly at a very detailed level. Quarterly in a structured way between myself and – and Mr Shipton, but then, of course, as matters arise, I will – I would and I have called him on a number of matters, and – as he has me.

45

What sorts of things do you call Mr Shipton about?---Anything that's on my mind. Everything from – I would call prior to major announcements. I would call after market close but the day before our financial results. I do the same in the one results period I've been through. The same with the head of APRA. If there's matters that
5 are on my mind in the context of are we appropriately engaging on a particular topic, so there may be a particular issue that I'm wondering what the sense from ASIC is. We've also had a number of discussions about the close and continuous monitoring, as I – as I mentioned. He wrote to me formally, but we also spoke about that on the phone as well.

10 What's an example of something that you've called Mr Shipton about to ask whether you're appropriately engaging on a topic?---The advice business.

And what sort of information did you seek from Mr Shipton?---I was seeking
15 feedback in the context of how we're proceeding across a range of different issues, including the fees for no service matter. I also have turned my mind to a number of areas of our FOFA obligations and wanted to just get a sense of what might be on ASICs mind, and there's six matters that they're looking at as part of their onsite supervision. I think two or three of those relate to Wealth. So some of that has been
20 somewhat superseded. I – I would have – I called him earlier this year in relation to the – the Youthsaver matter. I've spoken to him in the context of the demerger announcement. I've spoken to him about the – the future of advice, as in the provision of financial advice. Probably – I've maybe met with him four or five times at least in person, and I would have thought I would have spoken to him – I'm
25 estimating – 10 or so times on the phone.

Does he call you to discuss things?---Yes. Yes, he does. Probably more often I – I call him but he's – he's very responsive.

30 And what has he called you to discuss?---I think the onsite supervision. I think he has given me an update on that. I'm trying to recall if there was another example, and – in particular. He has also returned my call a number of times, so we've certainly had conversations as it relates to – to Wealth in particular.

35 You said that from these engagements with Mr Shipton you understood that there were six matters that ASIC was looking at in the onsite monitoring in the CCM process?---Yes.

40 What do you understand those six matters to be?---They're individual examples, and one of the conversations I've had with Mr Shipton is the importance around breach reporting. And the recently published report from ASIC around breach reporting, we were referencing it earlier in our discussion in the context of remediation. But one of the things that he and I agree on is the importance of breach reporting beyond, which is, of course, important, the mandatory compliance obligation but also how breaches
45 are treated inside an organisation as a proxy for culture. So when a matter is first discovered, ensuring that if it's a – a serious matter, that there's a within 10 days a view is formed about whether it's a breach as opposed to, obviously, in the past,

much more of an extension of time before someone would actually formally turn their minds to whether a significant breach had occurred or not. The way that matter was raised and escalated inside the organisation, how it was responded to, whether the – if it leads to customer remediation, how that was dealt with. And also an
5 important point, consequences and from a conduct perspective but also from a positive perspective. So one of the questions that he asked me was how are you going to make sure that for people who are proactively raising issues which lead to breaches, they're positively incentivised, either informally, formally, financially, non-financially. And that's one of the things that we're working through at the
10 moment about just looking at our end-to-end breach process. So they're just looking at some of those particular examples. And I think they're also – they're looking at different parts of the organisation. When I met with the head of the onsite supervision team, as I said, last week, they had finished the first matter and he provided some insights just about their dealings with the – with the bank. Obviously,
15 it's a – it's a new way of working having six people from ASIC on site.

When you say they had finished the first matter, what was the first matter?---It was looking at a particular case within the CommSec business. A historical one.

20 In a breach reporting setting or separately from the breach reporting?---In relation to the breach report but more broadly. And so the context is looking at the breach that had been previously reported, looking at it from end to end, reviewing the files, interviewing people, forming a view on those people, how they responded, and one of the things I asked was making sure they've got all the available information.
25 Obviously we're providing information, files, access to the people related to that matter, and my understanding – I could be incorrect – but I thought they were – they would have moved on by now on to another case.

30 And how many matters or cases do you understand that they're going to be looking at in their time on site?---I think – I think in the first letter, I think it was either five or six that they outlined. There was a – there was a letter that was sent directly to – to me, announcing – or letting me know formally that they were arriving that next Monday. And I think there were six matters that were itemised in that.

35 And were those matters chosen by ASIC?---Yes.

And what do you understand will happen once those matters have been completed by ASIC? What is ASIC going to do with that?---Well, I suspect that they will provide observations, potentially a report, if they deem necessary. There's certainly the risk
40 of enforcement action arising from – from those matters, but that is – that is the engagement model that is – that is in place, and – and I, and I know Mr Shipton, is, you know, very committed to having a – a far more constructive and transparent approach to dealing with regulators. Of course, there will be times where it will be important to make sure that the organisation responds well when, through the – their
45 efforts of greater transparency leads to enforcement.

You said that one of the things that you called to discuss with Mr Shipton was the Youthsaver matter?---Yes.

5 What did you call him to discuss about that matter?---I called him to give him in the – in that context a advanced notification that there was going to be some media coverage on that topic.

10 And why did you do that? Why is it important for you, as the head of CBA, to call the head of ASIC about some media reporting that's going to happen?---Well, it – from my perspective, anything that I think may damage the reputation of the organisation, I would want to give him, certainly as it would relate to the remit of ASIC or more broadly, I would want to give him a heads-up. I would try not to surprise the regulator.

15 But what about – what about giving that heads-up by making a breach notification, as you're required to do under the law?---Of course. That is a prerequisite, yes.

And did that happen?---In that particular instance, no, it did not.

20 And that could have happened at that time, couldn't it? I know it didn't happen back when these things were first detected in 2013, but why didn't you use the formal, legal measure of notifying ASIC at the time that you knew that this was going to be reported in the media?---Yes. We – we – we could have, Ms Orr.

25 Why didn't you, Mr Comyn?---Because at that point in time, we hadn't understood the – the significance of that particular matter. And - - -

30 What do you mean by that, Mr Comyn? Did you know that there was – that this was a breach or a likely breach of your obligations under the Corporations Act?---We hadn't specifically turned our minds to whether it was a breach or a likely breach, and I'm – and I agree that we should have more explicitly.

And you have now?---Yes.

35 And have you made a formal breach notification?---I don't know, Ms Orr, I'm sorry. I would have to – I would have to double-check whether I – whether we have or not.

All right. Well, could I ask you now to look at the engagement principles - - -?---Yes.

40 - - - that we started this discussion with annexed to your statement, CBA.0001.0570.0648. These are the engagement principles that you've agreed with ASIC?---Yes, that – they're the principles we've sent to ASIC. I think ASIC are intending to respond formally to those.

45 I see. I see. And was there any feedback from ASIC that required you to change any of the principles, or did ASIC accept them in the form that you originally

proposed?---There have been no changes but I think they have been considering them, and I'm awaiting any – any changes, but to date they have not – they have not formally responded to the principles, but I understand them to be broadly supportive of those.

5

And when did you provide them to ASIC?---I would need to check the date, Ms Orr, but - - -

A month?---I would have thought May or June of this year.

10

And you haven't had feedback from them from ASIC yet?---Not formally in writing.

Yes?---But I – but I understand that they're – they're supportive of the principles. I think they're also turning their minds to whether they might be the sort of thing that they might adopt more broadly in the – in the industry.

15

But you regard them as operative for people in your organisation?---Yes, I do.

And have you regarded them as operative within your organisation from around that time, May or June of this year?---Yes, that has certainly been the intent.

20

Yes. And we see under paragraph 3 that you are to have accountability for the relationship with ASIC, and you commit to proactively raising significant issues?---Yes.

25

Now, is that commitment reflective of you calling Mr Shipton to raise significant issues or making breach reports?---Well, it's to ensure that the organisation is appropriately breach reporting. Often my engagement with Mr Shipton would be, in my view, advise, now that we have an onsite head of that team, Mr Harvey, I've dealt with him directly a number of times as well.

30

And we see that the sorts of commitments that you make in these principles are about engaging with ASIC proactively, in an honest way, in an open way, a transparent way, engaging holistically with ASIC across the entire portfolio of group matters, and engaging in a responsive and timely manner?---Yes, that's right.

35

And you also commit to working collaboratively with ASIC?---Yes, that's right.

Now, you mentioned quarterly meetings. Has the first of those quarterly meetings happened?---Yes.

40

And what feedback did ASIC give you about your compliance with your own engagement principles?---It was the – so the first quarterly meeting has been had but we didn't formally go through each of these principles. So - - -

45

What did you do in that meeting, Mr Comyn?---Mr Shipton and I met. There were two other attendees. I think Mr Shipton was over video conference. We talked about

a number of matters. In particular, I spoke – I spoke to him about some of the advice issues. And we spoke about the onsite supervisory model which at that stage had not commenced. I think they were – I think they were the main topics.

5 And when you say you talked to him about the advice issues - - -?---Yes.

- - - what are you referring to there?---I wanted to make sure that we were appropriately dealing with anything that may be outstanding from the regulator's perspective.

10

In relation to fees for no service or in relation - - -?---Fees for no service, but more broadly.

15 Yes. I see. And what did Mr Shipton say to you about how you were tracking with that?---He said that he would go away and speak specifically to the team within ASIC about that.

20 Now, they've been in place, these principles, then, for some months. Can you give an example of how they're working in practice?---Well, I – I – I hope that the – in the context of the responsiveness and the transparency, the weekly meetings which are being held between members of the bank and ASIC, in addition to the onsite supervision, I understand that those meetings are going well. It's not to say that we haven't missed something but I understand there's certainly a lot more engagement between the – our two institutions than there had been in – in the past.

25

And have you adopted similar principles to these for your engagement with other regulators, like APRA and AUSTRAC?---Yes. I understand that they've been – this set of principles have been sent to APRA but I have not discussed them yet with the chair of APRA. I am meeting the CEO of AUSTRAC again later this month. So I was going to raise it with Ms Rose.

30

So it's your intention that these principles will govern your dealings with each of the regulators?---Yes.

35 Yes. And have you considered adopting principles like this for your dealings with external dispute resolution bodies?---Yes, I have. Certainly after reading through the CCI case because one of the ways I think that we've misunderstood or certainly haven't fully appreciated, perhaps rather than misunderstood, is our dealings with FOS have mostly been about individual customer matters and they're dealt with in a different part of the organisation. Whereas a systemic matter, and certainly the matter that they had raised should have been integrated into the – the team that were dealing with our regulators. So, yes, I have met with the – and, of course, AFCA was started at the start of this month. I have met the new CEO of AFCA, I've met the chair of AFCA but that was prior to the commencement of AFCA. So I certainly intend to meet with both of them and adopt principles such as these. As well as some regular reporting between ourselves and AFCA and some better feedback that I can share both at my leadership team level as well as with the board.

45

So you think these sorts of principles should govern your relationship with EDR bodies as well?---Yes, certainly substantially similar. They may differ slightly but the principles that we're attempting to articulate here I think are appropriate, more broadly.

5

Yes. Now, you've referred a few times to a FOS matter?---Yes.

There were documents provided to you in preparation for your appearance today that related to a particular engagement that CBA had recently had with FOS. It took CBA quite recently about two months to tell ASIC that FOS had found that there was a systemic issue with CBAs policies and procedures for providing information and general advice on the loan protection products. Is that right?---Yes, that's right.

10

So FOS identified that systemic issue and wrote to CBA and told CBA that it should notify ASIC of that matter?---Yes, that's right.

15

And you've seen that it took two months for CBA to do so?---Yes, that's right.

Was that acceptable - - -?---Not at all.

20

- - - Mr Comyn?---No.

Do you have any explanation of why it took two months after an instruction from FOS to convey that relevant matter to ASIC?---I have an explanation but it's not a good one. And that is that the – the team that deals with FOS and specifically around individual customer matters or systemic matters – and this is why one of the many reasons why it's not a good one – are in a different part of the organisation. It is in our complaints handling team both our internal dispute resolution as well as the team that deal with our external dispute resolution and ultimately our customer advocate. That team operate at least – and – well still as at today – quite independently of the way we deal with all our regulators. So what would have happened with that systemic matter is I suspect – but I haven't been able to determine but I would be confident that the matter went into the complaints handling team. That was sent to probably someone inside, it looks like, from the – the trail – the CommInsure business. The team that's involved in ASIC and the CCI review and the Ernst & Young review are a different part of the organisation and - - -

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They didn't talk to each other?---They didn't talk to each other.

40

So what are you going to do to change that?---Well, I need to integrate in the way we're dealing with FOS, and a clear bifurcation between individual customer matters which are, of course, very important but the way we deal with systemic matters and ensuring that that's adopted into our overall regulatory approach. It is, unfortunately, something I had not turned my mind to before - - -

45

And - - -?--- - - - preparing for today.

You've seen from the correspondence that ASIC was quite unhappy when this information was finally conveyed with the delay in conveying it?---Yes, understandably so.

5 And that was because it wasn't just relevant to the remediation of the loan protection products. It was also relevant to the very work that EY was undertaking?---Yes, that's right.

10 And CBA has apologised to ASIC for its delay in providing that information?---Yes.

Do you think it's going to be difficult to shift long-held mindsets in CBA about how to deal with the regulator?---It may prove to be. I think the real test will be, because I think the – there has certainly been, from my perspective – and I hope ASIC shares this view – some real progress in recent months, notwithstanding this is a very poor
15 example but I think there are some positive examples. I think the inevitability of stricter enforcement in some of that onsite supervision, we're going to consciously guard against the organisation not retreating into more of a defensive and legalistic sense. So I think it's something that I and my leadership team need to be very attuned to and it is something that I would look for feedback from both Mr Shipton
20 and the head of the onsite supervisory team.

How are you ensuring people on the ground are engaging with ASIC in the way that these principles require?---Well, one of the ways was I instructed all of my
25 customer-facing group executives, so my direct reports, to get across all of the individual matters in their business unit, and to go and have a senior meeting with the – their counterpart at ASIC to go through both historical and a current list of issues. All of those meetings have been completed. So whilst I take primary accountability and responsibility, I'm also going to ensure that the leaders who report directly to me are also very closely involved in any individual matters in their business unit.

30 So you accept, I think, that there's a risk that after the splits that you're doing now, requiring people to – in your organisation to approach ASIC and be proactive about the matters that they have with ASIC, people might fall back into the old ways of
35 engaging with the regulator, the legalistic and defensive ways of engaging with the regulator?---There is a risk of that and I certainly will be intending to ensure that does not happen.

All right. Now, Mr Comyn, I want to move to the second category of root causes that you identified in your statement.

40 THE COMMISSIONER: Just before you go on, Ms Orr, can I go back to the close and continuous monitoring, Mr Comyn. Do you have any view about its utility?---Well, I – I do think it's a positive step forward. And I say that in the context of – and it's obviously early days but my discussions with both Mr Shipton
45 and by coincidence the same week that I was speaking with Mr Shipton, the global chief executive of Morgan Stanley was in Australia, and I – I met with him and I understand Mr Shipton did as well. And by coincidence we spoke about the same

topic. And certainly in his experience, having been the global CEO of, as I said, Morgan Stanley for many years, he thought that having the Fed on site, which obviously the US banks became deposit-taking institutions during the GFC, he thought it had been a positive in the context of shifting the culture of the organisation and also developing a better understanding and relationship. So I do genuinely think there is real potential. It's not that it won't come with risks, but I – and it's obviously untested here, but I would hope it's – it's one thing that we can do much better than we have in the past.

10 You said it's attended by risks. Of course, change is but what would you see as the chief risk, chief couple of risks that attend the change?---Essentially what Ms Orr was discussing with me, and so in the context of these six matters, which ones, if any – well, go to enforcement, how they're proceeded with, is there a view that – how open can you be with the regulator if there's a real risk of it going to enforcement.

15 That's – that's a mindset that people need to get – to get over, because if there's harm or wrongdoing we're obliged to be breach reporting and doing that openly and fulsomely. In the case of what we've just discussed around consumer credit insurance, if we had had a broader engagement, I think that would have – it shouldn't have needed to be but I think that would have forced a broader review at the root

20 cause as it related to the eligibility questions.

Yes?---So how – how I think the organisation reacts. It does – I think it will just take a period of adjustment for the organisation.

25 Yes. Yes.

MS ORR: I said, Mr Comyn, that I wanted to move to that second category of root causes dealt with in your statement. We've talked a lot about customer and culture root causes and I want to talk to you about the accountability governance and capabilities clauses that you identified in your statement. And I want to do that principally by reference to CBAs breaches of the Anti-Money Laundering and Counter Terrorism Financing Act. Now, you would know that in June this year the Federal Court made orders declaring that CBA had contravened multiple provisions of that legislation?---Yes.

35 And the Federal Court ordered CBA to pay a civil penalty of \$700 million which was described by AUSTRAC as the largest ever civil penalty in Australian corporate history?---Yes, that's right.

40 And most of the contraventions were linked to CBAs introduction and oversight of intelligent deposit machines, or IDMs?---Yes, that's right.

And IDMs are a type of ATM which can accept cash and cheque deposits?---Yes, that's right.

45 And they were introduced by CBA in 2012?---Yes, that's right.

And unlike other ATMs, cash deposited through an IDM is automatically counted, instantly credited to the relevant CBA account, and then available for immediate transfer either within Australia or overseas?---Yes, that's right.

5 And IDMs, therefore, pose a high international money laundering and terrorism financing risk because money can be deposited anonymously at any time at hundreds of locations and then be immediately available for transfer?---Yes, that's right.

But CBA didn't introduce a daily limit on the amount that could be deposited through IDMs until November 2017, more than five years after they were rolled out. Is that right?---Yes, that was an account-based daily limit in November 2017, yes.

Yes. And CBA, the Federal Court tells us, breached the legislation in five different ways. And I think that you will be familiar with these but if I can just summarise my understanding of them. The first was that for more than five years after the IDMs were rolled out, from May 2012 to about October or November 2017, CBA failed to conduct an appropriate assessment of the money laundering and terrorism financing risks of the IDMs?---Yes, that's right.

20 That was the first form of contravention. And the second was that for a period of about three years, CBA didn't comply with the transaction monitoring requirements of its own program in relation to almost 780,000 accounts?---Yes, that's right.

The third was that over a period of approximately three years, from November 2012 to September 2015, CBA failed to submit over 53,000 threshold transaction reports being reports for cash transactions of \$10,000 or more to AUSTRAC within the specified time under the legislation?---Yes, that's correct.

30 And the fourth was that on numerous occasions, CBA failed to report suspicious matters on time or at all involving transactions in the tens of millions of dollars?---Yes, that's right.

And the final form of contravention was that even after CBA became aware of suspected money laundering on a number of CBA accounts, CBA didn't monitor those customers to mitigate and manage that risk?---Yes, that's right.

Is that a fair summary of the contraventions found by the Federal Court earlier this year?---Yes, it is.

40 Now, the consequences of those contraventions were extremely serious, weren't they, Mr Comyn?---Yes, they are.

From the introduction of the IDMs until daily limits were introduced, several million dollars of money laundering occurred through your IDMs?---Yes, that's right.

45 And some of the people involved in that money laundering have since been prosecuted and convicted of criminal activity?---Yes, that's right.

And if CBA had introduced the daily limits earlier, it would have disrupted money laundering activity through the IDMs by drug syndicates?---Yes, I wouldn't – I wouldn't limit the causal connection to the daily limit.

5 I see. I see. So let's look at that across - - -?---But certainly our failures contributed to the inability to provide law enforcement with necessary intelligence that would – intelligence that would have led to earlier prosecutions, and, of course, there could have been other matters as well because we didn't appropriately manage all of the risks associated with our AML/CTF obligations.

10 So the failures meant that law enforcement could not disrupt money laundering through your IDMs by drug syndicates, firearms importation syndicates and distribution syndicates?---Yes, that's right.

15 And CBAs actions or inactions limited the ability of our law enforcement to fight financial crime?---Yes, that's right.

And you were the group executive of retail banking services during the period that most of those contraventions occurred?---Yes, that's right.

20 Now, in your statement you say that the overarching failure in respect of those contraventions was that CBA did not sufficiently understand or meet its obligations under the legislation?---Yes, that's right.

25 Why didn't CBA sufficiently understand its obligations under the legislation?---We should have, Ms Orr. We did not.

Well, how did that situation arise, Mr Comyn? How could it be that an organisation of CBAs size and sophistication did not understand its legal obligations?---Yes. I'm quite familiar with this matter, so perhaps I can - - -

30 Yes?---I can take you through in as much detail as you would like. Well, at a – at a – at a high level, I would say that there wasn't a sufficient understanding and awareness of exactly what the risks associated with money laundering was. Part of the reason why I don't think we appropriately understood the risk is that I don't think the relationship either with AUSTRAC or as I perhaps mentioned earlier around law enforcement was appropriate. There was a very poor understanding at an individual obligation level about exactly what was required. There's not a satisfactory answer as to why, but in my view, having spent a lot of time on this particular matter, I don't think it's clear that we actually understood exactly what was required. How could we ever fall into that sort of sense of complacency? I've asked myself that question many times. One of the reasons was we were, during that period of time, and, of course, this is no excuse, spending hundreds of millions of dollars. It's another example of where I think there was complacency where we were insular, we were congratulating ourselves about the – the information that we were providing, because at all times during that time we were providing extensive information to AUSTRAC

but we were getting commendations – there was a widely held view that we were actually doing a good job which we clearly were not. The engagement that was - - -

5 You mean a widely held view within the organisation?---Yes. Yes. Or at least a reasonable – not that – not that – because there are a number of warning signs, particularly as it relates to some – some group audit reports. But there’s a – there’s a view that we’re providing information and intelligence. It’s leading to prosecution. I think the – the way we were engaging at the most senior levels of the organisation, and prior to, as an example, August or September last year, I and no member of the executive committee other than the chief executive had ever seen AUSTRAC, never met with them. Obviously, I’ve spent quite a bit of time with Ms Rose since coming into the – into the role. We just didn’t have good connectivity at the most senior levels of the organisation. I think that would also apply to the board. Whereas – and I say all of these failings are ours. I don’t mean in any of my explanation to imply that it’s a failing of any other party other than the bank. When you go through, as I have, all of the interactions you can see point to point interactions between AUSTRAC and with our centralised AML/CTF team which we are – I think you could characterise as, perhaps, a little dismissive of some of the information that they’re raising. Each of those contraventions, they’re quite different in nature. So if I categorised into – certainly in terms of the way the organisation responded, the 20 53,506 contraventions with the failure to lodge a threshold transaction report within the required timeframe, that was identified in August 2015. The way we identified that was we had lodged a suspicious matter report with AUSTRAC. They came back and that particular suspicious matter report included two deposits of \$20,000 each. 25 They came back and asked us for why did we not have the corresponding threshold transaction reports. We went back, investigated, got to the root cause, realised there was a failure, supplied at that time I think it was 51,500 or so, and then ultimately 53,506 reported it, escalated it to the board. Other than that, when the statement of – the statement of claim was filed on 3 August 2017, a number of the failings that were 30 included within that were a complete surprise to many people and everyone in the organisation.

35 You didn’t even know that you had failed in those ways at that time?---I knew about the 53,506 and the threshold transaction reports, yes, but the others, no.

40 And that’s a concerning matter in itself, is it not, Mr Comyn?---Yes. We have put enormous effort and attention, as we should, against both the matter, understanding what the root cause was. Of course, resolving the matter, I hope satisfactorily for – for all parties, but – and as I make clear in my witness statement, we’ve put enormous investment – I think specifically in my witness statement I call out that we’ve, as at 30 June 2018 and included in our investor disclosures for that financial year, we provided for \$269 million of investment that we’re making to improve our controls and ultimate compliance. We’ve gone on our financial crimes operations team – again outlined in my witness statement – from 96 people to approximately 45 560. We’re making substantial investments. Of course it should never have been necessary, and we deeply regret the failings that we had over that period of time and,

of course, the potential consequences that have and certainly could have flowed from that.

Well, and the actual consequences?---Yes.

5

We're not just talking about potential consequences, are we?---No.

I put to you a series of propositions which were about the actual consequences of those failings?---Absolutely. I've seen each of the individual syndicates. I understand the impact and the harm that our failures did result on to Australians.

10

I want to suggest to you that there was a fundamental problem that underpinned a number of the failings, and that was that it was unclear within CBA exactly who was responsible and accountable for ensuring that your IDMs were operating in a way that was compliant?---Yes, that's right.

15

And that was reflective not only of the complacency that you've referred to a number of times in your evidence, but also of the fact that the senior levels of your organisation did not prioritise the identification and management of non-financial risks. Do you accept that?---Yes. Yes, I do.

20

Now, CBA has what's referred to as a federated organisational structure. Is that right?---Yes.

And that means that there are a number of business units. You have five business units that are based on your target customer segments. Is that right?---Yes.

25

And then there are a number of support functions that provide support to those business units?---Yes, that's right.

30

And the most senior management forum within your structure is the executive committee or EXCO?---Yes, I've renamed it. It's now the executive leadership team but it was – up until April or May of this year it was the executive committee.

And the group executives of each of the business units and the support functions are on what used to be called the executive committee and is now the executive leadership team?---Yes, that's right.

35

And what's the purpose of the executive leadership team, Mr Comyn?---Well, ultimately, it's the leadership team that, with me, lead the organisation, and we, as I think I mentioned earlier, there's both the – in my view – an individual accountability for each of their business units or support units but I also rely and lead that team in the collective interests of the Commonwealth Bank.

40

And how often does it meet?---Every week.

45

- And the prudential inquiry report was highly critical of the – what was then called the executive committee including in its oversight of your anti-money laundering and counter-terrorism financing systems. Do you accept that?---Yes, I do.
- 5 And it regarded the failings of the executive committee as invariably contributing to CBAs missteps including in relation to the anti-money laundering matters. Do you accept that?---Yes, I do.
- 10 The prudential review said that the executive committee did not collectively provide a strong counterbalance to the prevailing views of individual business unit executives, nor did it effectively mobilise the institution when confronted with issues affecting multiple business units. Do you accept that finding?---Yes, I do.
- 15 And it found that it was not an effective vehicle for addressing group-wide risks and issues. Do you accept that finding?---Yes, I do.
- And that it didn't have a mandate to oversee the risk profile of the group. Is that right?---Yes, that's right.
- 20 Its dynamics didn't encourage a sense of collective accountability for risk outcomes or constructive challenge of committee members?---Yes, I agree with that.
- And it placed particular onus on senior level oversight and understanding of risk?---Yes, that's right.
- 25 And finally, it didn't provide appropriate direction and drive often enough. You agree with that?---Yes, I do.
- 30 Now, CBAs failings in relation to the anti-money laundering matters didn't attract a collective response from the executive committee for some years. Not until March 2016. Is that right?---Yes, that's right.
- And this was despite the fact that there had been – I think what you described earlier as a number of warning signs?---Yes.
- 35 There had been numerous indications of material weaknesses in your controls in this area, including multiple internal audit reports?---Yes, that's right.
- 40 So what do you say to those findings of the prudential review about the failings of your most senior leadership team to grapple with the anti-money laundering problems?---Yes, there was, at that time, no forum inside, so the executive committee, so the – that team broadly would meet to discuss the overall management of the bank. It would meet – a subset of that would meet around what we called – at the time was called the executive risk committee but that was really financial risks.
- 45 It would meet to discuss asset and liability committee, which is effectively the balance sheet management of the bank. But there was no specific forum for the management of non-financial risk. Individual audit items, as you – as you mentioned

in that case, there was no forum at that point in time where audits at a management level were openly discussed, either with the individual that was accountable for that audit or with the collective management of the organisation to get, as the prudential inquiry identified, a very clear understanding of what the key risks were facing the organisation. Some of the audits identified issues – perhaps not the full extent of the issues. They often went back to the parts of the organisation at that time and the central team that was responsible for AML/CTF compliance rather than, perhaps, going to other executives inside the organisation. Unfortunately, there are many failures in the way that we – we dealt with that particular matter.

At the management level. You accept that?---Yes, I do.

Now, the prudential inquiry made a number of recommendations that were directed to the functioning of your executive committee and the role of the senior leadership team in overseeing and having accountability for these sorts of matters. One of those recommendations was that you establish an executive level non-financial risk committee?---Mmm.

And you have done that, Mr Comyn?---Sorry, Ms Orr. Yes, I have.

And when did that committee come into existence?---Perhaps – I can't remember if – the first meeting was either in May or June of this year. I think it may have been June.

And who is on your non-financial risk committee?---I chair it, all of my direct reports. So across, as you said, all of the business units, the support units, the head of group audit, the head of compliance, the head of operational risk, the head of financial crime, and the signing partner for our external audit firm, PwC.

And how often does that committee meet?---Monthly.

And a charter for that committee was created, it seems to us, in about June. Does that sound right to you?---Yes, and there has been, I think, refinements to that since then.

Yes. It looks to us as though it was amended in August. Is that consistent with your understanding?---Yes, that's right.

And can I take you to what appears to be the version after the amendments in August of that charter?---Yes.

Which is CBA.1005.0009.0031. So we see up the top that this is current as at 21 August 2018. Do you think this is the current version of the charter for the committee, Mr Comyn?---Yes, I do.

Okay. Now, we see from paragraph 1.1 that the committee was established to:

Raise the visibility and stature of non-financial risk issues across the Group and to assist and advise the CEO in the governance, optimisation and effective management of the Group's non-financial risks.

5 ?---Yes, that's right.

If we move to paragraph 5 in this document, which spans 0032 and 0033, we see a list of the responsibilities of the committee. And those responsibilities include:

10 *Reviewing and overseeing the effectiveness of the non-financial risk management frameworks.*

?---Yes.

15 Continuing:

Monitoring and reviewing material non-financial risk incidents.

Do you see that at 5.9?---Yes, I do, sorry, yes.

20

Sorry, at 5.6, I should say?---Yes, I see 5.6, yes.

Continuing:

25 *Overseeing the Group's regulatory relationships.*

At 5.9?---Yes.

Continuing:

30

Monitoring and reviewing the impact on the group's reputation in respect of non-financial risks.

At 5.10?---Yes.

35

And at 5.11:

Overseeing the health of the Group's risk culture.

40 ?---Yes.

How is this new committee going to oversee the health of the Group's risk culture?---So, at the – we're actually reviewing our approach to risk culture at the moment, but effectively what happens is that there's a self-assessment process inside
45 the individual business units. So effectively, think of it like a survey of all of the people in an individual business unit. Every time a group audit is done, they also have a – an approach around determining risk culture which is, effectively, a

combination of both quantitative and qualitative analysis. And we need to bring together all of the different elements. We've had various approaches and methodologies about – in terms of determining risk culture, is also one of the things that the prudential inquiry specifically observed during that. So we're also
5 wondering whether we should just reapply the methodology that they used on a more regular basis. And then, ultimately, it's up to me to be able to then synthesise that, and, of course, there is multiple elements of that. And that's one of – and I use this as a particular forum to take out key outputs of this into the various board committees as well.

10 What is the risk culture that you're striving to achieve?---Accountability, constructive challenge would be two of the most important elements, particularly in terms of the from-to shift. One of the issues that has troubled me is the – and we need to watch very closely – is that people feel very comfortable about raising issues
15 and concerns inside the organisation. And when they raise those issues and concerns, they're heard and they're actually dealt with. Another would be that people inside the organisation feel like there's the right level of both financial and resource support to ensure that they can deal with specific non-financial risk reduction. They would be some of the – the elements in particular, but ultimately
20 from a risk culture perspective you want people who are very clear on what they're accountable for from a risk perspective, they have a very good understanding about how to discharge those accountabilities, that they're setting the right tone for their team, that they're hearing and they're also constructively challenging on issues.

25 Is the non-financial risk committee proving valuable, in your view, Mr Comyn?---Yes, definitely.

In what ways is it proving valuable?---Well, it meets for about four hours per month where I go through and I can see in that particular meeting, I can see an update on the
30 non-financial risk because the way we've structured it is in each of the business units they have their own non-financial risk committees so they have to report to that. In that meeting I will also hear from the head of group audit. So in that particular month we will go through all of the individual audits that – that he is working on. We will get an update specifically from the head of compliance about progress.
35 Similarly, as it relates to operational risk, we manage very closely the financial crime – what we call the program of action, effectively the uplift. So there's a regular update there. We would specifically turn our – our minds to other key risk types, like cyber risk, for example. We then evaluate all those – those risks, in essence, against the Group's – what we call the risk appetite statement. And then I use this
40 forum as the primary forum for which I then use in my updates to the board and in my conversations with the chairman to structure both our conversations, as well as making sure that the most important and what I consider to be the critical risks that are facing the organisation are included in the upcoming agenda for the audit committee and risk committee of the board.

45 Can you give us an example of something that CBA has handled differently as a result of the creation of the non-financial risk committee?---Yes, we've agreed at an

enterprise level, some of the key risk types that we're really going to be focused on as an organisation, we've completely re-done the – what we call the issue management approach, which is how do we basically categorise across the organisation clean up risk insight which I know was an understandable source of frustration for the Commission. We work on and respond on particular issues that span across multiple parts of the organisation. So cyber, for example, is a – is a good example of a risk type that is now discussed at that committee. The head of enterprise services or the CIO would report on – on cyber. But the cyber risk is not something that can be appropriately managed or discharged through a – one part of the organisation. There's actually accountabilities and responsibilities across all parts of the organisation. We talk about prioritisation, we talk about how the investments are reducing risk. We get to hear, as I said, from a number of different – a number of different areas. That said, we've been going since, as I said, I think June. So it's early days. I – I would say that all of the participants would say that it's invaluable and, obviously, there was a clear deficiency and gap in the way we operated previously.

So why did it take the prudential inquiry for CBA to set a body like this up within its organisation?---It should not have.

Do you accept that CBA subordinated its executive level oversight of non-financial risk to its oversight of financial risk in the past?---Yes, it did.

And I will just – I will tender that document, Commissioner.

THE COMMISSIONER: That's annexed to his statement, I think.

MS ORR: I'm sorry. I'm sorry. I just want to make sure it's the same version that is annexed to Mr Comyn's statement.

THE COMMISSIONER: I hope – I hope it is.

MS ORR: Yes.

THE COMMISSIONER: It's the one I've been looking at.

MS ORR: Yes. I'm told it is. So we don't need to tender that one, Commissioner.

I want to ask you, Mr Comyn, about the report that CBA commissioned last month from PwC into the new non-financial risk committee. And could I take you to CBA.1004.0155.0072. Now, this is an agenda for a meeting of the non-financial risk committee on 23 October this year. And can I ask that we have shown for you 0084. Now, we see there – so you're familiar with this document, Mr Comyn?---Yes, I am. I asked for it.

This is - - -?---Yes.

5 Yes. Why did you ask for it, firstly?---Because we had had three meetings. The signing partner for as – for PwC, as I said, was on the committee. He offered to do it not – not charging but he offered to go and ask all the participants on the committee to get their sense. And he and I had already discussed – I think there’s a number of improvements that we could make, and he undertook to go away and craft this document in terms of a set of recommendations to improve the operation of the non-financial risk committee.

10 So this was created by a member of the committee?---Yes.

Yes?---Someone in his team may have worked on it as well but yes.

15 I see. And we see from the page we have on the screen under the heading Observation, that PwC noted that the establishment of the committee had been viewed as a very positive development with many members commenting, “Why haven’t we done this before?”?---Yes, I see that.

20 But also on that page we see that the report noted that the committee was still at a very early stage of its operation and, therefore, it was to be expected that it was still finding its feet?---Yes. That’s right.

25 And PwC identified four matters below this and the first was that although the charter included a number of very specific detailed responsibilities many of those weren’t yet being fully addressed?---Yes.

And second, there remained some uncertainty about the interaction of the non-financial risk committee with the board and its committees?---Yes. We’ve since addressed that but, yes.

30 And, third, the reporting to the committee was very extensive and not focused enough on the key issues and the actions to resolve them, impacting the amount of time for actual discussion and decision-making?---Yes, that’s right.

35 And the fourth point was that the level of board focus on group audit red reports, like the AUSTRAC audit reports – they were red audit reports, weren’t they?---Yes.

40 So the level of board focus on group audit red reports should be reflected at the committee with more ownership taken of the decisions about actions and timeline as well as subsequent reporting to the board?---Yes, that’s right.

45 Now, just returning to the first of those points, the failure to address the specific requirements of the charter, if we go to 0093 in the document. Perhaps we could have 0093 and 0094 on the screen. Although that might present difficulties, given their orientation. If not we will start with – there we go. This is an appendix dealing with the requirements of the charter. We see that of the 14 specific requirements of the charter – I say 14 because we have 1A and 1B at the top – from the work done to date only one of those had been fully met which was to raise the visibility and stature

of non-financial risk issues across the group?---Yes, after the first three meetings, yes.

5 And eight were partially met and five were not met, including overseeing the health of the group's risk culture?---Yes, that's right.

10 So having received this feedback in this piece of work from PwC, did you then embark on a process of making improvements to the way the committee was operating?---Yes. The – the partner and I had discussed that – and I agreed with the recommendations – and I think almost without exception. And I was not surprised by any of the – the findings. There was a lot of work that we had taken on in the first three months and the purpose of the review was to identify opportunities for improvement quickly. And so I think we've incorporated most, if not – if not all of those.

15 Incorporated?---Incorporated in terms of adopted all of the recommendations in the subsequent meetings.

20 And one of the four matters that I took you to earlier at 0084 – if it helps, we will bring that back up on the screen – was about uncertainty in the interaction of this committee with the board and its committees not quite striking the right balance with reporting levels and a lack of ownership. Now, those are issues that have commonalities with the issues raised by the prudential review in relation to the executive committee, are they not?---Yes, they're – they're similar, yes. I would suggest they're quite different in the implementation at the moment versus then but yes it's a similar - - -

30 Right. But still problems about committees not talking to each other?---Definitely not about committees not speaking with each other.

35 I see?---More refining the level of detail, both coming to the NFRC and then also how – which of all of the material and it can be voluminous, to give an example something like 500 pages, so what subset of some of that material would be critical to then go and integrate into their various committees, one of the – the board committees, that is. One of the ways that we've done that is updated the group risk appetite statement. And another is just refining some of the reporting so that there's a – I think a set of metrics which would trigger escalation to the board any of the red or unsatisfactory audits, they automatically go to the board. As I said to you yesterday, there's also things like – well, there's a requirement for me to notify the chairman within 48 hours of an unsatisfactory report. It needs to go to the next available audit committee where it's fully discussed, and the responsible business unit head is there, not just the head of audit. And then there's very thorough tracking of the – of the outstanding red audit items or unsatisfactory audits, and the key open issues, and they're tracked at both the non-financial risk committee and also at the –

45 at the board. So there has been a number of improvements since – since this report and I dare say, we will continue to refine and improve it.

Are there further improvements that you think need to be made?---Yes, I'm – I'm sure there are. I mean, at – at this stage, I'm – I'm certainly not satisfied with the – the rate of issue closure, in terms of outstanding open issues inside the organisation across a range of – of different non-financial risks. I'm certain the board aren't
5 either. So there's a lot of focus on ensuring that we've – we're lifted the metabolism of the organisation to deal with that. Of course, the way we respond to things like red audit reports as well, and part of my job is to make sure that I'm informing transparently the board on the key issues. And the answer can't be just to give them
10 endless amounts of information. We've got to distil it down into very clear insights across key risk themes to make it, you know, a very good synthesis of issues to go through. So I – yes, I suspect we will continue to refine, and I think one of the important elements is that we should never be satisfied, and to continue to keep looking for opportunities to improve the way that we're working and the way that we're managing our non-financial risk given our substantial failures in the past.

15

Could I tender that report, Commissioner.

THE COMMISSIONER: With the meeting pack or just the report, Ms Orr?

20 MS ORR: I think it's safest if I tender it as part of the document within which it belongs, which is the agenda for the meeting of the non-financial risk committee on 23 October 2018.

25 THE COMMISSIONER: And that document which is CBA.1004.0155.0072 becomes exhibit 7.24.

EXHIBIT #7.24 AGENDA FOR MEETING OF NON-FINANCIAL RISK COMMITTEE ON 23 OCTOBER 2018 (CBA.1004.0155.0072)

30

MS ORR: Mr Comyn, does the non-financial risk committee now have oversight of CBAs compliance with its obligations under the Anti-Money Laundering and Counter-Terrorism Financing Act?---Yes, it does.

35

And has CBA fixed its problems with its compliance with those legal obligations?---We've made substantial progress over the last 12 months but it remains a continuing area of focus for me and the organisation.

40 Do I take from that that the problems are not fixed?---No, the problems that were identified as part of the contraventions are – I consider them fixed. There's a – one of the elements of AML/CTF obligations is there's a risk-based assessment. So many of the obligations are not binary. And the other thing that we should always bear in mind is the threat landscape continues to shift as criminals become more
45 sophisticated, the more improvements that we make. So, for example, something like transaction monitoring, so we have hundreds of rules which automatically are triggered based on a customer's – generally behaviour. They require a response

which are then processed, and I won't go into all the detail. Decisions need to be made about customer due diligence, suspicious matter reports, etcetera, etcetera. So there is a large body of work that has been underway for some time and – and continues.

5

Picking up on those themes, you say in your statement that:

Compliance with the obligations for an organisation of CBAs size and with CBAs sorts of systems is a challenge and a continually evolving process.

10

?---Yes, that's right.

And you say that the significance of the challenge has recently been highlighted to you by a group audit and assurance audit report?---Yes, that's right.

15

Could I ask that you look at that audit report, which is CBA.1004.0155.0072.

THE COMMISSIONER: That's the same document we've just had.

20 MS ORR: I apologise. The document I want to take you to is – I'm sorry, if I could just have a moment, I will make sure I bring up the right document.

CBA.1004.0155.0142. I apologise. The problem is it's part of the document - - -

THE COMMISSIONER: I see.

25

MS ORR: - - - that also contained the previous exhibit. So I shouldn't have called up the first page. Have you seen this document before, Mr Comyn?---Yes, I have.

30 So this is a paper that went to the non-financial risk committee from last month. And it summarises the audit findings from the audit that I think you were referring to in your statement?---Yes, that's right.

And we see from 0143 the first page of the paper. So this was a paper for that same meeting on 23 October 2018. And under the heading Overview, we see:

35

Our independent review of CBAs AML/CTF part A program was rated red, reflecting the significant number of issues already known to management and the additional issues found by GA&A during the review. The report was discussed at the board risk committee meeting in October.

40

You see that - - -?---Yes, I do.

- - - Mr Comyn? Now – and also there:

45 *We noted a significant improvement in management's awareness of AML/CTF issues and their responsiveness to our findings.*

At 0144, we see a summary of the findings of that audit report. Do you see under Key Findings, towards the end of that first paragraph:

Our last equivalent audit in 2016 was rated red.

5

?---Yes.

And underneath that:

10 *The AML/CTF framework of CBA has improved but continues to be deficient in key areas.*

?---Yes, I see that.

15 And the summary records that:

This review raised 45 new issues, including seven high rated issues, adding to the existing 199 program issues known to management and the CBA program of action as at 31 July 2018.

20

?---Yes, that's right.

And what did you think when you, as the chair of the non-financial risk committee, received this summary of this latest audit in relation to the anti-money laundering operations?---I have spent quite a bit of time on this particular report to understand it in more detail, which I – I think I have quite a detailed understanding about it. Would you like me to go - - -

25

Well, I'm really interested in your reaction to this - - -?---I was not – I was not surprised, and I can explain why, which I confirmed with the head of our group audit. The – the audit was always going to be red. So we're required under our audit plan to conduct this audit because – but as the – the audit and the head of group audit who prepare these papers identified, we had 199 outstanding issues. So they – they didn't need to do any work.

30

35

For it to be red?---Yes, exact – it was always going to be red. So - - -

What about the - - -?---We're closing about 40 or 45 issues per month. And they're very granular issues. And of the 45 new issues that they raised, including the seven high rated issues, I've been through each of those. I don't think they're in my tender bundle but I know they're in the documents provided. The majority of those – so I think three of them relate to user access verification, which is, effectively, a population of users who have got more access to certain systems than they should have. It absolutely needs to be closed. But not the – the same scale and severity of – I want to make sure there's very clear contrast between issues that have been identified in this audit versus in prior audits. One of the others related to international foreign transfer instructions. If – if – I – I would need the document to

40

45

go through the – the rest of them. But as I would expect as well, there should be an acute level of sensitivity from my group audit team across any issues relating to AML/CTF. So in the same context that an issue that may have been a medium issue a few years ago in the context of – as we discussed in CCI, I would expect that
5 obviously across the board to get a very high rating. So, as I said, I – this – this piece of work and our ongoing compliance with AML/CTF is a huge priority for me. I'm very confident that we've substantially improved and demonstrably the control environment to protect the financial integrity and, of course, Australian citizens. There is work to continue doing. And I think – I suspect there will never be a day
10 while I'm in this role that I ever say that I'm fully satisfied, that we're dealing with all our AML/CTF risks because it will be one of those risks that continue to evolve but this is a very high priority for me and the board in the months ahead.

You say there will never be a day when you're satisfied. How long do you think it
15 will take for you to get to a point where you're not seeing red audit reports identifying new issues, new failings?--I very much doubt the next audit – I believe the next audit would – will be a very different picture. And I would say an identification of issues I – on the one hand, there are failing but that's exactly what the group audit team is there for. And I remember looking at one of the – one of the
20 findings in there. I think it's – it was recommendation number 32, and it talks about the overarching enterprise approach to risk assessments which is clearly one of the areas that you referenced earlier as it relates to risk assessments. Risk assessments need to be conducted against customers. So you need to have a – a risk assessment model for customers, you need to have a risk assessment for products. You need to
25 have one for channels, you need to have one for jurisdictions. And there's – we've done all of that across the enterprise. There's some work to make sure that that's entirely consistent and sticks together. So I feel – I feel very confident we're making a lot of progress. Of course, I want to close out any issues as quickly as I possibly can.

30 All right. Now, I want to move on from this document. And we're not confident that these pages are part of what we tendered the last time so out of abundance of caution, Commissioner, could I tender these pages from CBA.1004.0155.0143. It's the paper from the group audit and assurance report for the meeting of the executive
35 leadership team non-financial risk committee on 23 October.

THE COMMISSIONER: That document, as you've described it, becomes exhibit 7.25.

40 **EXHIBIT #7.25 PAPER FROM GROUP AUDIT AND ASSURANCE REPORT FOR MEETING OF EXECUTIVE LEADERSHIP TEAM NON-FINANCIAL RISK COMMITTEE ON 23 OCTOBER (CBA.1004.0155.0143)**

45 MS ORR: Now, Mr Comyn, I want to turn to another topic dealt with in your statement which we've covered in some ways as we've worked our way through

other topics, but I want to pause and deal with this in slightly more detail. And that's the failure by CBA in relation to fees for no service. And I want to deal with this at this point because one of the topics that you deal with in your statement is the failure by CBA to take the time to investigate thoroughly the root cause of issues, which you
5 say has contributed to a failure to proactively address issues and to prevent them or similar issues from recurring?---Yes.

Now, that was a problem with both the primary failings that I focused on so far, both the mis-selling of consumer credit insurance and the AUSTRAC contraventions. Do
10 you accept that?---Yes, I do.

But I want to look at this issue by reference to another failing, the fees for no service failings. And I'm referring there to the charging of fees without the provision of service by three of your subsidiaries: Commonwealth Financial Planning Limited,
15 BW Financial Advice and Count Financial Planning?---Yes.

You would know that topic was examined in some detail in the second round of the public hearings. But broadly speaking, there were two types of situations where these licensees charged fees to customers without providing the promised service.
20 The first was that the client was allocated to a financial adviser and was paying a fee for ongoing services but the adviser was not providing those ongoing services?---Yes.

And in the second, the customer was paying a fee for ongoing services but was not even allocated to a financial adviser?---Yes.
25

So the client didn't receive anything for the fee that they were paying?---Yes.

Now, in April this year, just before that second round of public hearings commenced, CBA entered into an enforceable undertaking with ASIC in relation to this
30 conduct?---Yes.

And as part of that undertaking, CBA agreed to remediate customers who had paid ongoing fees but hadn't received their services?---Yes.
35

How much has CBA now paid in remediation to those customers?---I think in – in total \$116 million.

Now, in your statement you acknowledge a number of failings on the part of CBA in relation to that conduct?---Yes.
40

The primary failings that you acknowledge are systems failings. Is that right?---No. I – I wouldn't – I wouldn't describe that as the primary failure. That is one of the failures. I think the primary failure, in my mind, is the failure for us at the inception
45 to understand the obligation and duties that were required for the – our customers and to not even contemplate offering or charging for a service without having the appropriate level of systems, controls, supervision, and monitoring. I see that as the

root cause. Some of the systems and the complexity made it more difficult to diagnose, but I don't see that as the root cause of the issue.

5 So do you accept that CFPL and BW Financial Advice didn't have adequate systems in place to monitor whether customers were receiving services for their fees?---Yes, I do.

10 And do you accept that the licensees didn't have adequate systems in place to ensure that customers whose advisers had left the licensee were assigned to another adviser or had their fees switched off?---Yes, I do.

15 Now, do you also accept that when CFPL and BW Financial Advice identified these issues they failed to investigate them with any appropriate sense of urgency?---Yes, I do.

And you say that this was because they failed to appreciate the extent of those issues. Do you recall saying that - - -?---Yes.

20 - - - in your statement?---Yes.

And I want to suggest to you it was something more than that. When the licensees found out that some customers had been paying ongoing fees and not receiving the services connected to those fees, they didn't stop and think, "This might be an issue that could be affecting more of our customers. We should investigate and find out the extent of the problem." Do you agree with that?---Yes, I – I do. Absolutely. I wouldn't mind checking where I've referenced that in my witness statement because I agree with the intent as you've just described it.

30 That was me putting that proposition to you?---Yes. I – I do agree with that.

35 And they didn't stop and think, "This problem has occurred because we don't have systems in place to tell whether our customers who are paying fees are receiving the services that they're paying those fees for and we should put those systems in place right away." They didn't do that?---They did not.

Instead, it took years before the full extent of the problem was uncovered?---Yes, that's right.

40 And it took years for CFPL and BW Financial Advice to notify ASIC of what had happened?---Yes, that's right.

And it took years before CFPL and BW Financial Advice began remediating customers?---Yes, that's right.

45 And during that time, Mr Comyn, they kept charging those customers the fees?---Yes, that's right.

Which they could have switched off as early as 2012?---Yes, that's right.

Now - - -

5 THE COMMISSIONER: Mr Comyn, it's more than systems, isn't it?---Yes, it is.

Fees were coming in?---Yes.

10 And an amount was going out in payment to advisers?---Yes, that's right.

There was a difference?---Yes, absolutely.

15 And the difference was being taken by the entity?---Yes. And as Ms Orr said – and I certainly intended to articulate – we should never of – we should never have commenced a service without the appropriate systems, etcetera, in place, to ensure
- - -

20 Well, the point I'm asking you to grapple with is that it's more than systems. Take the case where there is no assigned adviser?---Yes.

A fee is charged to the customer. Where does that fee end up? It doesn't go out to an adviser. There's no assigned adviser?---There's a licensee.

25 Yes?---Yes.

So there's a difference between what is charged, what is paid out, and the difference goes to the licensee. Is that right?---Yes, it is.

30 And that would have been apparent to the licensee throughout the process, would it not?---Yes, it would.

So the licensee knew at all times that it was charging more to clients than it paid out?---During the – that time period, yes.

35 Yes. Go on, Ms Orr.

40 MS ORR: You say in your statement, Mr Comyn, that all of this reflected an unacceptable culture and a lack of professional conduct among the advisers who failed to provide their customers with the – with the services?---Yes.

But it also represented an unacceptable culture on the part of management, didn't it?---Yes, it did.

45 Nobody identified the risk that when advisers who were used to a trail commission model switched across to a fee for service model, they might not appreciate that they now had a legal obligation to provide services in exchange for the ongoing fees?---Yes, that's right.

Nobody put in place any systems needed to ensure that the advisers were providing the services that they were promising to provide?---Yes, that's right.

5 And when management found out that customers were paying those fees without being provided the services that they were paying for, do you accept that they did too little to uncover the full extent of the problem?---Yes, I do.

They didn't prioritise the interests of the customers?---No, they did not.

10 They didn't prioritise compliance with the law?---No, they did not.

Have there been consequences for the managers involved?---I suspect insufficient, Ms Orr.

15 Well, what were the consequences, Mr Comyn?---Given my limited involvement in – in that business until very recently I would need to do a more thorough review, but I certainly agree with all of the propositions that is you've put forward to me and - - -

20 And what you know of the consequences causes you to characterise them as insufficient consequences. Is that right?---Yes, but – but I say that on the understanding I'm not – I'm not, with a sufficient level of detail, across what the consequences were, but I agree that the conduct, which is as exactly as you just explained, and I agree with, had not been characterised like that in the past, and that is our failure. And so, therefore, I suspect that there's an imbalance between the –
25 the consequences that were applied because as you heard earlier this year, we had treated it as a – a systems issue, as opposed to a failure in some very important obligations.

30 Well, did consequences get applied to the individuals who were responsible for identifying at the outset the risks that were involved in switching from a trail commission model to a fee for service model. Did those people at that point with those responsibilities have consequences applied to them?---I don't know at what level of detail I – I would need to make some additional inquiries to satisfy myself that the appropriate set of consequences from when the conduct, as you're indicating,
35 first started to occur and how we dealt with that. There certainly were some consequences in the year – I think it was 2015. But you're quite right, this predates, in fact - - -

40 Yes. I want to go back to - - -?---Right.

- - - when someone thought about this big move from a commission model for the payment of financial advisers across to a fee for service model. There were very significant failings at that point in time, weren't there, Mr Comyn?---Yes, there were.

45 And you're not able to say whether the people responsible for those failings at that point in time had consequences applied to them?---I'm not confident of the detail of those consequences, Ms Orr, I'm sorry.

And what about the people who realised that people were being charged fees for no service and decided not to conduct a full investigation. Do you know if there were any consequences for them?---Again, I don't have the specifics of the detail. I'm sorry, I didn't - - -

5

And do you know - - -

THE COMMISSIONER: Again, can I interrupt – and I just want to be quite plain about this?---Yes.

10

Leave aside the case where an adviser has agreed that he or she will provide services and, in fact, does not. Now, there may have been a – I think there probably was a system failure to detect whether the adviser who had promised something gave what was promised. But there were other cases, weren't there, Mr Comyn? There were cases where there was no assigned adviser and dare I mention it, there were cases where the dead were being charged?---Yes, Commissioner.

15

Is that right? In those cases, there was no payment out to an adviser. Is that right?---That's right.

20

What happens to the money. It goes to the entity?---That's right.

Is that right?---Yes, it is.

25

Well, that must have been apparent within the entity?---I agree.

Well, did anybody grapple at that time with whether that was something that should have been done to take the money to the entity's benefit?---I'm not aware of the extent to which they grappled with it, and the evidence – I saw the examination – I think it was Mr Hodge earlier this year. I think clearly we had mischaracterised that. We are doing a full review of all of those matters, and I think it's very important that we complete that, but I – I agree with both your and Ms Orr's characterisation of the – of the failure, which is at many levels.

30

35

Yes.

MS ORR: Mr Comyn, in June this year CBA announced that it intended to demerge its wealth management businesses?---Yes, that's right.

40

And the demerged business will include Count Financial?---Yes.

And Financial Wisdom?---Yes.

Those are CBAs aligned financial advice businesses?---Yes.

45

And BW Financial Advice no longer operates?---Yes, that's right.

But CBA will keep CFPL?---Yes.

Commonwealth Financial Planning Limited?---Yes.

5 Which means that CBA will continue to employ financial advisers?---Yes. We want to provide financial advice for customers. We are exploring which would be the best long-term model to provide financial advice and how to best do that.

10 You're exploring which model will be - - -?---Yes.

- - - the best model. What are the models you're considering?---Well, we have the existing model and I – I do wonder if there's a better way, or in addition to that, to be able to provide a low cost, high quality, safe, affordable advice for Australians. I think it's very difficult in the current construct between general and personal advice. I think that would be an area that people would benefit in terms of participants in the industry, from – from clarity there. I – I would hope that there is a way to provide, if it's not advice, certainly guidance, education for everyday Australians. I – I don't envisage any economic model associated with that, but purely with the interests of helping people understand and make better decisions, but we don't want to vacate financial advice entirely but, clearly, we want to make sure that we deliver an advice proposition that's quite different in the future.

25 Well, is the primary difficulty with the existing model not the distinction between general advice and personal advice, but the inherent conflicts in that model?---Yes, I agree with that, are the – the matter that I was talking about is more of a longer term strategic issue, but, yes, if you're talking specifically with the existing, I think that is – I think that is one element, yes. There are – there are conflicts, clearly.

30 I want to show you a document which will be, I think, the last document I will show you, Mr Comyn, which is APRA.0050.0001.0192. This is a prudential consultation note produced by APRA relating to a prudential consultation in May this year. I understand you've been shown this document in your preparation for giving evidence today, Mr Comyn, yes, it's my understanding it's – someone from APRAs record of the meeting that I was at, yes.

35 A meeting that you were at as part of a prudential consultation between APRA and CBA in May this year?---Yes, that's right.

40 And if we look at 0193, and it would be useful if we have 0194 on the screen at the same time, we see that these two pages set out APRAs observations from this prudential consultation?---Yes.

And under the heading Strategy those observations include the following:

45 *CBA's CEO stated that "The bank assurance model had categorically failed. The business model is not sustainable due in part to conflicts of interest".*

And over on the third page, we see:

5 *CBA's CEO stated that "It feels wrong to exit financial advice and not provide this service to customers, however the current model provides for too much conflict of interest".*

Now, do the statements in this document represent your views, Mr Comyn?---Broadly, yes.

10 So given those views, why has CBA decided to continue to employ the financial advisers at CFPL?---Because we would, as I said, like to provide financial advice, but only in a way which ensures that we can do so in – to deliver outcomes which have been different to what we've delivered in the past.

15 Well, how are you going to deal with the inherent conflicts of interest in that model that you discussed with APRA in May this year?---Well, I mean, part of that, obviously, from a product manufacturing – at least part of that goes away with the divestment and the demerger of the wealth management business, so the product manufacturing - - -

20 Part?---Yes, well all – all of the platform and the asset management.

25 Yes?---Yes. So that simplifies the overall proposition. And then what I would like to then understand is to ensure that our advisers are entirely motivated to always provide advice that aligns with their best interest duty. And some of that applies to making sure that there are – there is appropriate management of conflicts. So that applies to ensure that we're fully complying with all elements of the FOFA legislation as it was originally intended. And making sure that we have adequate systems, supervision and monitoring to avoid problems in the past.

30 And is it your view, Mr Comyn, as recorded in this document, that the bank assurance model has categorically failed?---Yes, that was the view I expressed.

35 All right. I tender this document, Commissioner.

THE COMMISSIONER: Prudential consultation note of APRA, 22 May '18, APRA.0050.0001.0192, exhibit 7.26.

40 **EXHIBIT #7.26 PRUDENTIAL CONSULTATION NOTE OF APRA DATED 22/05/2018 (APRA.0050.0001.0192)**

45 THE WITNESS: Ms Orr, I should say that's my view on the Commonwealth Bank's history. I'm not necessarily applying that – I'm not familiar with everyone else's management of wealth management but - - -

MS ORR: I understand?---I think there's a typo in the way that that's constructed. I think it should be bank assurance with a C.

THE COMMISSIONER: A single word?---Yes, exactly.

5

MS ORR: I understand. I just want to ask you, finally, Mr Comyn, about the bigger picture priorities for CBA moving forward. You've outlined a number of those priorities in your CEO's message in the 2018 annual report. And the first priority you refer to there was "earning trust with customers, regulators and the community"?---Yes.

10

And a number of the priorities you listed, the third, fourth and fifth, were all about becoming a simpler, better bank, with the demerger of your wealth management and mortgage broking businesses, the sale of your life insurance business and the strategic review of your general insurance business?---Yes.

15

Is that right? Now, Mr Comyn, in your view, is it feasible for authorised deposit-taking institutions in Australia to offer services beyond their core business of retail and business banking in a way that is sustainable and which does not pose unacceptable risks to their customers?---It – it may be possible but in the instance of the Commonwealth Bank, we've decided to focus on our core business.

20

You say it may be possible. Why do you hesitate in saying that it is possible?---Well, our – our view is that we've decided strategically to focus on our core businesses going forward and a separation between our banking business and our wealth management business. Of course, that – the alternative models where they remain integrated are of course viable but those conflicts need to be managed in a – in a better way than we have been able to do in the past.

25

And have you taken those steps because you hold concerns about whether it is possible to operate providing services beyond those core banking services?---That wasn't the – the primary rationale, decision. As I think I mentioned yesterday in the context of a board meeting that we had in – in May, strategically we decided to focus on our core banking business, and particularly because that's where we thought our – our real strengths as an organisation lie. We do believe that a focusing on our core banking business is in the best interests of CBA shareholders as well as all of our stakeholders and we do think a separately listed wealth management business which has a dedicated and focused, both executive and board that are focused on a business model that at least in some ways is different to the core banking business would be the most appropriate path forward for the Commonwealth Bank.

30

35

40

Thank you, Mr Comyn. I don't have any further questions?---Thank you, Ms Orr.

THE COMMISSIONER: Just before we decide what we do, how long will you expect to take, Mr Finch? What's going to be the better.

45

MR FINCH: Thank you, Commissioner. I've got no re-examination. So not very much time at all.

5 THE COMMISSIONER: Wait until I've finished, Mr Finch, before you say there's none. Mr Comyn, there's just one particular area I want to take up with you, and it's – can I approach it generally before we get down into the - - -?---Of course.

10 The particulars. The general set of issues is about culture and governance. And you've been asked a lot of questions about culture and governance. You've given a lot of answers about what CBA sees as its problems, its solutions, and its way forward. Inevitably, of course, the answers you've given have been about how CBA will approach the task?---Yes.

15 Now, my issues are necessarily a little bigger?---Yes. Yes, they are.

20 And the basic question is are we all dependent upon what each entity does, about culture, governance, issues of that kind; is there any role for external supervision, rule-making – I don't care what form of externality we include in that, but is it all internal or is it something that needs to be supported by, enforced by, buttressed by external action. A very large question?---Yes.

25 But do you see the kind of issue I want you to grapple with?---I do. I mean, I – I see a role at multiple levels, of course. It has to be dependent on the individual institutions and the – the boards and management have to be accountable for those institutions. And then, of course, the – the regulators and the regulatory architecture needs to be established in a – in a – in a very clear way which – and then enforced appropriately. And I do think – particularly on the point of culture, I think it's – it's hard and it's a very – it's a very complex issue, and often one that's difficult to – to measure and manage. I do think things like the accountability regime, I think some of that will drive quite a specific focus. Clearly, in the context of our failures and to
30 the extent that they are representative of other problems in the industry, I think they're – they're quite, as we've discussed over the last day and a half, quite identifiable and observable. And so there should be consequences associated with repetition in those areas. And I know that the regulators turn their minds to – to how to look at culture as well. I think that's an issue that's a live topic here. It certainly is, as I understand, in all of the other banking markets. And I'm not sure there's a – there's a perfect landing there. I think there's certainly a role for institutions, and I think there's a role for regulators.

40 Some of the international work I've looked at is tending to suggest that culture and governance, particularly, are matters about which prudential supervisors should have a concern. Not in the sense of it being a topic where a prudential supervisor can say, "You, entity X, will develop culture A, B, C." But that the prudential supervisor can nudge, question, ask, point the way forward. Now, is that something that is worth
45 exploring, or is it something that you think is to be discarded?---No, not discarded. I – I think those insights of the regulators are very helpful. I think it's – it's known – perhaps I cover in my witness statement that APRA in 2015 had described us in two

words as arrogant and bureaucratic. And I think if the organisation, perhaps, reacted quite differently to that, I think there were very important insights and observations. I thought that the work that the panel did as part of the prudential inquiry around culture – and they sent out a survey to all of our staff, but at least – I am pretty sure it was more than 10,000 people responded. They reviewed. It was obviously a very thorough exercise. But I think the regulators do provide unique insights, and very useful insights. And that's, in my brief time in the role, the feedback that I get from both the – the chair of APRA and also, of course, the chair of ASIC, and even from the onsite supervisory team as they go through the individual matters which are in different parts of the organisation, they've picked up already some – some observations that I think are very accurate. So I do feel that there is a role. I think it's hard for them to regulate it, but, certainly, I think they should be encouraged to provide – to the extent they don't already – encouraged to provide those views and institutions such as the Commonwealth Bank will embrace those.

But at what level of the entity should – should the contact be: CEO and chair, or at several levels? How do you see the supervisor – the prudential supervisor interacting with the entity?---Well, I mean, at multiple levels. Certainly at the board and with the chair, and our chair meets directly with the – the chair of APRA, in this case. But I also think they've got good observations because they tend to be dealing with different parts of the organisation at times in quite – in quite detailed areas. And from my perspective they often have insights on, certainly, three or four levels below the chief executive about individual people, and I know at least in – in one instance, that they had concerns with a particular individual and if we had either asked for those views or heard those views, that – that may have avoided at least one of the matters we've discussed over the day and a half.

Hindsight is a wonderful thing - - -?---Yes, it is.

- - - Mr Comyn. Yes. Ms Orr, is there anything arising out of that?

MS ORR: No, thank you, Commissioner.

THE COMMISSIONER: Mr Finch?

MR FINCH: Nothing arising, Commissioner.

THE COMMISSIONER: Thank you very much, Mr Comyn?---Thank you, Commissioner.

You may step down.

<THE WITNESS WITHDREW

[1.10 pm]

THE COMMISSIONER: Ms Orr, if we come back when 2 or 2.15?

MS ORR: I think 2.15.

THE COMMISSIONER: 2.15. Is that going to be convenient for Ms Livingstone?

5 MR FINCH: It will be. Thank you, Commissioner.

THE COMMISSIONER: Yes. 2.15, then.

10 **ADJOURNED** [1.10 pm]

RESUMED [2.14 pm]

15 <CATHERINE BRIGHID LIVINGSTONE, SWORN [2.14 pm]

20 <EXAMINATION-IN-CHIEF BY MR FINCH

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

25 MR FINCH: Thank you, Commissioner.

Ms Livingstone, I think your full name is Catherine Brighid Livingstone?---That's correct.

30 Your business address is 201 Sussex Street, Sydney?---Yes.

You are the chair of the CBA?---That's correct.

35 You are here pursuant to a summons dated 9 November 2018?---Yes.

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

I tender the summons, Commissioner.

40 THE COMMISSIONER: Summons to Ms Livingstone is exhibit 7.27.

EXHIBIT #7.27 SUMMONS TO MS LIVINGSTONE DATED 09/11/2018

45 MR FINCH: Nothing further, Commissioner.

THE COMMISSIONER: Thank you. Ms Orr.

<CROSS-EXAMINATION BY MS ORR

[2.15 pm]

5

MS ORR: Ms Livingstone, you've been a member of CBAs board since 1 March 2016?---That's correct.

10 And the chair of CBAs board since 1 January last year?---That's correct.

Now, before you joined CBAs board, you were a member of the board of Telstra?---Yes.

15 You became a member of Telstra's board in November 2000?---Yes.

And you were appointed chair of Telstra's board in May 2009?---That's correct.

You've also been the chair of the CSIRO?---Yes.

20

And a member of the boards of Macquarie Group Limited, Goodman Fielder Limited and Rural Press Limited?---Yes.

And from 1994 to 2000, you were the CEO of Cochlear Limited?---Yes.

25

So you have experience at senior levels in healthcare, science and research, food, media, telecommunications and financial services industries?---That's correct.

30 Now, reflecting on your time in those different industries, do you think that there are particular features of the financial services industry that mean there's a greater risk of misconduct in that industry or conduct that falls below community standards and expectations?---Yes. I – I think there is.

35 And what are those features that give rise to that greater risk, Ms Livingstone?---Well, I think starting with the degree of regulation. So it's a more highly regulated sector than almost any other. And, of course, it's the products that it offers go to the heart of what is very personal to individuals. So it's their financial wellbeing.

40 Now, as a director and as the chair of CBA you've presided over a difficult time for the bank?---I would agree with that, yes.

45 And we've heard evidence from Mr Comyn about a number of events in that time, but I want to take you through the sequence of some of the events after you joined the board of CBA?---Mmm.

In March 2016, shortly after you joined the board, Four Corners and Fairfax Media reported on a number of concerns about CommInsure's life insurance business including about the definition of heart attack used by CommInsure in its trauma policies?---Yes.

5

That was March 2016?---Yes.

And then about six months later, in October 2016 ASIC released its report 499 in relation to fees for no service?---That's correct.

10

And the report said that CBA had identified systemic issues in relation to the charging of ongoing service fees?---Yes.

And that CBA estimated at that time that it would need to pay over \$100 million in compensation to customers who had been charged a fee for a service they didn't receive?---That's correct.

15

And then a couple of months after ASIC's report into fees for no service, in December 2016, shortly before you became chair, CBA entered into an enforceable undertaking in relation to ASIC's concerns about CBAs wholesale spot foreign exchange business?---Yes.

20

And then in May 2017, PwC completed a targeted review into CBAs home lending practices, and identified concerns with CBAs processes for verifying the financial circumstances of borrowers, and its processes for monitoring serviceability overrides?---Yes.

25

In August last year, AUSTRAC commenced the civil penalty proceeding against CBA that I've discussed earlier today with Mr Comyn?---Yes.

30

And CBA agreed to pay a penalty in respect of the contraventions alleged in that proceeding of \$700 million?---That's correct.

And later that same month, CBA announced that it would be refunding \$10 million to 65,000 customers who had been sold unsuitable credit card insurance?---That's correct.

35

And towards the end of that month, we're in August last year, APRA announced that it would conduct its prudential inquiry into CBA?---Yes.

40

Then in December last year, this Royal Commission was established. And in January this year, ASIC commenced a civil penalty proceeding against CBA alleging unconscionable conduct and market manipulation in relation to CBAs involvement in setting the bank bill swap rate in 2012?---Yes.

45

And CBA agreed to pay a total of \$25 million in relation to that proceeding?---Yes.

And entered into another enforceable undertaking with ASIC?---Yes.

Then in May this year APRA released the final report of the prudential inquiry and CBA entered into an enforceable undertaking with APRA in relation to the
5 recommendations in that report?---Yes.

And under that enforceable undertaking, CBA was required to submit a remedial action plan responding to each of the recommendations made in the final report?---Yes.
10

And CBA was required to appoint an independent reviewer to monitor CBAs compliance with that remedial action plan?---Yes.

And to provide a report to APRA showing how the findings of the prudential inquiry were reflected in the remuneration of current and past CBA executives?---Yes.
15

And as a result of the findings of that inquiry, APRA added \$1 billion to CBAs minimum capital requirement?---Yes.

20 What are the practical consequences for CBA of a \$1 billion increased capital requirement?---Well, literally, that you have to hold that additional capital and that, effectively, reduces your profitability. But it's actually intended to cover the consequences if there were an operational risk incident because it's operational risk capital that we are required to hold the extra, as operational risk capital.
25

And finally in this sequence of events, in July this year CBA entered into another enforceable undertaking with ASIC in relation to the way that it distributes certain superannuation products?---Yes.

30 Now, I want to ask you some questions about the board's role in addressing some of those events and the causes of some of those events, but before I do that, having heard me lay out that chronology of events since your time joining the board of CBA, are there any observations that you would like to make about that chronology of events?---I think it's a fairly damning chronology of – in some instances the
35 bank's behaviour, in other instances, the bank's control over its non-financial risks.

Now, CBAs board has four permanent standing committees. Is that right?---That's correct.

40 They're the audit committee, the risk committee, the remuneration committee, and the nominations committee?---Yes.

And you're a member of each of those committees?---As chair, yes. I chair the nominations committee as well.
45

And I want to make sure that I understand the role of each of those separate committees. The nominations committee is responsible for the appointment of board members and the CEO. Is that right?---Yes.

5 And you've been the chair - - -?---Sorry, the board ultimately appoints the CEO. But the nominations committee will do, if you like, the ground work in relation to it.

Thank you. And you've been the chair of the nominations committee since you became chair of the board?---Yes, that's correct.

10

And the remuneration committee oversees the bank's remuneration policy?---Yes.

And it makes recommendations to the board about the remuneration of the CEO and senior executives each year?---That's correct.

15

And you've been a member of the remuneration committee since you became the chair of the board?---Yes.

20 Now, the risk committee and the audit committee both play an important role in the board's oversight of CBAs risk management framework?---Yes.

Do you agree with that?---Yes.

25 And I want to understand a bit better how that works in practice. APRA's prudential standards require CBA to have a risk management framework. Is that right?---That's correct.

And it's the board's responsibility to oversee that risk management framework?---Yes.

30

And it does that both through the risk committee and the audit committee?---Well, the risk committee has a primary carriage in terms of compliance with CPS 220, which is the APRA standard, and the role of the audit committee in relation to the risk committee is to advise if there are any observations from the assurance function, which would come through the audit committee that have implications for the control environment, the audit committee refers that matter to the risk committee, so the risk committee can take it into account in its assessment of the risk management framework.

35

40 Thank you. Can you explain what a risk management framework is?---So it's the overall way the organisation is organised to identify, manage and mitigate the risks of the organisation, so it starts with the business plan because that defines the business you're in. In our case, it obviously also includes what we call the risk management approach, which is the overarching governance approach, and a risk appetite statement. And then underneath that, you define the risks that you are managing, which in our case, obviously, is the financial risks. So market risk, liquidity risk, capital risk, and the non-financial risks. So they've traditionally been

45

described as operational and compliance risks, but we take those – we now take those down to a more granular level. So we identify the specific risks such as conduct risk, and so on, that fit under that non-financial risk category.

5 And the board is responsible for setting a risk appetite - - -?---Yes.

- - - in relation to both the financial risks and the non-financial risks?---That's correct.

10 And for approving a risk management strategy which describes how the risks are going to be managed so that they stay within the appetite. Have I got that right?---That's correct.

15 And each year CBA is required to conduct an audit of the effectiveness of its risk management framework?---That's right. And every three years an independent audit.

20 Yes. And as part of that audit process, CBA conducts audits of the different controls that it has in place to make sure that it stays within the risk appetite?---That's right. Through – through the various assurance function activities, yes.

25 So is that an example of one of the controls, the assurance function?---Well, the assurance – it's one of the elements of the risk management framework. The assurance function actually looks at specific controls, in particular areas.

30 So can you give an example of a control?---So, for example, if you take the mortgage business. So there would be controls over entry of borrower data or compilation of the living expenses, for example, or their other financial institution borrowings. So there would be controls over various elements of the process. So you have to start with a process, and then identify the control points in the process, and then assurance looks at those control points. And then from that you can draw a conclusion as to whether you are in – within risk appetite.

35 And the audits - - -

THE COMMISSIONER: Ms Orr, I am sorry to interrupt but it looks as though the whole of the system is having a quiet little nervous breakdown on us at the moment. We have neither transcript nor the evidence screen.

40 MS ORR: I see.

THE COMMISSIONER: I suspect the feed has probably gone down as well. I think we've got no choice - - -

45 MS ORR: Perhaps we need to take an adjournment.

THE COMMISSIONER: - - - except to stop for a time. If somebody can let me know when the system is back up. You are privileged, Ms Livingstone. You have all aspects of the system go down around you?---As long as I don't feel responsible.

5 I will come back when I'm told that it's back up, Ms Orr.

MS ORR: Thank you, Commissioner.

10 **ADJOURNED** [2.29 pm]

RESUMED [2.45 pm]

15 THE COMMISSIONER: I'm sorry about that, Ms Livingstone, but these things happen?---Indeed, Commissioner.

20 MS ORR: I might just check before I commence, Commissioner. All right.

Ms Livingstone, I had been asking you questions about the different controls that are in place to make sure that CBAs risk remains within its risk appetite. And we had been speaking about the assurance or audit function, and the role that it plays in assessing those controls?---Yes.

25 And the results of the audits are reported to the audit committee. Is that right?---That's correct.

30 And you've been a member of the audit committee since you joined the CBAs board in March 2016?---I think that's right.

And you've been a member of the risk committee - - -?---Yes.

35 - - - Since you became chair in January last year. Now, I want to ask you a bit about each of those different roles that you have within CBA, starting with your roles as a member of the risk and the audit committees, and as chair of the board?---Yes.

40 Now, CBAs board, as we've just been discussing, is ultimately responsible for the way that CBA manages risk?---Correct.

Do you agree with that?---Yes, I do.

45 And that includes the financial sorts of risks that you mentioned before, credit risk, liquidity risk?---Yes.

But it also includes non-financial risks, like conduct risk?---Yes.

Compliance risk, reputational risk?---Yes.

5 And would you agree that failings in CBAs governance and risk management arrangements contributed to the misconduct and conduct that fell below community standards and expectations that has occurred at CBA at recent years?---Yes, I would agree with that.

10 The final report of the prudential inquiry into CBA made a number of criticisms of CBAs governance and risk management arrangements?---Yes.

15 And a fundamental finding in that report was that the degree of attention and priority given to the governance and management of non-financial risks within CBA was not to the standard that would, in the words of the panel, “have been expected in a systemically important bank”?---That’s correct.

20 And you agree with that assessment?---I agree with it.

25 And the prudential inquiry found that the board, together with its risk, audit and remuneration committees, demonstrated significant shortcomings in the governance of non-financial risks?---That’s correct.

And this was one of a number of concerning findings that were made by the panel about the board. Do you agree with that?---Yes, I do.

30 And some of the others included that:

The board did not demonstrate sufficient rigour and urgency in holding management to account.

35 ?---That’s correct.

Do you agree with that?---Yes.

40 The board had not sufficiently challenged management. Do you agree with that?---Yes. I mean, when I’m agreeing, I’m agreeing in terms of in the past.

Yes?---But that’s not necessarily the case now.

45 I understand. And the panel also found that the board had not insisted on improvement by management?---That’s correct, generally, yes.

And that the effectiveness of the board and its committees was hampered by gaps in reporting to the board and the committees?---That’s correct.

Do you agree with that?---Yes, I do.

And the board didn't set a clear tone from the top in relation to the management of non-financial risks?---That's correct.

You agree with that finding?---Yes, I do.

5

Now, the prudential inquiry said that those findings related largely to the operation of the board prior to your appointment as chair?---They made several references to that effect, yes.

10 Yes. But you were a member of CBAs board for 10 months before you were chair?---That's correct, 10 months, but probably five meetings – five or six meetings.

Over the course of that 10 months?---That's correct, because I had leave of absence for the June meeting.

15

And what were your views of the operation of the board during that time under the previous chair?---So I was quite surprised by the – the lack of challenge.

20 What surprised you about it? Was it inconsistent with the style and frequency of challenge that you had seen on the other boards that you had been part of?---That's correct.

25 So you were surprised by the lack of challenge. Did you have any other views of the operation of the board during that 10 months before you took over as chair?---Well, I think the point that the prudential inquiry made about the follow-up of – of issues, I think the urgency there and the degree of follow-up, in general terms, was not what I had been accustomed to.

30 So there was insufficient follow-up of issues by the board, follow-up of management?---That's right. I mean insufficient in terms of over time as distinct from the follow-up itself, as in the follow-up would take too long.

35 The follow-up would take too long. Do you mean by that that the board waited too long for - - -?---Yes.

- - - the results of that follow-up?---Yes, and to ask the next question. Yes.

40 All right. So you said there was insufficient urgency in the board's approach to follow-up?---Yes, that's correct.

45 So there were too few questions asked of management. That was, I think, the first point that you made, insufficient challenge?---Insufficient challenge and, again, as the inquiry highlighted, too much store placed in assurances from management, which has, effectively, then led to insufficient challenge. So it was somewhat circular.

So too few questions asked of management and too little follow-up after those questions were asked. Is that - - -?---Yes.

- - - a fair summary of that?---Yes, it is.

5

And that surprised you based on your experience on other boards?---Yes, it did.

10 Did you discuss your observations with any of the members of the board, or – including the chair of the board?---When we – in the August, I think it was, in the – around the August timeframe after I joined, which would have been my third meeting, I think, we – the chair did a performance review by having one on one meetings with individual directors. And I think I may have raised at that time just the – just the style of the board, but I can't – I can't recall exactly.

15 You may have raised the style of the board, did you say?---Yes, but I can't – I can't recall exactly, because – yes, no, I can't recall.

20 Do you recall raising any of the matters you just identified for me?---I can't recall specifically, no.

25 Well, did you take any steps – as a member of the board, did you take any steps to address the concerns that you had?---Well, as a new member of the board and three meetings in at that point, you're still trying to get a feel for how the board works. You can't form judgments immediately on how a board functions after two or three meetings, usually. So in fairness, you would generally wait up to six months before forming a view.

You wait up to six months - - -?---As a – as a - - -

30 - - - as a director of the board before forming a view on the operation of the board?---Before forming a definitive view because you haven't seen a full cycle of meetings, and activities of the board.

35 But you - - -?---And you don't also - - -

Sorry?---Sorry, you don't also have the detailed knowledge of all of the issues at that point.

40 But you had seen enough of the way the board operated to form these concerns?---I had formed the concerns, yes.

And you didn't take any steps to address those concerns at that point?---At that point, I was still forming my view.

45 Now, I want to come to some of the changes that have been made since you became chair of the board, but before I do that, I want to ask you about three aspects of the board's involvement in CBAs governance and risk management arrangements. The

first is the way that the board and its committees respond to misconduct and compliance issues when they're brought to the attention of the board. And the second is the way that the board and its committees are positioned to identify new misconduct and compliance issues, and the third is the tone that the board sets in relation to the management and importance of misconduct and compliance issues. Those are the three topics that I want to deal with. So I want to start with the first of those, which is the way that the board and its committees respond when misconduct is drawn to its attention. And I want to deal with this by asking you about the way that the board dealt with the Anti-Money Laundering and Counter-Terrorism Financing breaches that became the subject of the civil penalty proceeding brought by AUSTRAC last year. Now, you may have heard me ask some questions of Mr Comyn about these matters?---Yes, I did.

You saw that evidence, Ms Livingstone?---Yes, I did.

And the questions that I put to Mr Comyn were focused largely on the handling of those AUSTRAC issues by management, in particular by the executive committee. But I want to ask you about the handling of those issues by the board?---Yes.

Now, do you agree that the AUSTRAC contraventions demonstrated significant failings in CBAs management of risk?---Yes, I do.

And CBAs internal audit department had identified issues with CBAs processes for complying with those legal obligations many years before AUSTRAC commenced its civil penalty proceeding in 2017?---That's correct.

The issues were identified by the audit department in 2013?---Yes.

And they were identified again in 2015?---Yes.

And they were identified again in 2016?---Yes.

And in each of those years, the audit reports rated anti-money laundering and counter terrorism financing with an overall red rating?---That's correct.

What does an overall red audit rating mean, Ms Livingstone?---Well, it's the most serious rating you can have on an audit report. And in relation to the controls in the relevant area, it would indicate that the – the area is not in a state of control.

The controls are failing?---Yes.

So red audit ratings for the controls in that area in 2013, '15 and '16?---That's correct.

And the findings of each of those audits were reported to the audit committee?---I believe they would have been.

Yes. Well, you weren't on the board in 2013 or '15?---No.

But you were a member of the board and the audit committee in 2016?---That's correct.

5 And throughout 2016 the board received documents called regulatory reports?---Yes.

Is that right?---Yes, that's right.

10 And can you explain what a regulatory report is?---The regulatory report covers a range of regulatory matters. It will be interactions with regulators, it will be breaches and it will be changes in the regulatory environment in terms of new regulation.

So does it include an update for the board on any significant regulatory interactions

15 - - -?---Yes.

- - - that CBA is having?---Yes, it does.

Now, on 8 November 2016, the board received a regulatory report which included

20 information about CBAs interactions with AUSTRAC. Are you familiar with that?---Yes.

Now, I will show you that regulatory report, which is CBA.0502.0001.6960. Right.

So we have there a copy of the regulatory report provided for the board, dated 8

25 November 2016?---That's correct.

Now, if we bring up two pages within that document together. Could we bring up 0010 and 0011. We have 0010 on the screen and hopefully we will also be able to bring up 0011. But at 0010 you can see the start of the update that the board received

30 about CBAs dealings with AUSTRAC. You see that towards the bottom of the page?---Yes, I do.

The document recorded that on 22 June 2016 a statutory notice had been received from AUSTRAC's enforcement team for the production of information and

35 documents relating to CBAs compliance with AUSTRAC's customer on-boarding and ongoing customer due diligence requirements. You see that?---Yes, I do.

And the report also said that on 2 September 2016 a second statutory notice had been received from AUSTRAC?---Yes.

40 And then over the page we see a reference to 14 October 2016, CBA responded to the second statutory notice and also received a third statutory notice from AUSTRAC?---Yes.

45 So by the beginning of November 2016, CBA had received three statutory notices from AUSTRAC requiring it to provide information about its anti-money laundering and counter-terrorism financing compliance?---That's correct.

Now, you were present at the meeting of the board at which this regulatory report was discussed?---Yes.

5 I want to move to the minutes of that meeting, but first could I tender the regulatory report.

THE COMMISSIONER: Regulatory report, 8 November '16, CBA.5502.0001.6960, exhibit 7.28.

10

**EXHIBIT #7.28 REGULATORY REPORT DATED 08/11/2016
(CBA.5502.0001.6960)**

15 MS ORR: Have you reviewed the minutes of that meeting on 8 November 2016, Ms Livingstone?---I may have. I can't immediately recall.

20 I want to put to you, and I will bring the document up to assist you, that they record no more than the board was told that there had been no further statutory notices since the third statutory notice, and that the board discussed and noted this report. Would you like me to show you the document so you can see that reference?---Well, no, I think that's -- that's fine, because - - -

25 Does that accord with your recollection?---Well, it -- not completely. So -- but either at the October meeting, and I think it was the October meeting, because I think by then the second notice had been received, I challenged management about why were we getting these notices. What was behind them. And was AUSTRAC concerned about something. And so the answer I received was, well, AUSTRAC knew that we were working hard and investing in our financial crimes compliance platform but
30 that we weren't fully compliant at that time. And that there was significant work and significant investment going on, and that we were maintaining contact with AUSTRAC. And in addition, the then CEO of AUSTRAC had actually met with the board at its June 2016 meeting, at which I was not present, but had not raised any issues with the board at that meeting. I have to say, I was concerned about the fact of
35 the notices, and I had had experience with AUSTRAC in a previous role. So it didn't feel quite right to me that AUSTRAC would be comfortable with where we were, but management provided assurances that they were fully informed about the situation of -- in terms of our level of compliance.

40 When you say "management", who provided those assurances?---The CFO did.

So you say that this happened at the October meeting?---I'm -- I think it was at the October -- it was either the October or the December. It wasn't at the November meeting.

45

I see?---So I think it might have been October.

So around this time, at a meeting at which you were told that these notices had been issued, you, as you describe it, challenged management about that, and you were given the assurances that you've just described from the CFO?---Yes, but I didn't feel comfortable with those assurances.

5

And what did you do, given that you didn't feel comfortable with those assurances?---So by that time, it had already been – it was being announced that I was becoming chair of CBA from 1 January. So as soon as I came into the chair, as a matter of good governance I arranged to see each of our major regulators to introduce myself in my new role, and included AUSTRAC as one of the regulators I went to see almost immediately as I came into the role.

10

So was that in January?---That was in January, yes.

15

- - - 2017. So can we come to January because I want to move through this – these events before January. So there's the meeting which you think was either October or December where you challenged management and received the assurances?---Yes.

20

The third of the three overall red audit results that I referred to earlier was produced on 5 December 2016. Is that right? I should be clear, that's the date on which it was reported to the audit committee?---Okay.

Does that sound right to you?---It sounds right, yes.

25

So do you think that that report to the audit committee happened before or after the discussion that you're describing with the CFO at a board meeting?---I – I think – and I – I'm just not sure about my memory – I think it was at the October meeting that I raised the issue.

30

Okay?---I think it was but - - -

35

So let's work on that assumption for now, that you raised those matters and received those assurances at the October meeting. And then there was the document that's on the screen at the moment, the regulatory report dated 8 November 2016, which confirmed that there had been three notices in total. Then on 5 – I'm sorry, on 5 December 2016, the third red audit report was reported to the audit committee. And you were present at the meeting of the audit committee at which that audit report was discussed. Is that right?---That's correct.

40

Now, can I take you to a document about that meeting. CBA.0502.0001.1265. Now, this is the agenda for that meeting of the audit committee on 5 December 2016?---Yes.

45

And we see from the agenda that the meeting was scheduled to start at 1.30 in the afternoon. And to finish at 3.20 in the afternoon. So just under two hours?---That's correct.

And we see from items 5, 6 and 7 on the agenda that 30 minutes of time was allocated to three items. The audit report, the group audit and assurance report, the group audit and assurance charter biennial review and the key audit themes for the six months ended 31 October 2016?---That's correct.

5

Now, can I take you, firstly, to the paper that corresponds to item 5, the group audit and assurance report, which is at 0037. CBA.0502.0001.1265.0037. I'm sorry, Commissioner, I don't think this is a topic I can deal with without the document - - -

10 THE COMMISSIONER: I understand that.

MS ORR: - - - to assist Ms Livingstone.

THE COMMISSIONER: Yes, I understand that.

15

THE WITNESS: Are there hardcopies I can look at?

MS ORR: There may be but I think the Commissioner and others will need the version on the screen. We have it. Ms Livingstone, so this is the paper that corresponds to item 5 in the agenda that I took you to, the group audit and assurance report produced for the audit committee meeting on 5 December 2016. Now, can I ask you, firstly, to look at 0041 in the document?---So section 4.1, do you mean?

20

THE COMMISSIONER: No.

25

MS ORR: I'm sorry, it's the attachment to the paper?---I'm sorry, yes.

Which is at page 0041.

30 THE COMMISSIONER: The page is now up?---Yes.

MS ORR: So the attachment that you have in front of you now is a summary of the results of all the reports issued by group audit and assurance in September and October 2016?---That's correct.

35

And does each line in this table summarise the contents of a separate audit report?---Yes, it does.

And we can see that there were three areas identified with an overall red rating: anti-money laundering and counter-terrorism financing, special audit on non-performing loan client, and the Commonwealth financial planning ongoing service matter?---That's correct.

40

And the anti-money laundering and counter-terrorism financing entry records that the control environment was rated unsatisfactory, management awareness and actions were rated marginal, and the overall rating was red?---That's correct.

45

The last of the three overall red matters is the fees for no service matter that was the subject of a case study in the second round of hearings?---That's correct.

5 Now, down the bottom of the page underneath the table, the first line we see there is that:

Copies of all audit reports are available upon request.

10 Do you see that line under the table?---That's correct.

15 And having received this document with the one-line summary of the three red audit reports, did you request a copy of any of the audit reports?---No, I did not. As the prudential inquiry report raised the – the chairman of the audit committee provided the briefings on the audit reports. We should have asked for the detailed audit reports but we didn't.

Well, to your knowledge, did anyone else on the audit committee request a copy of any of the audit reports?---I – I don't know that – the answer to that, Ms Orr.

20 But you say you didn't and you should have?---That's correct.

25 And during – on your time on the audit committee prior to the prudential inquiry, the APRA prudential inquiry, do you recall anyone on the audit committee ever requesting a copy of an audit report?---No, I – I don't recall that they did.

You don't recall anyone ever doing that on the audit committee?---I – I don't recall that – they may have but I don't recall.

30 So the only detail the audit committee had about the nature of the audit failings, which was the substance of the work it had to do, was the information contained in the lines in this sort of document, this sort of attachment?---No, there was a full briefing from the chair of the audit committee and the head of group assurance.

35 I will take you to that as well. So there was the discussion that's recorded in the minutes and in addition to that discussion there was this style of document, this attachment that summarised the results of the audits. Is that right?---That's right. There would be another – because this is a review of six months. There should be another page.

40 It says for September and October 2016?---Sorry. But there should be another page in the group assurance report which actually describes the audit itself.

45 Well, let's look at – are you talking about the paper presented by the group audit and assurance?---There should be in there, yes.

All right. Let's go back to that paper to which this document is attached. That's back to 0037. And I will take you through what's said about this matter in that paper. In the executive summary we see at 3.1:

5 *Despite improvements in anti-money laundering and counter-terrorism*
financing over the last two years, our audit outcome was red. A large number
of AML/CTF issues continue to exist across the group. Many of these have
been self-identified by line 1 and line 2 which has driven an improved
10 *management awareness rating. There are also a number of issues that remain*
from our 2014 AML/CTF audit, and repeat issues because necessary controls
have not been suitably designed. Know Your Customer error rates remain too
high in certain business units.

15 So that was the executive summary reference to this particular audit?---That's
correct.

 And it was clear from that paragraph that there had been audit failings in previous
years in relation to the anti-money laundering and counter-terrorism financing
20 systems at CBA?---That's correct.

 There was a reference to the 2014 audit report?---Yes.

 Did you request a copy of that audit report?---No, I didn't.

25 To your knowledge, did anyone else on the audit committee request a copy of that
audit report?---Not – not to my knowledge.

 And if we keep that page on the screen and bring up at the same time the following
page, we can see what the report said under the heading Anti-Money Laundering and
30 Counter-Terrorism Finance in red, can you see that at 4.2 at the bottom of the first
page?---Yes, I do.

 Continuing:

35 *A large number of AML/CTF issues continue to exist across the group. Two-*
thirds of the issues were raised by line 1 and line 2 together with new issues
found by our audit. Issues include a significant number that remain open from
our prior AML/CTF audits due to delayed remediation and repeat issues
40 *resulting from fixes not being suitably designed.*

 And paragraph 4.2.2, also dealt with this matter. And you will see the reference in
the last sentence to:

45 *Know Your Customer error rates having improved across the group since the*
2014 audit but some business units lag behind with significant error rates self-
reported in business and private bank, over 20 per cent, and to a lesser extent
in Wealth Management, 8 per cent.

You see that?---Yes, I do.

5 And I will let you read the remaining paragraphs before the next heading, Wealth Management Advice, if you would like to, so that you can see the full extent of the information provided in this paper.

THE COMMISSIONER: If we take the pop-up down. Yes.

10 THE WITNESS: Yes.

MS ORR: So that is the information contained in the document about these particular issues, the anti-money laundering and counter-terrorism financing issues?---That's correct.

15 And you would have seen from that information that repeat issues were occurring because CBA hadn't designed suitable and necessary controls?---That's correct.

20 And that the know your customer error rates in some business units were over 20 per cent?---Yes.

Now, the issues that were remaining from the 2014 audit that had not been addressed, based on this document what did you understand the nature of those issues to be?---I think the – on the 2014 audit, I think that was substantially – I think that was a transaction monitoring audit.

25 Did anyone tell you that? It's not clear from this document?---No, but in – in terms of this whole area, I've sought to inform myself, obviously, with the AUSTRAC issue just exactly what happened.

30 But at this point, at the audit committee meeting on 5 December 2016, did you have information that allowed you to understand what the 2014 problems were that were outstanding?---I can't recall. Honestly, I can't recall.

35 As a - - -?---But I – I do recall in terms of discussion and the assurance from management, again, as to what was being done, and particularly in relation to the KYC and the Auckland hub, in particular - - -

40 I want to come to the minutes of the meeting so that we see what's recorded as to the discussion of this paper, but do you accept that this was the information provided to the audit committee about these issues for the meeting on 5 December - - -?---Yes, I do.

- - - 2016?---Yes, I do.

45 And as a member of the audit committee who received this report, what was your reaction to these matters?---Well, as I said, I was concerned about them, and not confident in the assurances that I was receiving from management that AUSTRAC

was aware of the progress that we were making in – in terms of our financial crimes compliance.

5 So do you think this was the meeting at which you expressed the concerns that you raised earlier with me?---It – it may have been. Honestly, I can't remember between the October and the December meeting which meeting it was I particularly raised the concerns.

10 I see. So do you remember what you said to management at this meeting in response to these issues?---I can't recall exactly at this meeting.

All right. Well, let's look at the minutes for that meeting. But I will first tender the paper for the audit committee on 5 December 2016.

15 THE COMMISSIONER: Audit committee papers 5 December '16, CBA.0502.0001.1265, exhibit 7.29.

20 **EXHIBIT #7.29 AUDIT COMMITTEE PAPERS DATED 05/12/2016 (CBA.0502.0001.1265)**

25 MS ORR: Now, the minutes are at CBA.0502.0001.1303. I assume you received the paper ahead of the meeting, Ms Livingstone?---Yes.

How far ahead of the meeting would you have received that paper?---At that time, it would have been probably just under a week, possibly.

30 And you read the paper?---Yes, I did.

And it concerned you?---Yes.

It concerned you insofar as it related to the anti-money laundering matters?---Yes.

35 But you did not seek a copy of the audit report?---No.

And you did not seek a copy of the 2014 audit report referred to in the paper?---No, I didn't. But I think it was pretty clear, even from the summary, how serious the issues were.

40 Well, how – what – what was clear about the 2014 issues from the summary, Ms Livingstone?---Well, the fact that - - -

What did it tell you about them?---The fact that there were still issues from 2014.

45 Yes, but did it tell you - - -?---Of itself.

- - - anything about the nature of those issues? Did it tell the board what the problems were from the 2014 audit that were not addressed?---No, it didn't.

5 All right. So you then attend this meeting of the audit committee on 5 December 2016. We have the agenda on the screen at the moment. And this document includes the minutes – I'm sorry, this is the agenda for the February 2017 meeting which annexes the minutes from the December 2016 meeting. I apologise if that confused you. I want to go to those minutes which are at 0002. We see from this page that you were present at this meeting?---That's correct.

10 And if we turn to item 5 at 0006 – it would be useful to have 0006 and 0007 on the screen together – we can see what was said about the audit and assurance report that I've just taken you to. And the minutes record under item 5 that Mark Worthington – he was the group auditor. Is that right?---That's correct.

15 The head of audit?---Yes.

20 He presented the report. And Aidan Gillies and Philippa Maiden attended and commented on aspects of the reports. Now, what part of the business were Mr Gillies and Ms Maiden from?---Mr Gillies would have been from the internal audit group and Philippa Maiden was from group security which was the group within financial services who had taken over responsibility for financial crimes compliance.

25 Okay. So you had a representative of the audit group beyond Mr Worthington and a representative – is that the business unit responsible for the anti-money laundering systems?---That's correct.

And why were they invited to the meeting?---Because they would have been asked to be available to comment on the outcome of a red audit.

30 And we see that Mr Gillies commented upon the red rated report noting that:

35 *A large number of issues continue to exist. However, this audit also found that more issues were being self-identified resulting in the management awareness and action rating moving from red rated to amber rated.*

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

40 And further down, we see that Philippa Maiden commented on the reporting each day to AUSTRAC?---That's correct.

After that, we see from the top of the next page, that Philippa Maiden left the meeting?---Yes.

45 And Mr Gillies then updated the committee on the red rated report for the CFP ongoing service issue noting that it was red due to a weak controls environment?---That's correct.

And we see here that the minutes record that:

The committee expressed its disappointment that this has been found to still be an issue and asked management to explain the delay in remedying the issue.

5

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

And towards the end of that paragraph:

10 *The committee raised questions on various matters including what staff behaviours (if any) needed to change and why the business had continued to charge the fee.*

?---That's correct.

15

And then we see the committee discussed and noted – I'm sorry, we will need to pan back – the final line is that:

The committee discussed and noted the group audit and assurance report.

20

?---That's correct.

Now, the minutes don't report the committee saying anything about the anti-money laundering and counter-terrorism financing audit issues?---No, they don't, but that wouldn't mean that there hadn't been a discussion.

25

No, we can see that there was a discussion. And the minutes tell us something about the discussion for the fees for no service issue. We see the expression of disappointment, we see the questions asked of management. We don't see any of that for the anti-money laundering matter, do we?---No, we don't.

30

Why is that?---I – I can't say – I can't say why that is but it – it would have been discussed.

35

And what do you recall of that discussion?---In the November meeting.

We're in the December meeting now - - -?---Sorry, December meeting, I can't – I can't specifically recall the discussion in that - - -

40

Do you think that if the committee had raised questions about the matter, we would see that reflected in the minutes, as we do for the fees for no service issue?---Yes. The – the minutes should have recorded that.

45

And do you recall any questions being asked?---Well, as I say, I – I don't remember whether it was at the October or the December that I particularly challenged this – the situation in relation to the AML/CTF compliance.

All right?---I'm sorry, I just can't recall which it was.

The fact it's not referred to in this document, does that suggest to you that it was not at this meeting?---It – it may, yes.

5

Would you expect the minutes to record where the audit committee has required management to respond to questions and provide assurances?---Yes, I normally would, yes.

- 10 Yes. Do you think that the committee took the audit findings in relation to the anti-money laundering and counter-terrorism financing issues seriously enough?---I think – I think it's fair to say that not seriously enough, because there was, as I've said, the reliance on management's assurances about all the work that was being done, but as it's – as it's clear, there were still many issues that remained outstanding,
- 15 notwithstanding the amount of money that had been spent and the time that had been spent on upgrading the compliance.

- What did you and the other members of the audit committee do to hold management to account for those failings and to require them to fix them?---Well, the discussion
- 20 is – and would have been what – how long is it going to take and what's happening, but I think, as is clear from what has happened, these matters were being addressed over time. It was taking too long. And there were always responses, "Yes, we're doing this, yes, we're spending that money." So those responses were taken as assurance that the issue was being addressed, but I absolutely accept that that's – that
- 25 was an inadequate conclusion on the part of the audit committee and the board.

- Did the committee do enough to make clear to management how urgent it was for these matters to be fixed?---I think it would have noted urgency but probably the actual sentiment would not have conveyed the degree of urgency required.

30

We see no reflection in this document of any sentiment of urgency being conveyed?---Well, it – as I say, the – the minutes should represent fully the conversation but they may not. But the – the discussion would have, and certainly the chair of the audit committee would have made a comment, as he always did,

35 about the follow-up on the audit reports.

It's very important that minutes of board committees accurately reflect the discussions at those meetings, isn't it?---I agree.

- 40 Were you concerned that having an inadequate control environment for these sorts of matters might facilitate money laundering and drug distribution by criminal syndicates?---Well, I was absolutely concerned that if you have poor controls in this area, that could be an outcome.

- 45 And that is what occurred, isn't it?---It is.

And CBA admitted in the civil penalty proceeding that it had failed to report millions of dollars of suspected money laundering?---That's correct.

5 And that money was laundered through CBA accounts that included the proceeds of drugs and firearms importation, and distribution syndicates?---Yes.

10 Now, do you think that you and your colleagues on the audit committee gave sufficient attention to the significant non-financial risks of CBAs failings in this area?---No. No, it did not.

And do you think you did enough to hold management to account to ensure that these problems were fixed and that they were fixed in a timely manner?---Not at this point.

15 Now, do you agree that beyond the AUSTRAC example, this was a period in which the board was not doing enough to address significant non-financial risks?---Yes, I do agree.

APRA had reached that conclusion, hadn't it?---Yes, it had.

20 Now, I want to take you to a document but I will tender first the agenda for 5 December meeting – I'm sorry.

25 THE COMMISSIONER: Minutes – the minutes of the audit committee held on 5 December - - -

MS ORR: Thank you.

THE COMMISSIONER: - - - '16 CBA.0502.0001.1303, exhibit 7.30.

30 **EXHIBIT #7.30 MINUTES OF AUDIT COMMITTEE HELD ON 5
DECEMBER 2016 (CBA.0502.0001.1303)**

35 THE COMMISSIONER: Just before we leave that document, though, Ms Livingstone, at this time, by which I mean October, November, December of '16, do you have any memory of an issue being raised at board level or committee or board level about the use of intelligent deposit machines in connection with AML/CTF?---No, I – I don't, Commissioner. But I subsequently – if I could go to
40 when I met with the CEO of AUSTRAC in January of 2017, I then went back through the – the papers to understand how I was not aware of the IDM machines issue, and I did find reference in one of the regulatory reports to the IDMs, but it was a – it was a relatively brief reference, and, I suppose, at that time the assumption was everyone on the board understood what the issue was because it was quite a few
45 years old. So it was a – a fairly short reference at that point.

Yes?---But – so the section 167 notices, the references there did include the reference to the – the failure to lodge the TTRs.

Yes.

5

MS ORR: Ms Livingstone, you had accepted that this was a period in which the board was not doing enough generally to address significant non-financial risks?---Yes.

10 And I had said to you that APRA had reached that conclusion because in the months before you joined the board on 1 March 2016, APRA had provided CBA with a prudential review report dealing with CBAs operational risk management framework?---That's correct.

15 Have you seen that document - - -?---Yes, I have.

- - - Ms Livingstone. It's CBA.0001.0534.0001. So this is a letter from APRA to the CEO of CBA dated 24 December 2015?---Yes.

20 Regarding APRA's prudential review of CBAs risk management framework conducted in November 2015?---Yes.

And the letter attaches a report and requires CBA to respond to the findings in the report by 4 March 2016?---That's correct.

25

And if we return to 0003, we see under the heading Executive Summary that APRA's main concern following the review was that CBAs operational risk management framework is not effectively identifying, escalating and addressing significant operational risks?---That's - - -

30

The first line under the heading Executive Summary?---Yes, sorry. Yes. Yes. That's correct.

And if we turn to 0006, we see that under the heading Actions:

35

APRA required that CBA take the necessary steps to enhance the effectiveness and implementation of the operational risk management framework so that key risks are identified, escalated and addressed in a timely manner.

40 ?---Yes.

Now, when you joined the board on 1 March 2016 was this report drawn to your attention?---No, it wasn't.

45 Would you have expected this report to be drawn to your attention, Ms Livingstone?---I think in – in terms of a new director when you joined the board, you

– you build your knowledge generally, as I have said, over the – the first six months. So that this – these matters would have come up then during that period.

5 This was a very significant document for those on the board to have access to, was it not?---Yes. Yes, it is.

And does it concern you that it was not drawn to your attention?---Yes, it does.

10 When were you made aware of it?---Well, I think the first awareness would have been, I think, the response to APRA, as required by this report, which would have come from the CEO, that letter. That would be attached to a regulatory report.

15 So do you remember someone drawing the response to this report to your attention?---No, not – not specifically, but I think it would have been part of the papers that I read.

And when did you receive it as part of those papers?---I think it would have been at the March meeting, which would have been my first meeting.

20 And is that – reflecting on that, is that an adequate series of events in relation to a document of this nature about CBAs operational risk management framework?---No, probably not, but, as I said, when you join a board, your induction and your knowledge takes some months to acquire, and there were – there were, obviously, quite a number of issues in the bank, and so it took some months for me to get fully
25 conversant with all of the matters.

THE COMMISSIONER: Well, that may itself be the issue, may it not, Ms Livingstone, that it does take a new director some months to become aware of what
30 issues are alive and running within the organisation?---It – it does. And – and that’s part of, if you like, having a board. So you don’t have a whole board turning over in one – at one go so that you actually bring new members on. The rest of the board is aware of the issues. And as you bring new members on, they get briefed and they become aware of the detail.

35 Well, other organisations are used to assembling briefing papers to allow newly joining members to know what the current issues are. Is that not a practice that could be applied and modified?---I think, Commissioner, that’s absolutely right. And we’ve looked at our director induction program in some detail now to make sure that
40 it’s a more fulsome induction than it has been in the past, because the briefing pack that was provided was more a description of the organisation and how it runs, as distinct from the issues.

45 It’s not unknown in government, is it, to have briefing papers available for those who are to take responsibility for certain functions of government, whether after election or otherwise. Is that so?---No, that – that’s correct, and that would be a much better practice.

Well, is it not – is it not possible to apply something of that kind to the organisation of a board of an organisation as large and sophisticated as CBA Group?---Indeed, it is that – that would be the better practice. And that’s the – in terms of our current induction program, that will be our practice.

5

Yes. Yes, Ms Orr.

MS ORR: Could I tender that document, Commissioner.

10 THE COMMISSIONER: Letter APRA to Narev 24 December ’15 concerning operational risk framework and attached report, CBA.0001.0534.0001, exhibit 7.31.

15 **EXHIBIT #7.31 LETTER APRA TO NAREV DATED 24/12/2015
CONCERNING OPERATIONAL RISK FRAMEWORK AND ATTACHED
REPORT (CBA.0001.0534.0001)**

20 MS ORR: So Ms Livingstone, moving much further forward in time, in May 2018 when the report of the prudential inquiry was produced, the panel raised very similar concerns in relation to the way CBA identified, escalated and addressed non-financial risks as those contained in this communication from APRA at the end of 2015. Do you agree with that?---Yes, I do.

25 And the report raised similar concerns about the role of the board in that process?---Yes.

30 And since becoming chair of the board, and particularly in light of the prudential inquiry, have you made changes to ensure that the board treats matters like the AUSTRAC matter with sufficient seriousness and holds management to account for addressing those matters in a rigorous and a timely fashion?---Yes, I have.

35 And can you explain the changes that you’ve made?---So the – starting with the quite extensive board renewal that we’ve undergone. So changing the way the board works, the way it challenges management. The reporting it gets from management. I also changed the rhythm of engagement with the CEO. So the chair to CEO relationship. In terms of the follow through, we had work going on which we call our Big Rocks program which included the development of a risks taxonomy, specifically in relation to non-financial risks. So there was the – the follow through
40 on that. And it becoming a part of the risk committee framework. So that brought non-financial risks into that framework quite explicitly. So they would be – they would be the key ones, just in terms of the actual style of the board and the questioning and the – and getting the experience on to the board of the people who understood risk management in financial services sector.

45

You’ve changed the composition of the board. That’s one of the things you’ve done?---Quite extensively. And also changed, just in terms of the – the way the

agendas are constructed for the meetings, and ensured there was actually more time. So as you've pointed out, there was – in terms of some of the meetings, there was very little time allocated for matters which are very important. And so we extended the time of both committee meetings and the board. And I changed the way the
5 board operated in terms of its agenda, so that it was quite clear what conversation was happening at any one time. So distinguishing the strategic conversations from the business operations conversations from the compliance conversations to make sure that we were very focused on the accountability that we were addressing at any time as we worked through board meeting and the papers. And that's in addition to
10 requesting improvements in the board papers themselves.

And how do you plan to assess the effectiveness of those changes that you've made?---Well, I think we're – one of the things that we've done is really explore what the – what governance is, what it actually means, and the frameworks through
15 which the board exercises its governance duty. And then looking at those individual frameworks and assessing the health of those frameworks. So, for example, the risk management framework is one, the remuneration framework would be another. And on the risk management framework, in particular, we spent a lot of time on the risk appetite statement. And, in fact, we're just going through another cycle of updating that to make sure that the non-financial risks are clearly described and the indicators
20 that we have for each non-financial risk are those which will tell us whether that non-financial risk is in a state of control or outside of tolerance. But meaningful indicators, because we don't feel we've had sufficiently meaningful indicators in – in – in the past.

Are there other changes that you feel you need to make, or would like to make?---Well, I – I think the – really, almost the complete change in the management team. Clearly, we've appointed a new CEO. And the CEO has almost a completely new management team but there were two positions that are crucial in
30 that management team. One is the chief risk officer and the new chief risk officer is – has extensive experience in risk management in financial services, and is – is external. Has come in from – it's an external appointment. And the other one is the CIO who also has extensive experience in financial services in the systems side. So those two roles are actually pervasive across the whole organisation and they bring
35 with them very valuable experience and experience that's additional, obviously, to the management team above and beyond what it had before. And I think Mr Comyn spoke about the non-financial risk committee of – of management. And we now have to work with how that – that committee then links up and reports to the board. So that's – that's the work that's going underway at the moment, which will actually
40 improve the flow of information in relation to non-financial risks because it will go through a management assessment, a management judgment, and management will then report that to the board. Up until now, the information has been coming almost unfiltered, if you like, and unfiltered in a collective view of the leadership team, and now we will have the collective view of the leadership team in relation to those non-
45 financial risks.

5 Do you feel that the board now sufficiently holds management to account for addressing matters like the AUSTRAC matter?---Well, I think in relation to the AUSTRAC matter, I think that is the example of holding management to account when – when it occurred we took immediate action in terms of remuneration in relation to the item.

And just before you go on, when you say “when it occurred”?---Sorry.

10 - - - what are you referring to there?---When the AUSTRAC proceedings.

When the proceeding was launched?---Yes.

By AUSTRAC?---Yes.

15 You then did what?---We took immediate steps in relation to remuneration. So all senior executives forfeited their short-term variable remuneration 100 per cent. As you know, at that time also we announced that – well, I announced that we had been having conversations with the then CEO, and so in terms of his tenure and – so we began the search for a new CEO at that point which started the process of renewal on the leadership team. And from that – I mean, clearly, the degree of challenge at the board is significantly greater, and the non-acceptance of assurances, in the sense of it’s more of a show me, don’t tell me. So we seek much more evidence of what actually has been done. And there’s more urgency in terms of closure of the issues and less acceptance of long timeframes for closure.

25 And when did you reach your state of satisfaction that the board now holds management sufficiently to account for matters like the AUSTRAC matter?---Ms Orr, I don’t think I would say I’ve reached a state of satisfaction at all. But I think we could see, in terms of the – the extra disciplines that were put into the approach to board meetings, I think we saw that there was almost immediate improvement in the challenge to management and management’s response. So that would be in – in the first half of 2017. And I think we’ve seen continuing improvement since that time.

35 All right. Now, I want to turn to the second of the three issues that I referred to some time ago, the second one being the way that the board and its committees are positioned to identify misconduct and compliance issues, having now dealt with an example of the way the board responded to a misconduct issue. Now, we’ve talked a little about that in the context of the AUSTRAC matter, but I want to ask you about the reporting that the board receives about customers. Do you understand?---I do.

40 And the prudential inquiry observed that the board received information about overall customer satisfaction, but that it did not receive any measures or analysis of customer complaints?---That’s correct.

45 Now, we can have a look at some examples of the information that the board received about customers from a particular meeting, from the December 2017 meeting. That’s CBA.0502.0001.8021. Now, if we could bring up the second page,

as well as the first page, we see the agenda for the first day of a meeting of the board on 11 December 2017. And the board received information about customers at this meeting in the management reports at item 5 of the agenda. Is that right?---That's correct.

5

And in the group strategy progress review at item 8 of the agenda?---That's correct.

Now, if we go to paper 5.2, the management report from retail banking services at 0093, we see that this is the management report from retail banking services?---That's correct.

10

And if we turn to the second page, we see that it was presented by Mr Comyn?---That's correct.

15 And I will wait till that page comes up. But you will see that item 3 deals with customer satisfaction performance?---Yes.

The information that the board got from Mr Comyn was that:

20 *CBA leads the major banks for the retail MFI net promotor score in October despite declining .2 to 1.1. NAB improved to second place on .2. Westpac declined to third place on negative 1.1 and ANZ remains in fourth place. CBA continues in first place for overall digital net promotor score. CBAs mobile app achieved a record high score and has a margin of 10 points over NAB in*
25 *second place.*

That was the information provided by Mr Comyn as the head of retail banking services about the customer experience for this board meeting?---Yes, that's correct.

30 Mr Comyn reported about the customer experience by explaining how CBA compared to the other banks in its retail and digital net promotor score?---That's correct.

35 And nothing was reported about customer complaints or any other poor customer experience?---No, and as – as the prudential inquiry pointed out, we focused far too much on customer satisfaction and good customer scores and not on dissatisfaction.

Well, if we turn to paper 5.7, we see the equivalent report from wealth management. That's at 0111. We see a single paragraph in the middle of the page about the customer experience in CBAs wealth business?---That's correct.

40

You see that?---Yes, I do.

Continuing:

45

Colonial First State continued to meet grade of service and customer experience survey targets in October. Complaints have also fallen.

CommInsure met its GOS targets and CES for life offers. The general insurance CES was below target but improved to highest levels achieved this financial year.

5 So, again, the focus was on whether customer satisfaction levels had met CBAs targets?---Yes, that's correct.

And there was a reference to complaints having fallen, but nothing about those complaints?---That's right.

10 And the prudential inquiry, as you've observed, said that:

Over the past three years CBAs overall customer satisfaction ratings had been good

15 ?---That's correct.

But there were still customers who had had very poor experiences with CBA, weren't there?---Yes, there were.

20 And CBA currently has about 16 million customers?---That's correct.

So even issues that affect only a small proportion of your customers still have the potential to affect a very significant number of people?---That's correct.

25 And complaints from CBAs customers, even a small proportion of those customers may, therefore, be useful in identifying areas where CBA staff are engaging in misconduct or conduct that falls below community standards?---That's correct.

30 Do you agree that it's important for the board to be informed about more than just overall customer satisfaction?---I do. And that is now the case, that we are informed.

So you agree that it's important for the board to understand what is happening when customers are having poor experiences with - - -?---Yes.

35 - - - CBA?---I agree.

And did the other boards of which you were a member, such as the Telstra board, did they receive information about customer complaints?---Yes, in different ways, yes.

40 And prior to the prudential inquiry, did the CBA board ever receive reports on trends in customer complaints?---No, it didn't.

45 Did it ever receive reports analysing systemic issues observed in customer complaints?---No, not that I recall.

Did it ever receive information about specific customer complaints?---There might have been. And I certainly, as chair, received a lot of individual complaint letters.

In your capacity as chair?---Yes.

5

Not because it came as part of the board papers?---No, no, in my capacity as chair.

All right. Now, do any of those things happen now? Does CBA now receive reports at the board level - - -?---Yes, it does.

10

- - - on trends in customer complaints?---Yes.

And does the CBA board receive reports analysing systemic issues observed in customer complaints?---Yes, it does.

15

And information about specific complaints?---Yes, it does.

And when did each of those things start happening?---A few months ago.

20 In response to the prudential review?---Yes.

And what does the board do now with the information that it receives about customer complaints?---So the – to the extent that the analysis leads to awareness of a systemic issue, so the question is asked are there systemic issues from this, or in – individual complaints, seeks advice as to what has been done in relation to that complaint. But I would emphasise that we're in the early stages of – of getting this into a more sophisticated rhythm.

25

How do you at the moment, based on the information you receive, assess whether these complaints represent systemic issues?---Well, the – the analysis would indicate whether there is a systemic issue, and management highlights that in – in the paper. There is provision – sorry, there is provision for management to highlight that if that is the case.

30

35 That is something that management can now tell you about. Is that what you mean?---From – from the analysis of complaints. But, as I say, it's early stages of – of getting this – these systems really working in a more sophisticated way.

40 Even though it's in the early stages has the information the board has received about customer complaints allowed it so far to identify any emerging risks?---Not – not at this stage, other than the ones that are – are already known.

And should the board have been receiving and using this sort of information about customer complaints much earlier, in your view?---Yes, it should have been.

45

And what can you say about why it didn't?---I think the – well, as I've said, there is – was the – too much assurance was taken from the customer satisfaction scores, and

that wasn't triggering us to ask the question adequately about complaints, which we should have been asking. But we – we do now have that – have this in place.

Could I tender that document, Commissioner.

5

THE COMMISSIONER: Board papers for meeting of 11/12 December '17 of CBA, CBA.0502.0001.8021, exhibit 7.32.

10 **EXHIBIT #7.32 BOARD PAPERS FOR MEETING OF 11/12 DECEMBER '17 OF CBA (CBA.0502.0001.8021)**

MS ORR: And the third aspect, Ms Livingstone - - -

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THE COMMISSIONER: Before we depart from this second aspect, Ms Orr, ultimately measuring things like culture, governance, outcomes presents a whole set of issues. I don't want to get down into particular details of it, at least not yet. But how important is it that the board be aware of a number of species of conduct. Can I
20 give you all the species and then we will come back. Intentional conduct. So the board being told of things where people have intentionally done something that they should not have. Unintentional behaviour, the careless, the silly, it's a human organisation. Of course, people do things carelessly. Sometimes they behave in a silly fashion. Unintended consequences. That is, the fact that something has led to a
25 set of outcomes that no one intended, but that's what has happened, either in a case or series of cases. And then what might be termed the opposite side of the ledger, the positive behaviour, the behaviour where the staff has done something that has gone well and truly beyond what they need to. How much of that is – and what kinds of behaviour are properly the concern of the board?---Well, I think all of them,
30 Commissioner, in – not necessarily in the full completeness of every incident.

No?---But trying to get a feel for the centre of gravity of the organisation, if there are too many unintended consequences, that's a signal that something needs to be further investigated.

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Well, it may tell you something, for example, about product design. It may not, but it may?---That's right. Certainly, the board needs to know about every example of wilful misconduct. And we get reporting of that. And whether it's directly known or whether it comes out through a whistleblower or through the Speak Up Program so
40 we get reporting of that. And that has to be, you know, virtually 100 per cent, what happens. On the positive behaviours, I think that's important to see because it's important to know that they're acknowledged and recognised. And we would see that partly through the annual remuneration reviews, or there might be individual recognition that happens or the CEO will comment, or a head of a business unit will
45 comment on the – the positive behaviours. And we now have built into our remuneration system a specific element for the CEO to reward observed positive behaviours that go above and beyond what might be expected.

5 Yes?---And those are communicated. And then you get the – I suppose, the most difficult one to really track, which is the non-wilful inadvertent misconduct, if you like, not intentional but misconduct, nonetheless. And so that – that can come up through multiple points. But the board has to be sensitive to where that might be happening. For example, if there are audits in a particular area and there's a risk culture audit and it identifies those, perhaps, more minor issues, but if – if the weight of the minor issues starts accumulating then you know you've got a much bigger issue.

10 Yes. Yes?---But the board has to be aware across all four of those that you describe to different levels.

Yes. Yes, Ms Orr.

15 MS ORR: The third aspect of the governance and risk arrangements at CBA that I said I wanted to ask you questions about, Ms Livingstone, is the tone that the board sets in relation to the management and importance of misconduct and compliance issues. One criticism of CBAs board that was made in the prudential review was that the tone from the top in relation to the management of non-financial risks was
20 unclear. Do you recall that?---Yes, I do recall that.

And can you explain what you understand the concept of tone from the top to refer to?---The – the tone from the top is – is the extent to which the board really indicates that it's interested in a particular topic, that it will regard matters in relation to that
25 very seriously, and will want management to respond very expeditiously. So that – that says to management that the board is taking this particular matter particularly seriously. Then there's the general tone from the top, which is the sense of urgency that you convey, the sense of integrity that you convey, the sense of non-negotiables that you convey, the intolerance for certain matters or behaviours that you convey.
30 So it's how you call them out during a meeting from the papers in front of you, how you inspect a particular issue. That is all part of signalling the tone from the top.

Do you agree that the tone from the top has a significant influence on the culture of an organisation?---I do. And just to, perhaps, explore the – the culture concept,
35 because I think – so the – the way we look at culture, culture is made up of four elements. And one is obviously the people and the behavioural norms of the people. One is the processes in an organisation, then the policies, then the systems, because they're all interdependent. So the tone from the top can influence the behavioural norms, what's acceptable, what's not acceptable. It can influence the systems, in the
40 sense of investment in systems or not investment. It can influence the policies, as we have done, by requesting that there be a complete review of the policy framework and rewrite, and simplification. The fact that the board has requested that to be done is part of signalling the tone from the top. Policies are really important but they've got to be able to be complied with. And, in fact, our policies now build in the link to
45 the obligation which gives rise – rise to that policy. And then in the processes, the actual recognition that you have to have end-to-end processes. You can't have disconnected processes, because people can have good intentions in an organisation,

5 good behaviour, but if the processes and the policies and the systems are militating against them, then what you observe is a bad culture, but you have to drill down into what was the root cause of that bad culture observation. So, for example, if you take the AUSTRAC and the noncompliance – say if I go to the SAFA – and the non-lodgement of the TTRs.

The threshold transaction reports?---Sorry, threshold transaction reports, sorry. So as the SAFA makes clear there was no intent - - -

10 As the what makes clear?---Sorry, the statement of agreed facts.

In the Federal Court proceedings?---In the Federal Court proceedings.

15 Thank you?---There was no intent not to comply. So that's the behavioural side. But the process that failed in that particular issue was the changed management practice, which led to the coding error in the system which led to the non-submission of the threshold transaction reports. Now, you stand back from that and you say that's a bad culture because that has ended up with a noncompliance. But what happened was the defects in the process and the systems in that particular instance led to a noncompliance. Now, then there are other systems which should have come in to detect that noncompliance, and that's another issue, but in the first instance you observe a bad culture because there is noncompliance. But there were contributory elements from interdependent elements in culture. So I know that's a bit complicated - - -

25 No?--- - - - but actually if you're trying to solve this problem we have to go down to those elements.

30 Can I ask you to pan back for a moment, because the prudential inquiry made a number of findings about CBAs culture, very critical findings about CBAs culture. Do you accept that CBA needs to continue changing its culture?---Well, it – I mean, it does. And, as you know, and I think from Mr Comyn's evidence, for example, in terms of the behavioural norms, we have – we now have a very clear code of conduct which establishes expectations that are linked to values, linked to the – the question of should we rather than can we. And then what you do if you have an issue, how you speak up, how you escalate it. So that is a very clear statement of the expectation of the behavioural norms in the culture which was not there in as clear a way as it is now, for example.

40 What is the culture that you are striving to achieve at CBA?---So in terms of – I think one that certainly complies with our values as now stated, but one which is more disciplined in the way it basically goes about its business, because unless we have that discipline, we can't possibly be assured that we are delivering good outcomes and good customer outcomes as well as good compliance, in terms of regulatory compliance, and, you know, to other stakeholders as well. So that lack – lack of engine room discipline and rigour then led to other aspects of behaviour and

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business, which then have an observed culture which is ill-disciplined and not focused on the stakeholders, including good customer outcomes.

5 Can you give us an example of something you have personally done to change the culture at CBA?---Well, I think I've personally led the renewal of the board. I've personally led the recruitment of a new chief executive. I've personally, in terms of the remedial action plan from – as required by APRA, I and two other board colleagues sat with the management team in terms of how that plan would be constructed. And very particularly how it would apply design principles not rushing to the answer, because the criticism in – of CBA has been that it has rushed to answers. The answers haven't been enduring and the issues then turn up as repeat issues. So I was personally insistent that we take a design perspective, in terms of that program. So think about the design of the solution before you implement, because you could have unintended consequences from competing designs. So 10 actually, I brought to – to that plan the perspective that I have had from my time in implant of medical devices, which is all about operational risk and compliance risk, how you go to root cause. I've been insistent that we drive to root cause. We are so – we have worked with issues. You can't work with issues. You can work with a root cause. We've had so many issues we haven't been able to identify the systemic underlying root cause. Unless you've got a root cause mentality, you just see the issues. So I have been insistent that we get to root cause. That we have proper project management principles over the remedial action plan, and being developed over the program of action. I've also raised the question of documentation, because unless you have good documentation, document what you do and do what you 15 document, you can't be assured that you will have repeatable processes without error. So these are perspectives that I personally have brought to the operations. I personally led the issue management standard design, because we have to take these issues and categorise them so that we know what we're dealing are. Are we dealing with a strategic issue? Are we dealing with a whole company-wide issue? Are we 20 dealing with a business unit to business unit interdependency or are we dealing with an issue which can be resolved within one business unit. If we are, why can't that issue be resolved within 15 days or less. If it's a whole company-wide issue, all right, understand that might be a longer term project, put it in a project, have project disciplines but don't just record the issue and say 24 months' time it will be done. 25 That's – that's not execution.

Do you agree that culture is a difficult thing to assess or measure?---I think it is, but once you break it down into those four elements and you start assessing it in terms of the behavioural norms, the conduct, whether we have effective policies, whether we 30 have effective processes – and that comes back to your question on audit and assurance and controls. So that's the process by – it's the assurance process by which we check whether we've got end to end processes. And the home buying, for example, in that APRA letter from October, the one element in that that was called out for CBA was we were the one company that had actually done the end to end 35 mapping of the home buying process, which is a crucial underpinning before you start talking about controls. And then you can look at your system's health, which comes back to the non-financial risks, and it's – it's one of the elements in our risk

appetite statement now looking at the health of our systems, and that also follows the APRA IT review from 2016, as you would probably know.

5 In simple terms, Ms Livingstone, what do you want to see before you will be satisfied that the culture at CBA has changed for the better?---I want to see that our code of conduct is actually lived. And I want to see that people are actually disciplined through their – the policy environment, so they understand what it is they have to do, and their duties. That we have people understand what process they’re working in. And that we have systems that are all fit for purpose. And in all of that, 10 I would like to see more situational awareness.

Situational awareness?---Awareness.

15 What do you mean by that?---So even if you’re in a situation which is – is what you expect in your role and what you’re doing, but if you become aware that something around you, either in what someone else is doing or what you’ve suddenly received, or it’s just not right, something might be wrong, that you actually react immediately. You don’t sort of think, “I don’t understand but I won’t worry about it or it’s someone else’s problem” because it’s that situational awareness which actually 20 identifies issues right at their inception and that is for everyone in the organisation. So that would be – it could be in a branch with a teller, it could be identifying that a particular customer is distressed. So why are they distressed? Perhaps it’s a complaint and they haven’t been able to articulate the complaint. And then so following up there immediately. Or if someone sees something going wrong in a – 25 in a system, something they didn’t expect, that they raise it straightaway, because their situational awareness says, “That’s just not right.”

How are you going to achieve situational awareness, Ms Livingstone?---Well, I think that might be our next phase of working through the organisation, but you asked me 30 when will I be happy and that’s when I will be happy.

And do you have a plan for how you’re going to achieve situational awareness?---I’m – what we’re doing at the moment is putting in place core frameworks that we’re working on, and we’re systematically putting them in place. 35 We will have to check that they’re all effective, whether it’s remuneration or code of conduct, whatever. Once you’ve got those stable, then you can move and add more elements, but you can’t put too much into an organisation at once. And particularly not one that is – has come through a very difficult time, is still in a very difficult time. There is a lot of change. There is new leadership. So you have to give an 40 organisation time to absorb change or the change doesn’t become embedded.

Commissioner, if that’s a convenient time.

45 THE COMMISSIONER: Yes. How long do you expect to require?

MS ORR: I think I probably have another couple of hours with Ms Livingstone in the morning.

THE COMMISSIONER: Yes.

MS ORR: It might be useful if we start at 9.45 again.

5 THE COMMISSIONER: 9.45. Can you be back here in time to begin at 9.45,
please, Ms Livingstone?---Okay. Thank you.

Very well. 9.45 tomorrow.

10

<THE WITNESS WITHDREW

[4.21 pm]

15 **MATTER ADJOURNED at 4.21 pm UNTIL
WEDNESDAY, 21 NOVEMBER 2018**

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