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TRANSCRIPT OF PROCEEDINGS

O/N H-871456

THE HONOURABLE K. HAYNE AC QC, Commissioner

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

MELBOURNE

9.46 AM, WEDNESDAY, 21 MARCH 2018

Continued from 20.3.18

DAY 8

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

DR M. COLLINS QC appears with DR M. RUSH for ANZ

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

THE COMMISSIONER: Ladies and gentlemen, there are a couple of matters that I want to take up before the evidence resumes. First, over recent days the Commission has published two further background papers. Number 4, which is a paper about Australian law regulating consumer home loans, credit cards and car loans, which
5 has been written by Jeannie Paterson and Nicola Howell of Melbourne Law School. Second background paper number 5 is a treasury paper on reforms to consumer lending. Those papers have been published over the last few days. The second matter I want to take up concerns final submissions for this round of hearings.

10 It is intended that Senior Counsel Assisting will make a closing address on Friday this week, most likely Friday afternoon. In the course of that, counsel will identify issues that are seen as emerging from the hearings that have been conducted over the last week and a half, by then two weeks. Ordinarily, the Commission will work on the basis that persons having leave to appear will have one week thereafter to make
15 written submissions. Now, because the Friday following the close of this round of hearings falls on Good Friday, written submissions will be due by 4 pm on Tuesday, 3 April 2018.

You will notice the particularity of the deadline. A time is given, as well as a date.
20 The time is not simply there to plump out the direction. The time is there to be complied with. 4 pm on Tuesday, 3 April. I then need to say something about the length and division of those submissions. First, an entity which is the subject of one or more of the case studies examined during the hearings may make written submissions about what findings should be made in respect of the relevant case study
25 or studies. Those submissions by the entities, in effect, directly concerned, may not exceed 25 pages in total. In addition – so on top of the written submissions about – by entities the subject of one or more case studies – so in addition, all persons having leave to appear in this round of sittings may make written submissions on other issues raised by Counsel Assisting and those submissions, again, may not exceed 25
30 pages in length.

The third matter I want to raise concerns the next sittings, as has been announced on the website, the next sittings will commence on 16 April 2018 and will focus on financial planning and the wealth management industry. The fourth matter I wish to
35 raise is this: at the end of evidence given by Ms Forbes yesterday, I drew attention to the fact that she had been asked a question premised on ANZ not having produced an email string sent in response to a letter from ASIC dated 10 January '17. See transcript 647, lines 8 to 20. The email string was dated 19 January '17 and is exhibit 1.124 comprising ASIC 0012.0003.1696.

40
Inquiries were made last night, amongst the Commission staff and records. Those inquiries appear to confirm that that email string was not produced. Attention was given to notice to produce NP078, category A3, of which required production of any documents which record communications between ASIC and ANZ concerning the
45 incident. The incident, as appeared from other parts of that notice to produce, was identified as item 153 in the second table to ANZs response to the Commission's

letter of 2 February 2018. That item, item 153, is exhibit 1.123. Dr Collins, is there anything you wish to say?

5 DR COLLINS: Yes, thank you, Commissioner. Those instructing us have investigated that matter overnight as a matter of priority and I can inform you, Commissioner, that a letter has been sent this morning to those assisting the Commission setting out the results of that investigation. The ANZ accepts that the document in question falls within category A3 of notice NP078. In short compass, the matter was reviewed but inadvertently misclassified as not responding to that
10 category. The email in question formed part of a chain of emails, other parts of the chain were produced in response to the – to notice NP078.

Those matters are set out in the letter which has been directed to the solicitors assisting the Commission this morning on behalf of the ANZ Bank. I apologise for
15 the omission and assure you, Commissioner, that steps are being put in place to ensure that this kind of omission does not recur.

THE COMMISSIONER: Again, it is a matter for you whether you answer this question: has any inquiry been made about whether there was any other omission
20 other than that which was identified? As I say, whether you answer that question is a matter for you.

DR COLLINS: Insofar as we have been able to investigate the matter overnight, the answer to the Commissioner's question is no. But can I say, Commissioner, that
25 those instructing us are taking the matter most seriously and giving it anxious further attention.

THE COMMISSIONER: Thank you, Dr Collins. Is there anything else you want to add?
30

DR COLLINS: No.

THE COMMISSIONER: No.

35 DR COLLINS: Thank you, Commissioner.

THE COMMISSIONER: Yes, thank you. Mr Dinelli, it seems to me that it may be desirable that notice to produce NP078 be tendered. It would become exhibit, I think, 1.135, if my records are right. Is that so?
40

MR DINELLI: I think that's - - -

THE COMMISSIONER: Exhibit 1.135 will be notice to produce NP078, directed to ANZ.
45

**EXHIBIT #1.135 NOTICE TO PRODUCE NP078, DIRECTED TO ANZ
(RCD.0002.0001.0606)**

5 MR DINELLI: If it would assist you, Commissioner, the court book number is
RCD.0002.0001.0606.

THE COMMISSIONER: That doc ID should form part of the identification of the
exhibit. Yes. Now, we were dealing, I think, with Ms Stubbings, were we not?

10

MR DINELLI: That's right, Commissioner.

<SARAH MARY STUBBINGS, ON FORMER AFFIRMATION [9.56 am]

15

<CROSS-EXAMINATION BY MR DINELLI

20 THE COMMISSIONER: Do sit down, Ms Stubbings. And can I just – forgive me
if I say – can I ask you to keep your voice up?---Yes. Thank you, Commissioner.

Thank you.

25 MR DINELLI: Ms Stubbings, can I return to what was described as item
138?---Yes.

And can you remind the Commission what that issue was?---Item 138 related to fee
waivers and interest rate discounts on our Breakfree packages for customers.

30

And that was something – or an issue that arose between July 2013 and July 2017; is
that right?---Yes.

In fact, it arose at the end of the resolution of items 137, didn't it?---Yes.

35

And it was discovered – it's your evidence this issue was discovered by ANZ in July
2017; is that right?---I referred to the fact that the fee issue was identified in March
2017, and the interest rate issue in July 2017.

40 I see. And, in fact, the former issue was based on a date range for various reports
which had been prepared, in fact, even earlier: July to November 2016, wasn't
it?---Yes. That was initial exception reporting that highlighted that there was a
certain cohort of customers that had been charged a fee that would have typically
been waived under a Breakfree package.

45

And you informed ASIC of this on 5 October 2017; is that right?---Yes.

Was that a notice that was given pursuant to the Corporations Act?---I – I don't know the answer to that.

5 Perhaps I can take you to that document. It's SMS9 to your statement, ANZ.800.223.155?---Yes.

10 Given that notice was given to ASIC on 5 October, that's approximately three months after you found out – called the date July – I understand your evidence is you discovered some earlier issues even earlier than that, but you waited at least three months to tell ASIC, didn't you?---We were still investigating the matter in terms of the sizing of it. So once we got to the point of having a – you know, a fact base around the sizing and the customer impact, and the dollar impact, that was a point that we then worked with compliance and our legal team to prepare a compliance impact assessment and then inform ASIC of the matter.

15 On the previous occasion that you – or on the previous occasion that I've taken you to where you informed ASIC on 17 June – that letter, which I won't take you to, but that was said to be – I quote:

20 *We believe these matters have the potential to be reportable under section 912D of the Corporations Act.*

25 That language doesn't appear in this letter that I'm taking you to, does it?---No, it doesn't.

Are you familiar with the obligations upon ANZ to inform ASIC of matters, Ms Stubbings?---I have a – you know, a high level of – sorry – familiarity, yes.

30 Are you aware of ANZ's statutory obligation under section 912D of the Corporations Act to make written reports to ASIC in certain circumstances?---Again, I have a – you know, a high level of awareness.

35 And are you aware that that written report has to be given if there's a breach or a likely breach of any obligation set out in section 912A of the Corporations Act?---Yes. I'm aware of that.

Where the breach is significant?---Yes.

40 Did you – did you at the time turn your mind to this issue, Ms Stubbings?---In terms of whether it was significant?

45 Yes?---Look, I personally didn't. You know, that's something we work with our compliance and legal people on but, I mean, obviously in this case we had 2900-odd, you know, customers that were impacted.

Were you aware one of the factors in determining whether or not something is significant is to have regard to matters such as the number and/or frequency of similar previous breaches. Are you aware of that?---Yes, I am.

5 And in this case, given your evidence about item 138 and its similarity to 137, that would suggest, would it not, that this was a very significant matter?---I'm not necessarily saying it wasn't significant. In the context of section 912D, I can't really comment on it from that perspective.

10 But in any case you're aware there's a 10 day period that notification has to be given to ASIC?---Yes. From once compliance has been engaged, yes.

And - - -

15 THE COMMISSIONER: Sorry, what do you mean by "from once compliance has been engaged"?---It's my understanding of the regulatory guideline around the ASIC reporting that it's a 10 day period.

MR DINELLI: Okay. Can I take you to, if I may – for your assistance, Ms
20 Stubbings, it's tab 21 – ANZ.800.223.1858, in fact, for the operator?---So the offset remediation project summary?

Sorry, my – sorry, it's not that document, it's RCD – I am sorry. Have you found it,
25 Ms Stubbings in your materials? Tab 21 of your – no, I think it might be a separate document that you've been given, Ms Stubbings, and your barrister - - -?---In tab 21 I have the offset.

No, it's not that document?---Okay.

30 It might be a separate document you've been given for your convenience so you can read - - -?---This – this document here, do you mean, the Corporations Act?

Yes.

35 THE COMMISSIONER: Have you got a doc ID for it, please.

MR DINELLI: Yes, I do. It's RCD.0022.0001.0090.

THE WITNESS: Sorry, Mr Dinelli, is this the document you want me to look at?
40

MR DINELLI: Yes, it is. It's the Corporations Act?---Yes, thank you.

And if I can go to section 912D.

45 THE COMMISSIONER: We're into the NCCP Act. So the doc ID, I think, is not right.

MR DINELLI: I think it was 0190, not 0090. I take responsibility for that. I am sorry about that, Commissioner, Ms Stubbings. So in 0190?---I don't have any numbers on the page - - -

5 THE COMMISSIONER: Just a moment, Ms Stubbings. We are all at sea, at the moment. Just – we will get there.

MR DINELLI: I can see the shore, and – it is now up. And I do apologise. And if – what you've got before you in written form is section – some sections of the
10 Corporations Act. I would like to go to 912D, which is at .0209?---Yes.

And this is the provision to which we've been referring:

15 *A financial services licensee must comply with subsection (1B) if the licensee breaches or is likely to breach –*

and then it sets out – it sets out a number of obligations. If one goes to the next page, and specifically to (1B) it is there one finds:

20 *The financial services licensee must, as soon as practicable and in any case within 10 business days after becoming aware of the breach or likely breach mentioned in subsection (1), lodge a written report on the matter with ASIC.*

You see that?---Yes, I do.
25

There is no reference there to awaiting discussion with compliance, is there?---Not – not here, no.

30 And in relation to this issue am I right to say that, as of today, ANZ is still working through this issue?---Yes. We're still working through the remediation of that issue, yes.

That's correct. And work has started?---Yes.

35 But there's a report that I would like to take you to, which is ANZ – sorry, tab 21 for you, and ANZ.800.223.1858?---Yes.

This is a document that I'm sure you've seen before, and it was actually dated last month, 20 February 2018. Do you see that?---I do, yes.
40

What is this document?---This is about the offset issue. It's not about the Breakfree issue.

I see. But part of the 138 issue?---It's not part of the 138 issue.
45

Okay. What issue then does this concern?---This is a separate issue, I believe, in the table we provided on 13 February.

I see. Can I, in any case, ask you a question about it. This is a process that requires remediation, does it?---Yes, it does.

Okay. And if one goes to .1858 – sorry, .1859?---Yes.

5

And the – am I right to say then that item 138 that we've been discussing is 2 rather than 3 and 4?---No.

10 Can you assist me as to which of the remediation – various remediations that are being conducted this paper deals with?---So item 1, MBORP, is the item we discussed yesterday, that was the 137 issue.

Yes?---The number 2 here, this relates to the item – I think it's C in my statement.

15 Yes.

THE COMMISSIONER: Item?---Item C in my statement.

20 C?---Yes. And then 3 and – item 4 is item D in my statement.

MR DINELLI: Yes?---Item 3 is not questions I was asked about in my statement.

25 I see. And if you go to 1862, referring to this remediation that's occurring, do you see how – do you see how there's a reference there to:

The project team must identify how to stop the bleed on both of these issues prior to refunding customers.

30 ?---Yes, I see that.

35 Once again is this, like the document we went to yesterday, an indication that perhaps the refunding of customers isn't put as high as a priority at ANZ as it should be?---No, I wouldn't say that. As part of any remediation process you actually have to stop the issue, because otherwise it's very hard to remediate customers if you've still got customers that are being impacted by it. So what we have done for the customers who are impacted by this, we have linked their offset accounts. What we haven't done is remediated them for, you know, the interest benefit they've missed out on in that period.

40 Are the customers aware of the issue that has arisen?---They may not be aware yet.

45 So is it your evidence that you've taken some steps but the customers aren't aware of the issue at all at this stage?---So we've – as I said we've linked their offset accounts. They are now getting their benefits from the point we've linked them onwards, but they will need to be remediated and funds paid across to them for the fact they missed out on those benefits over that period.

Okay. So sitting here now, in relation to these issues, the customers haven't been informed yet?---I don't – I don't believe so.

5 And it's still unclear exactly when they will be informed; is that right?---We're working through the remediation as we speak.

But there isn't a date yet for when they will be informed, is there?---In terms of making payments, our current schedule has that happening before Christmas.

10 So in relation to something that was discovered when, Ms Stubbings?---Well, we've talked about March and July 2017.

I see. Can I deal with - - -

15 THE COMMISSIONER: Can I just get a better grip than I have at the moment on the chronology you've just been outlining. We begin the chronology, do we, in March and July '17 where an issue is – or two separate issues are identified; is that right?---Yes. It's a little bit confusing because those are actually the Breakfree issues.

20 Right?---This is an offset issue. So, sorry, actually it's a good point. My correction. This relates to the period up to March 2017 for the offset issue.

MR DINELLI: I see.

25 THE COMMISSIONER: So the offset issue – when do I start the chronology running? I want to try to get in my head - - -?---Yes.

30 - - - the chronology that is relevant. What's the first relevant entry in that chronology, do you say, Ms Stubbings?---So the period for this issue - - -

35 Yes - - -?--- that wasn't covered in my statement was effectively it's really from January 2016 onwards that these linkages errors would have occurred, because of the item we have that's C in my statement, we would have fixed all the unlinked offsets up until that point which was January 2016. So this relates to the period January 2016 through to March 2017.

40 MR DINELLI: I see?---And, yes, so we've gone through the process of linking all those offset accounts for customers who were impacted by this.

THE COMMISSIONER: But again, just – as I say, I'm anxious to be – understand the chronology. The errors or failure of linkage occurs between January '16 and about March '17; is that right?---Yes.

45 On discovery, the linkages are made?---Yes.

And in what sort of time period are we talking?---Look, I don't know exactly by what time they were linked, but I have been informed that those accounts have all been linked.

5 Are we talking, though, days, weeks, months? Are you able to give any estimate?---Look, it would be – it would be months, yes.

So over a period of some months?---Yes.

10 Links that should have been made but had not were made?---Yes. Once the item had been discovered, yes.

Stopping the clock at that point - - -?---Yes.

15 - - - has the customer been told anything?---The customer hasn't been told yet, no.

What's the next step in the chronology?---Yes.

The links are then made?---Yes.

20

What happens next?---Yes. So we've – we've built a new sort of tool to pick up these linkage issues, because clearly they have, you know, persisted. So we've built that out so we can stop the issue reoccurring. We are now going through the process of getting the data to refund these customers.

25

And has the customer yet been told?---No.

And do you – are you able to offer any expectation or prediction about when the customer or customers are likely to be told?---So the intent is that that will be done, you know, prior to Christmas was our timeline.

30

So Christmas '18?---Yes.

In respect of events - - -?---Dating back to January - - -

35

- - - occurring between January '16 and March '17?---Yes. Yes.

Do you regard the time thus identified as satisfactory or unsatisfactory?---Look, I think we – I mean, we're definitely focused on the fact that we've had, you know, this recurrence, and we needed to build a new tool to enable us to manage that, so we can stop that happening and impacting other customers. And that has definitely been a focus. We've also been very focused on making sure those customer accounts can be linked so we can minimise the impact to the customer. And now we really need to, you know, take steps to remediate and refund those customers.

45

Just to round off this attempt at understanding: do you yet have an estimate of how much money we are talking about for the customers as a group?---Yes. So for the

2800-odd that were identified through to March 2017, the estimates we had were about one and a half million.

Yes, Mr Dinelli.

5

MR DINELLI: Thank you. There are a number of issues, as your evidence has shown. Can I move – before I do that, I ought tender that – the document to which I’ve just taken you, if I may.

10 THE COMMISSIONER: That’s exhibit 1.136 will be Offset Remediation Project Summary, 20 February 2018, ANZ.800.223.1858.

15 **EXHIBIT #1.136 OFFSET REMEDIATION PROJECT SUMMARY DATED 20/02/2018 (ANZ.800.223.1858)**

20 MR DINELLI: Thank you, Commissioner. The next issue that I would like to deal with – and I will try to deal with these remaining issues and then have a couple of questions by way of summary, but is item 135 – which is the language we’ve been using – which was an interest rate margin discount issue?---Sure.

25 I mean, am I right that this happened because an operational processing team in Bangalore made a decision – made a decision to – in relation to certain discount requests that weren’t properly marked, the result of which was that they weren’t correctly actioned; is that correct?---Yes. That’s effectively correct.

30 So how did that happen, Ms Stubbings?---So from May 2016 through to sort of December 2016 there had been a 50 per cent increase in interest rate discount requests from customers with existing home loans. So prior to that period the team had been doing about 8000 a month in March and April, and it went up to over 12,000 in May and June. And as a result, you know, to save time, they made a decision to not mark as closed all those open interest rate discount requests.

35 Did ANZ have processes in place requiring the active marking of these requests as completed or closed?---Yes.

40 And if they did, why didn’t they work?---Well, as I said, the team took a decision to try and work through the volumes in the interests of, you know, dealing – you know, helping our customers and unfortunately, as a result of that, it meant that some customers interest rate discount was not applied to their home loans.

45 But it’s fair to say that this was another failure of process, wasn’t it, at ANZ in relation to item 135?---Yes.

And perhaps if you can assist me in terms of the timing of this. When did you say the issue was discovered by the person in Bangalore?---That was in September 2016.

And I understand that it was resolved relatively quickly?---Yes.

And then this issue was reported to the Australian division of the risk committee; is that right?---Yes, in April.

5

In April?---Yes. 2017, yes.

By that time you had already identified the cohort of home loan accounts that were impacted, hadn't you?---Yes.

10

You had already obtained data to determine the size of the customer detriment?---Yes.

Yet the compliance incident was only made on 19 April, some – again, some four or five months later before a view was formed that it was important to tell that risk committee; is that right?---It – the way the risk committee works is they – they meet monthly, but one of their meetings is on credit risk items, and then the second month it's on operational risk type of items. So depending on the cycle of that risk committee that would have impacted the timing of when this was presented.

20

But even on that analysis there would have been at least two meetings that it could have been produced at earlier?---Look, possibly. They don't tend to meet in January. So I can't comment – I don't know exactly which cycle they were working through.

Why does it say – if one goes to SMS13, why does it say that it was reported on 21 February 2017?---I can't comment on that.

Your evidence was this happened back in December, wasn't it?---Yes. Well, we first became aware of it in December.

30

Yes?---It wasn't until a couple of months later we had a good view of the sizing and the impact.

Again, it doesn't – there doesn't seem to have been much urgency of bringing it, though, to the attention of the Australian division compliance committee, was there?---I understand that it was certainly raised with the operational compliance, you know, teams and with the operational leadership team.

What do you think the reputational impact is of something like this for ANZ?---Look, I mean, clearly there's a failing of process here. And, you know, I think from my perspective – you know, the reporting that we had on the team and – you know, and how they were performing relative to their service standards was based on closed accounts, not open accounts. And if we had had reporting based on open accounts we would have identified this issue, you know, significantly earlier. And that, to me, is sort of – you know, really the core of what sort of failed here.

45

Do you think it's accurate to say that the reputation impact to ANZ is low as a result of this incident?---Look, I think, you know, when we go through and assess these types of things we look at the time period it persisted for, we look at - - -

5 Is it low? Is it low - - -?--- - - - the customers - - -

- - - Ms Stubbings?---I think these things are relative. So – I mean, as I said, there were failings here and there was a failings of process.

10 If I may say though, another one, wasn't it, Ms Stubbings?---Yes. There's – it's definitely - - -

It's relevant?--- - - - an incident here, yes.

15 And if one goes to – I'm sorry, it has come down the document, but if I take you to – back to that document which is ANZ.800.052.1461 at 1465?---Do you happen to know what the tab number is?

Yes. Sorry, it's SMS13?---Sorry. Thank you.

20

It was the document we were in?---Yes. The client impact assessment, yes.

In fact there you see that, when this report was made on 1465, it says:

25 *Reputation impact to ANZ: low.*

?---Yes, I see that.

30 Did that inform at all why, again, it took so long to begin putting the correct interest rates in place?---I mean, I actually think we – we acted really quite quickly on that. So as soon as we found out we, you know, we sized it, we obtained the data, and started the process immediately to correct those customers and refund them.

35 When is – on your evidence, when did you – when did you apply the correct interest rates?---So that was over the period June to September and then we made refunds to customers in the last week of September, and letters were sent to customers in the first week of October.

Unlike examples - - -

40

THE COMMISSIONER: I'm sorry, you dropped your voice?---Sorry.

Refunds were made in September?---Yes. So refunds were made in the last week of September.

45

Yes?---And letters were sent to customers in the first week of October.

Yes?---And interest rates were corrected between June and September of 2017.

MR DINELLI: Did you turn your mind to 912D again in this context?---I wasn't in the meeting when the compliance impact assessment discussion was - - -

5

Yes?---Was raised.

Do you know what they – what was determined?---Yes, I do. So they determined it wasn't significant.

10

I see. So you can't comment on whether or not they had regard to the number and frequency of similar past breaches?---I don't think we've had a similar breach of this nature. I do know they had regard to the time period that it persisted over, which was six months. The number of customers impacted, the dollar impact, which has been about \$980,000.

15

THE COMMISSIONER: I'm sorry, 980?---980, yes, Commissioner.

And number of customers?---1860.

20

MR DINELLI: That decision as to whether or not to inform ASIC was reconsidered about two months later, wasn't it?---Yes, it was.

Were you part of that decision?---No, I wasn't.

25

Is it common to reconsider whether or not – whether or not a disclosure should be made?---Well, I think based on, you know, further information, I – I think that the team wanted to make sure that we were still comfortable that that was the right decision.

30

But then the same conclusion was reached, wasn't it?---Yes, it was.

And the customers have now been remediated in relation - - -?---Yes. They have, yes.

35

- - - this issue, but it remains the case that ASIC hasn't been notified of it?---That's right.

Can I go to item 134.

40

THE COMMISSIONER: Sorry, can I just understand who makes the decision report or not report to ASIC?---Yes.

At what level or what body - - -?---Yes.

45

- - - within the bank makes that decision of report or no report?---Yes. So that's where the sort of key business stakeholders, sort of – you know, people at my sort of

level, and then we do that with our Australian division compliance folk. So with the head of Australia division compliance we would make that decision.

5 MR DINELLI: Commissioner, if I may tender that – sorry, that document is actually - - -

THE COMMISSIONER: It's in, I think. Yes.

10 MR DINELLI: It's in. It's SMS13. Apologies. Can I ask now about the last two issues – or first, if I can deal with item 134?---Sorry. Is item 134 item C?

134, which you deal with at paragraph 89?---Yes, thank you.

15 In fact – yes, it is at paragraph 89. This is the one you referred to as C before?---Yes.

And this was an issue that was persisting from January 2013 to January 2016 whereby offset accounts were not linked; is that right?---Yes, that's right.

20 Forgive me, of course. But that's, of course, the very same issue we've dealt with in relation to some of the other issues, isn't it?---Yes, it is.

25 And your evidence is that the coding instructions in your evidence at paragraph 94 is that the coding instructions in the macro were amended so that the customer with more than one eligible home loan and an unlinked offset account were able to be identified and passed through the processing team for linking?---Yes. So in all cases the macro wasn't identifying where a – there was more than one eligible home loan for the offset account to be linked to.

30 The fact that that coding – those coding instructions were changed, and it appears were changed relatively quickly, suggests that before that do I take it that there was nothing in place to deal with this issue?---Look, before that we weren't aware it was an issue.

35 Now, this issue was, again – this issue was identified in September or October of 2015; is that right?---Yes.

40 And, again – or on this occasion the Australia division risk committee was informed in April 2016; is that right?---Yes. And, look, the reason being in – that was when we first got a sense that there was potentially a problem. So we had been doing some decommissioning work in around – let me just check the date – I think it was, yes, September, October 2015 and we identified a cohort of customers that didn't have their offset linked to a home loan. We then spent, you know, about three or four months getting the data that we needed to run that across our entire offset population to determine to what extent more broadly was it an issue.

45 I understand that, and I understand you commenced the home loan reconstructions in March 2016, and in fact - - -?---Yes.

- - - you sent letters soon after?---Yes.

My point is this, though: yet still at this point, this significant issue, another offset issue arises, yet you don't report this to the Australian division risk committee until
5 April 2016?---Yes. I don't think it was really until February/March that we had a good view on the number of customers.

On this occasion it wasn't because there wasn't a meeting, on this occasion it was just because you didn't know what to report to the Australian division risk committee
10 until February or March; is that your evidence?---Yes. We were working through the data to determine to what extent across our offset portfolio had this been a broader issue and then, you know, I think we had a view on that by February. And, again, it would have been impacted by the timing of the Australia risk committee and what various forum was on.

15 But you were paying refunds to people before you had even told the Australian – before you had even told the Australian division risk committee, weren't you?---We started reconstructing the accounts in March, that's right.

20 And if I – and your evidence, though, is also that some – that those refunds and correspondence to affected customers occurred as early as March 2016?---Yes, that's right.

25 What's the Australian division risk committee meant to do at ANZ?---So the Australian division risk committee has oversight of the risks for the Australia division. So our credit risk, operational risk.

Risks of processing errors that have gone on for – for years?---Yes, they have oversight of those types of things, yes.

30 Yet this – and I think this is the fourth of the issues we've dealt with, although we also went into another one – yet, this happening in March – in – on your evidence, February or March 2016 – sorry, I withdraw that. On your evidence this issue was discovered in late 2015, yet you didn't go to the Australian division risk committee
35 until April 2016?---Yes. There was a smaller cohort of customers we identified at that point. It wasn't until we had done the analysis across our entire offset population, and particularly because that was a different product set from what the first cohort had been identified, we were trying to understand that.

40 And the only information that you gave to ASIC in relation to this was your colleague, Ms Edelman, rang up ASIC, didn't she?---She did, yes.

But there was no written notification given?---That's right.

45 Ms Stubbings, can I ask you what you – quickly about what you raise at paragraph 105?---Yes.

Am I right to understand that in the course of preparing your statement you've identified that there was an issue in relation to the remediation process in this – in relation to this very issue?---Yes.

5 So a further issue arose by reason of preparing this statement?---Yes. It's not so much a further issue arose, it was more when the remediation was done the data that was taken was based on all open accounts, as at January 2016, and we have identified that it did not pick up customers who closed their accounts between January 2013 and January 2016.

10 So the process that you had in place to resolve this very issue didn't pick up those closed accounts?---Yes.

15 And you realised it when you prepared this very statement for this Royal Commission?---Yes.

20 And so that's another issue that now is the subject of – is the subject of a process requiring remediation at ANZ, isn't it?---I – I wouldn't call it another issue. It's part of this issue. It just wasn't identified at that point in time.

25 Do you see the issues as separate issues or all as one issue?---I see this – this – the fact – this is all part of the same issue.

30 The last issue that I would like to raise is that which we've described as – or you've described in your statement as item 151?---That's item D?

35 It is item D?---Yes.

40 Can you explain the nature of this issue in relation to what's described as backdated offset transactions?---Yes. So this involves how our various – we have a core system and it has a couple of subsystems, so one for our lending accounts and one for our offset accounts. And the way that the two systems had worked together has meant that in certain scenarios customers have not received all the offset benefits they were entitled to. And so for the backdated transaction issue, the way our loan system works, it recognises transactions and calculates balances on a daily basis, whereas the offset subsystem recognises transactions and calculates balances on a business day basis.

45 Now, this issue – or can you tell the Commission when this issue was first discovered?---So it was first raised as a possible issue by ANZ technology in September 2014.

Well, that's not quite right, is it? It's actually as early as – as early as 2011 the issue was – there was certainly reference of the possibility of this issue, wasn't there?---I don't think it was raised as an issue as such.

Well, it - - -?---It was certainly discussed in the design of the MBORP.

But it – so – and I – I would like to take you to that. If one goes to SMS – if you go kindly to SMSB – 18B, I am sorry, which is ANZ.800.321.0011?---Sorry, I don't have the numbering on my pages.

5 THE COMMISSIONER: SMS-18B.

MR DINELLI: It should be on your – in this - - -?---I'm just trying to find it.

That's okay?---Yes, I have that.

10

And if one – well, perhaps I can ask you what this is a meeting agenda for?---I believe it was a meeting agenda for the – MBORP became known as MBORP. It was previously called the Mortgage Compliance Project. So this is effectively the Mortgages Breakfree and Offset Remediation Project. It changed its name.

15

I see. And you weren't involved at this time?---No, I wasn't.

If you go to .0019, please, which I think you will find is about the sixth page of your document?---Yes.

20

And the top word is Rate Reductions. Can you see that, that's - - -?---Yes, I can see that, thank you.

25 Can I take you down to the first dot point, the project manager – the first dot point about three quarters of the way down the page:

The project manager presented the following.

30 Do you see that?---Yes. It's - - -

There the project manager, in the course of preparing what you've described as what became the remediation project for the first issue that we discussed yesterday - - -?---Sorry, I'm just – I still can't find. Are you saying when it said "the project manager advised standard practice"?

35

No. So this is - - -

THE COMMISSIONER: It is a heading item 3 Interest Overcharged Calculation - - -?---Yes – yes, I do have that. Yes.

40

Immediately below that, is it, Mr Dinelli?

MR DINELLI: Yes, that's right?---The – my apologies, thank you.

45 THE COMMISSIONER: All right.

MR DINELLI:

The project manager presented the following.

This is a similar issue to item number 2. He goes on to say:

5 *The project calculates the interest on the actual balance on the date or dates the account is in error. It does not take into account transactions –*

sorry, does not take into – I think it's account –

10 *transactions made in the future and backdated to a prior date. In other words, it takes into account transactions made on the date of the transaction as opposed to the previous effective dates.*

15 Now, I can't quite understand that, but is that the very issue that we are dealing with as subsequently became item 151?---So I think what the project is talking about there is the calculation engine that they have built.

20 Yes?---And whether they built in – build in this concept of backdating transactions, which is effectively enabling the likes of loan accounts to be, you know, any transactions on a Saturday or Sunday or whatever it – whatever may be.

25 So back at the time of this meeting – so this is before the committee has changed names to become the MBORP, this – so July 2011, the very issue that has come up now six years later was something that at least was on the radar of those that were designing the very fix?---Yes.

At that time?---Yes.

30 Yet ANZ didn't put in the relevant fix back in 2011, so six years later this issue actually comes to fruition?---I think it was on their radar. I don't think they were necessarily saying it was an issue, as such. I think what they were saying is they weren't intending to replicate what happened in the production environment into their refund calculation for this element.

35 And I think you gave evidence before, consistently with your statement, that the issue was raised by ANZ technology in about September 2014?---Yes.

40 I am not going to take you to it. It was also raised in 2013. So it was raised on a number of occasions and it appears that around September 2014 the issue was referred to an external firm for legal advice and any necessary further investigation; is that right?---Yes.

45 How long – and I don't want you to tell me what that advice was, but how long did that firm take to get back to ANZ about this issue?---We received that advice back in May 2016.

So another 18 months went by between September 2014 and when that advice was received in May 2016; didn't it?---That's right, yes.

5 Has ASIC been informed about this issue?---Yes. ASIC has been informed about this issue.

And when did – did ANZ inform ASIC?---ASIC were informed on 16 October 2017.

10 And can I just – can I recap, so I can understand – so I can understand your evidence. You accept that in 2011, in the agenda that I took you to, it was – it might have been my words, but I think you accepted them – it was on the radar of the committee right back in 2011?---I – I don't actually think it was on a radar as an issue. It was just in terms of the calculation and how they were going to apply that to the mortgages and Breakfree remediation.

15 But it was something that was – I won't verbal you – it's something that was known by those - - -?---There was awareness, yes.

20 Thank you. And then, as I said, or your evidence was that ANZ technology raised it in September 2014. It then went to a law firm. That took 18 months. May 2016. You make then a notification to ASIC on 16 October 2017?---Yes.

25 Can I take you to SMS – your SMS 19 which is AN.800.077.1180?---Yes. So the ASIC letter?

Is this the letter dealing with – is this the letter dealing with this issue?---This is the letter that was sent to ASIC, yes.

30 Dealing with this issue?---Yes.

Under the heading Nature of the Issue it says:

35 *ANZ has undertaken proactive systems testing on the expected benefits of offset arrangements.*

Do you see that?---Yes.

40 That's misleading to say “proactive” isn't it?---Well, we were doing analysis of how our systems operate in terms of terms and conditions.

Well, you weren't being proactive if you had known about this – known about this issue since 2011, were you?---Well, I guess it was something that we had done, you know, as part of that review.

45 But the issue within ANZ was known to it for many years prior. It wasn't - - -?---I think was I said was awareness, we had awareness.

Awareness, yes?---And as I said, there wasn't acknowledgement it was an issue at that point.

5 But ANZ – even if you assume that – on your evidence, September 2014 is when ANZ technology raised it, even then it's wrong to say, isn't it, that ANZ was undertaking proactive systems testing?---Yes. You could take that lens.

10 In fact, it was misleading ASIC. It was saying to ASIC, "We're being proactive about these issues, we're dealing with them," when in fact ANZ wasn't dealing with them?---I think we were proactively, certainly, reviewing our terms and conditions and how our systems operated at that point.

15 Now, those who had been affected by item – this particular issue, how many customers have been affected by it?---We haven't identified yet how many customers have been affected.

20 And the number of accounts?---Haven't been able to identify that yet, either. What we have been able to identify is the types of transactions, and there's a lot of complexity that underpins those transactions. So it's – it's a very transactional level issue, as opposed to something being wrong with an account in – in this case.

Yes. I understand that, and I understand that to be your evidence about the – when you described the – the backdating?---Yes.

25 Is there any timeline for remediation in relation to this issue?---Again, I believe we're working through to try and have this resolved by Christmas.

30 And how much remediation do you estimate will be the subject of this particular issue?---Look, we're still sizing it. I think we provided some initial estimates of around about, you know, 13 to 15 million, but it's still being sized.

So 13 - - -

35 THE COMMISSIONER: 13 to 15, did you say?---Yes. Yes, I did.

Yes.

MR DINELLI: Thank you.

40 THE COMMISSIONER: I haven't been keeping a running total, Ms Stubbings, so forgive me, but the various matters you've spoken about - - -?---Yes.

- - - in your evidence have led to various sums of remediation?---Yes.

45 Have you done the total - - -?---Yes.

- - - in your head?---Sure. I mean, certainty – look, the ones that we have paid out have been about – of the ones that are in my evidence, are about 75 million, but we are yet to pay out, obviously, on item D, and the second Breakfree issue.

5 MR DINELLI: Now, they're the ones that are in your evidence.

THE COMMISSIONER: Sorry. Can I just – the last two you mentioned not yet paid out are estimated at, in the one case, 13 to 15?---Yes.

10 In the other case?---It was about 2.8 million were our current estimates.

So round numbers, 90 million all told; is that right? 75 plus 13 to 15?---Yes.

Plus 2.8?---Yes, that's fair, yes.

15

If we said 90, correct to the nearest decade, as it were?---Yes.

Yes.

20 MR DINELLI: They're the issues that you dealt with in your statement. Can you assist the Commission by informing it how much has been paid by ANZ itself in relation to remediation of customers over the past 10 years?---So we have pulled out that there has been at least \$130 million, in addition to the items that are in my statement.

25

And does that include, though – is that only remediation that has actually been paid?---That's remediation that has been paid, yes.

30 So you would have to add to that, at the very least, the – perhaps other items, but at the very least you would have to add the two items that we've just referred to?---Well, that's what I was saying. That's 130 as distinct from the items in my statement.

Yes.

35

THE COMMISSIONER: So it's 130 plus 75 plus 13 to 15 plus 2.8. Do I - - -?---Yes.

- - - capture that?---Yes, you have.

40

Yes.

45 MR DINELLI: For these issues to have occurred and to have occurred so often and in respect of so many ANZ customers is all – is certainly unsatisfactory, isn't it?---Yes.

And, in fact, it demonstrates that there are issues within ANZ in relation to the processing – the processing of data and customer information in relation to their home loan accounts, isn't - - -?---Yes. I mean, we've called out in our submission that, you know, delivering the standard of banking financial services that customers, you know, do expect of us, has – has led to a level of complexity in our systems and processes, and that that has contributed – contributed to these issues.

And that – but that – you put in this complexity - - -

10 THE COMMISSIONER: Just a moment, Mr Dinelli. What it has led to – correct me if I'm wrong, what it has led to is that customers have been charged the wrong amount of interest on their home loan?---Yes.

15 And, in round numbers, it's of the order of 220 million?---So can I just correct you, Commissioner, on that.

Yes, of course?---So the 130 million is not just in relation to home loan items.

20 Yes?---So that's in relation to various items in the 13 February submission.

Yes. Yes. I see. But if we confine our attention to the 90 million - - -?---Yes.

25 - - - that's 90 million attributable to amounts wrongly charged in respect of interest on home loans; is that right?---Yes. Interest – there's – there's a little bit in there around fees but, yes, interest as well.

The fees – is that a material contributor to the 90?---No. It's a – it is a relatively small part.

30 So I – keep muttering to people I have got to end up writing something about this, Ms Stubbings. At the end of it, if I took as an indication of the size of the problem approximately 90 million, am I in error?---That - - -?

35 If you think I am, please say so?---That is to do with the items that have been called out in my statement.

Yes?---There are possibly other items in the table that may relate to home loans. I just haven't - - -

40 Yes?--- - - - looked at that.

Yes, thank you.

45 MR DINELLI: I put to you yesterday that the fix of these various things over the years has been a band aid fix rather than a proper fix. Isn't that an accurate description, Ms Stubbings?---No. I think we've put – we've certainly put in quite a few system fixes. So we've put system fixes into what will be our strategic home

loan origination system. So we have built into that system all the parameters around loading interest rate discounts, all the parameters around offset linkages, and all the parameters around the population of Breakfree forms. Now, we are moving – we’ve said in our submission that a really critical thing for us is to move – we’ve got three
5 home loan origination systems. We’re moving to one. And we’re targeting – that’s meant to be in November. And, you know, those core system parameters and automation are sitting in that system.

10 But these problems have kept on happening, haven’t they, Ms Stubbings?---Yes.
Yes, they have.

And that falls short of what your customers expect of you, doesn’t it?---Yes.

15 And what community expectations would be of ANZ?---Yes.

THE COMMISSIONER: Do you accept also that it amounts to not providing the financial services efficiently, honestly and fairly?---I’m – I’m not sure I’m the right person to have a view on that. I mean, I certainly – you know - - -

20 Yes. I’m not asking you for a legal opinion?---Legal opinion, yes.

In the end, if there’s going to be one, I will have to express it?---Yes, yes.

25 But you’re the relevant bank executive?---Sure.

Do you think it is providing the financial services efficiently, honestly and fairly - - -?---Look, I - - -

30 - - - if the customer is charged the wrong interest rate?---I think if the customers are charged the wrong interest rate, then that is a – that is not a good outcome for a customer.

MR DINELLI: Thank you, Commissioner. No further questions.

35 THE COMMISSIONER: Yes.

Can I just pursue that a moment, Ms Stubbings. The questions I’ve asked you have treated a number of separate events as leading to a result which I’ve described - - -?---Yes.

40 - - - with a single expression, being “charged the wrong interest rate”?---Yes.

45 At least to that extent, would you accept that the various matters of which you have spoken are events that have some similarities?---Sorry, Commissioner. Just so I understand your question, that – the fact that we’ve had some recurrences, do you mean in terms of similarities, or - - -

We've spoken of a number of separate events?---Yes.

Is that right?---Yes.

5 And you've spoken of identifying, in effect, particular reasons for each of the particular events; is that fair?---Yes.

10 What I'm searching for is whether you can describe the separate events as having similarities between them?---Look, I think each event has had an element of, you know, a system or process failing.

15 Because a question that I may have to look at is how, if at all, section 912A and 912D of the Corporations Act were engaged with respect to these events, and 912D in part turns on to significance of breach which turns in part on number or frequency of similar previous breaches. Now, it's the similarity of the previous events that is the area I'm asking you to comment about?---Yes. Look, I think the – the interest rate discount issue was quite a separate process sort of issue. I think what's happened in item D is quite a – you know, a nuanced system issue. But, I mean, clearly what we've called out in item A and, you know, the recurrence of that in item 20 C, I mean, there are – you know, there are similarities in those issues.

Yes. Thank you. Mr Dinelli. No.

25 MR DINELLI: Thank you, nothing further.

THE COMMISSIONER: Does any party other than ANZ seek leave to examine Ms Stubbings? No. Dr Rush?

30 DR RUSH: No re-examination, Commissioner.

THE COMMISSIONER: Yes.

Thank you, Ms Stubbings?---Thank you, Commissioner.

35 You may step down.

THE COMMISSIONER: I should excuse, Ms Stubbings, should I not? Yes, you are excused from attendance, Ms Stubbings.

40 <THE WITNESS WITHDREW [10.54 am]

45 THE COMMISSIONER: Where to now, Mr Dinelli?

MR DINELLI: Commissioner, it might be – if it were convenient for you, Commissioner, to have a brief break. I intend to open very briefly in relation to the

issue of car loans, and the first witness is a consumer witness which concerns a car loan she obtained from Westpac.

THE COMMISSIONER: Yes.

5

MR DINELLI: So it may be that the parties need to arrange themselves.

THE COMMISSIONER: Five to 11. I will return at 11.

10 MR DINELLI: Thank you.

ADJOURNED

[10.54 am]

15

RESUMED

[11.00 am]

THE COMMISSIONER: Yes, Mr Dinelli.

20

MR DINELLI: Thank you, Commissioner.

THE COMMISSIONER: Yes.

25 MR DINELLI: Of the six topics identified in the opening address of Senior Counsel
Assisting last week, we now move to the fifth topic. That topic is car loans. A car
loan, unsurprisingly, generally refers to a personal loan with a specific purpose of
buying a new or used motor vehicle. There are, however, other methods of obtaining
finance for a motor vehicle to which you may hear some reference, including
30 obtaining a line of credit, or entering into a lease or similar arrangement. We will
not deal with those specific issues. As was identified at the very first hearing of the
Commission, the car is a crucial element underpinning the day-to-day lives of most
Australians.

35 We will hear evidence in a moment of Ms Nalini Thiruvangadam that she, like many
Australians, needed to buy a car to ferry her children to school and to undertake work
as a home carer. She, of course, is not alone. As the traffic on our roads shows,
Australians rely on cars to travel to and from work, to take care of their loved ones
and, of course, to undertake the daily tasks of life. In those circumstances the
40 purchase of a car for many the largest expenditure of their lives, or second only after
a home, needs to be a transaction that is conducted honestly and fairly. Our inquiries
so far, and what you will hear in this part of the hearing, has revealed that those
standards have not always been met.

45 In its regulatory impact statement in March 2017, ASIC indicated that 90 per cent of
all car sales are arranged through finance. Of these sales around 39 per cent, or
approximately 480,000 sales per year, are financed through a dealership and around

61 per cent are financed from other sources. As noted last week, according to the Australian Bureau of Statistics, finance commitments for motor vehicles totalled around 2.8 billion in the month of December 2017. For the calendar year 2017, finance commitments for motor vehicles totalled around \$35.7 billion. The
5 Australian Automobile Association notes that, for its hypothetical household, average weekly car loan payments were estimated to be around \$122 in both capital cities and in regional areas in Australia.

10 This was the largest vehicle related expense for the hypothetical household in both capital cities and regional areas, with repayments larger than weekly fuel costs. Car dealers can have three different roles under the National Consumer Credit Protection Act or as we've come to call it in these hearings, the National Credit Act. They may be, first, holders of an Australian credit licence. Second, they may be appointed as a credit representative of another Australian credit licensee. Or they may be exempt
15 from the credit licensing regime, including most relevantly by reason of the fact that they may be described as a supplier of goods under regulation 23 of the National Credit Regulations.

20 The third exemption, Commissioner, being the supplier of goods or services, is known and you will hear it referred to, as the point of sale exemption. When the National Credit Act and its regulations were enacted, Members of Parliament foreshadowed this exemption may be reviewed in the short-term. However, the point of sale exemption remains approximately eight years later, which means that many intermediaries are not required to comply with the responsible lending obligations of
25 the National Credit Act. ASIC indicates that the majority of car dealers engaged in credit activities by relying upon the point of sale exemption, rather than as credit licensees or credit representatives.

30 In all cases in which car finance is provided, there is an obligation placed on the lender to ensure that the consumer credit contract complies with the National Credit Act. According to further information provided by ASIC to the Commissioner on 7 March this year, and as mentioned in Counsel Assisting's opening statement on 13 March, ASIC has taken the following action against credit providers failing to assess properly whether a car loan is not unsuitable: ASIC has banned, cancelled,
35 suspended or placed conditions on the licence of 19 individuals or companies from providing credit services, 11 of which are permanent bans for failing to verify customers' circumstances and/or assess properly whether a loan is not unsuitable.

40 Following referral to the Commonwealth Director of Public Prosecutions, four credit service providers were convicted of criminal offences. Two entities have paid infringement notices totalling \$411,400, and approximately \$5.7 million has been paid in civil penalties and over 17 million has been paid in remediation or compensation. Also, as Senior Counsel Assisting noted in that opening statement and as previously mentioned, ASIC has already – has also introduced new rules
45 prohibiting flex commissions for car loans. Those new rules will commence on 1 November 2018. To explain, a flex commission is paid by lenders to car finance

brokers, typically car dealers, allowing the dealers to set the interest rate on the car loan.

5 ASIC explained that its key findings were that flex commissions distort pricing
arrangements and are a remuneration structure that has four outcomes: first, it means
that the interest rate charged to the consumer is not related to their credit rating or the
risk of default, but to their financial sophistication, degree of financial literacy, and
capacity to negotiate to protect their interests; second, they said that flex
10 commissions provide an incentive for sale intermediaries, relevantly car dealers, to
increase the price of a credit contract in a way that does not relate to the credit risk of
the particular consumer; third, they operate in a way that is not transparent for
consumers, or understood by them at the point of sale; and fourth and finally, ASIC
said that they can operate unfairly in any individual transaction.

15 ASIC formally banned flex commissions in the car finance market with the
legislative instrument to ban these commissions registered on the Federal Register of
Legislative Instruments on 6 September 2017. The legislative instrument operates so
that the lender, not the car dealer, has responsibility for determining the interest rate
that applies to a particular loan. The car dealer cannot suggest a different rate that
20 earns them more commissions. Car dealers will have a limited capacity to discount
the interest rate and receive lower commissions, leading to lower costs for credit.
Lenders and dealerships will have until 1 November of this year to update their
business models and implement new Commission arrangements that comply with the
new legislative instrument.

25 Commissions on loans are not the only source of profit for car loan intermediaries.
The profit margin for car dealers rely not only on car sales but on ancillary services,
including the sale of spare parts, after-sale services, such as ongoing services, and the
sale of finance and insurance. This profit margin is generally considered on a whole
30 of transaction basis, rather than on each of the individual components. You have
heard evidence about add-on insurance, and it is not intended to rehearse again that
which we heard when Ms Orr dealt with the topic earlier this week.

The focus here will be on its prevalence in the car loan industry. Indeed, add-on
35 insurance is a common feature of the average car loan transaction. These policies
can cover risks relating to the car itself, tyre and rim insurance for example,
mechanical breakdown insurance, but also the consumer's liability under a related
finance contract which has been used to obtain the car, including customer credit
insurance. In early 2016, ASICs review of add-on insurance referred – add-on
40 insurance report number 492, entitled A Market That is Failing Consumers: the Sale
of Add-on Insurance through Car Dealers, found that for the products included in its
review 75 per cent of the distribution of add-on insurance by dollar value was
through car dealers.

45 ASICs review also found that add-on insurance products sold through car dealers
provided significantly poor outcomes for consumers. The three key findings of that
report included, first, consumers receive low claim payouts relative to the premiums.

Based on the products included in ASICs review, over a three year period, the gross amount paid in claims was \$144 million, or only 9 per cent of gross premiums, just over 1.6 billion. This is compared to car insurance where the amount paid in claims is 85 cents in the dollar, and home insurance, which is 45 cents in the dollar.

5 Consumers receive much less in – second – the second finding was that consumers receive much less in claims than dealers receive in commission.

10 Upfront commissions of up to 79 per cent of the premium were paid to car dealers arranging the sale of add-on insurance products. Insurers paid 602.2 million in commissions to car dealers and only 144 million to consumers in respect of their claims. This means car dealers earned four times more in commissions than consumers received in claims. Third, the report found that insurers sell products that are poorly designed. Consumers were often paying for something they did not need or that offered poor value. In some cases, the average claim was less than or similar
15 to the average premium paid. We now turn to the case studies that will be considered in respect of car loans over the coming day.

The first case study that we will look at relates to Westpac’s loan practices. Westpac provides finance under the brand names of St George and Bank of Melbourne, and
20 those loans are typically received via intermediary – dealer intermediaries. In its submissions to the Commission, Westpac acknowledged engaging in misconduct in instances in which it’s finance add-on insurance that was unsuitable for customers who bought the insurance as part of a car loan package from a third party car dealer. In one instance in 2016, ASIC contacted Westpac about a customer who purchased a
25 car on behalf of a de facto partner who was, himself, unable to obtain finance due to his poor credit history. Despite only being employed on a casual basis, the customer was sold insurance in the form of a gap cover policy and a walkaway policy by the dealer.

30 These products were deemed to provide no cover or an unnecessarily high level of cover for the consumer. Westpac remediated this matter by waiving the remaining balance of the loan and to take steps to ensure the customer did not have a default listing with a credit reporting body. Westpac also undertook a review of loans originated by that dealer. Westpac acknowledged other instances of misconduct or
35 conduct falling below community standards and expectations in relation to car loans, primarily comprising breaches of responsible lending obligations.

In one instance FOS, the Financial Ombudsman Service, found that a dealer approved a loan to a 19 year old customer who was working in a casual job that she
40 had held for only two months. Despite the FOS finding, approximately a year after the loan was approved the balance of the loan had not been written off and about \$14,000 was still owing. In another instance, a loan was approved to a customer who had provided only one payslip, which was four months old, and showed yearly earnings to date of \$728 for a casual job. No rent or board was included in
45 serviceability calculations, and an undocumented Centrelink carer’s payment was included in the calculation of monthly income.

The Commission will hear evidence from that consumer, a Ms Nalini Thiruvangadam, who entered into a car loan with Westpac in July 2012. At the time that the car loan was approved, Ms Thiruvangadam's fortnightly repayments for her car loan totalling just under 30 per cent of her income. She subsequently became
5 unable to work as a result of injury and suffered financial hardship as she continued to attempt to make loan repayments. In around November 2017, Bank of Melbourne acknowledged that her loan should not have been approved. Her story provides a lens through which to view some of the issues which arise for Australians in their transactions with lenders and others in the car loan industry.

10 We will also hear evidence from Mr Phillip Godkin, Westpac's general manager, specialist finance business bank. He will give evidence about Westpac's review of Ms Thiruvangadam's situation, including Westpac's acknowledgement the processes in relation to approval of her loan were deficient. More broadly, Mr Godkin will
15 give evidence as to the practices at Westpac, how they have changed since Ms Thiruvangadam obtained her loan, as well as the monitoring in place at Westpac in relation to add-on insurance.

20 The second case study that we will look at is ANZ's car loan practices. As we have already noted, ASIC has already secured penalties in respect of breaches of the National Credit Act for lack of verification of borrower's pay slips by Esanda finance, which was at the relevant time owned by ANZ. ANZ expects to remediate approximately 320 car loan customers for loans taken out through the relevant third party intermediaries from 2013 to 2015. It expects the remediation to reach a total
25 amount of around \$5 million. So far, it has paid \$100,000. This case study will look more broadly at the practice of Esanda of assessing and verifying loans through intermediaries.

30 As already noted this assumes significance where the intermediary may not be subject to the various obligations under the National Credit Act but the lender, in this case Esanda, remains so bound. Mr Guy Mendelson, ANZ's general manager, small business bank, who at various times has had roles of responsibility in respect of Esanda, will give evidence about ANZ's processes for car loans arranged through
35 intermediaries. He will also give evidence about various incentives in place in relation to add-on insurance and finally give evidence about various fraudulent conduct of intermediaries which has come to ANZ's attention and what ANZ has done in response to those issues.

40 Finally, in this part of the first hearings a statement will be tendered of the evidence of Mr Michael Saadat, the senior executive leader of the Deposit Takers & Insurers & Credit Services team at ASIC and regional Commissioner for New South Wales. As the Commission has heard in opening, both last week and in what has been said today, ASIC has been involved in regulating the car finance industry, including by
45 the introduction of the recent ban on flex commissions, and in relation to responsible lending practices. Mr Saadat's statement addresses three – will address three principal topics. It will address the steps that ASIC has taken in relation to the regulation of flex commissions. It will address the steps that ASIC has taken in

relation to add-on insurance, and it will address the views currently held by ASIC in relation to the operation of the point of sale exemption. If it pleases the Commission, I now call Ms Thiruvangadam to give evidence.

5

<NALINI DEVI THIRUVANGADAM, SWORN

[11.21 am]

<EXAMINATION-IN-CHIEF BY MR DINELLI

10

THE COMMISSIONER: Do sit down, please - - -?---Thank you.

15 - - - Ms Thiruvangadam. As I have said to other witnesses, just stop, take a deep breath. Now, Mr Dinelli.

MR DINELLI: Thank you.

20 Can you please tell the Commission your full name?---Nalini Thiruvangadam.

And I don't need you to tell the Commission your address. We know your address. What is your present occupation, Ms Thiruvangadam?---I am not working at the moment.

25 You've been asked to give evidence today about your experience in obtaining a car loan. Can you please tell the Commission why you decided to look to buy a new car in - - -

30 THE COMMISSIONER: Before we get to that, I think just for her protection, we had better - - -

MR DINELLI: Yes.

35 THE COMMISSIONER: - - - make sure it is all under compulsion.

MR DINELLI: Yes.

THE COMMISSIONER: And therefore produce the summons.

40 MR DINELLI: Yes, thank you, Commissioner.

THE COMMISSIONER: And then the statement.

45 MR DINELLI: Thank you.

THE COMMISSIONER: Yes.

MR DINELLI: Did you receive a summons to come today, Ms Thiruvangadam?---I did.

Thank you. And do you have that with you?---Yes.

5

I tender that summons.

THE COMMISSIONER: You assume I am keeping up with the numbers, Mr Dinelli. That's a rash assumption. Exhibit 1.136, I think. 137, I'm told. Exhibit 10 1.137, summons to Ms Thiruvangadam. Yes.

EXHIBIT #1.137 SUMMONS TO MS THIRUVANGADAM

15

MR DINELLI: Thank you. And did you prepare a statement, Ms Thiruvangadam, for the purposes of giving evidence today?---Yes, I did.

And do you have that with you?---Yes, I have.

20

And did you sign that statement on 15 March of this year?---Yes, I did.

And it has some exhibits attached to it?---Yes.

25

And is it true and correct?---True and correct.

Thank you. I tender that statement.

THE COMMISSIONER: Exhibit 1.138, statement, Nalini Devi Thiruvangadam. 30 Yes.

EXHIBIT #1.138 STATEMENT OF NALINI DEVI THIRUVANGADAM

35

MR DINELLI: Thank you. And thank you, Commissioner, for slowing me down.

Ms Thiruvangadam, can I ask you, please, to tell the Commission why you decided to buy a new car in 2012?---The reason I decided to buy a new car is because I had a 40 second hand Mitsubishi Magna and I was driving one day with my kids and all of a sudden it caught fire around the engine side. So it was towed to the mechanic and the mechanic had a look and he said that, "At the moment I can repair – just briefly I can repair, but long run you have to buy a car." And the reason why I have to buy a car is because I need to pick my kids and drop my kids to school. And also at that 45 time I was working. I need a car to go, like from home to home to look after elderly residents. Yes.

I see. And how did you intend to buy this car?---Well, by getting a loan through bank.

5 Okay. And what did you – what did you do to look for a loan for your car?---Well, I called several banks, the major banks first, and then one of them is Westpac, because I had an account with Westpac. And then after that some finance company and also car dealers around my area.

10 I see. And when you rang – and when you said that you rang Westpac, what did they say about your desire to borrow money to buy a car?---Well, she went through few questions and then she asked me to hold on and then she came back on the phone, like, after one or two minutes and she said that, you know, “I’m sorry at this stage I can’t approve your loan because it looks like you have some credit problem.” And then she asked me to call the credit office to find out the history.

15 And do you know what that credit problem was?---Yes, I had a Citibank credit card. It was not paid. So I think I had the idea that it could be the one.

20 And after you called Westpac, who else – you said you called some other banks?---Yes.

Who else did you call?---Commonwealth, ANZ, and National Bank.

25 I see?---And other finance company too.

And were you able to obtain a loan from any of them?---No.

30 You said that you rang some finance companies. Did you ring anyone else?---Car dealers also around my area first. And then none of them wanted to give me a loan, finance.

35 I see. And can you explain then how you did come to buy yourself a car?---Well, I was searching online for all these numbers, like finance company numbers and things, and one of the company was – one of the dealer was this dealer that I bought this car. It’s about 50 kilometres away from my house and I spoke to the staff, called the car dealership, and I spoke to the staff and she put me through the manager in charge. And then when I spoke to the manager, I explained myself that I tried to call several banks, major banks, and they didn’t approve my loan, and also I did call finance and car dealers around my area, none of them approve. And he said that,
40 “Don’t worry, you come to my car dealer, and you are definitely going back with a car tonight.”

45 And so having been told that on the phone, what did you then do?---Well, I told him, “Look, I’ve called several places, major banks and finance, and other – they all said rejected. I don’t want to drive all the way to that particular place, about 50 kilometres away, as I said, and – unless I know I will – if you are going to tell me the answer that no, after me arriving there, like you said, no, your loan has not been

approved.” So he say, “No, no, you don’t have to worry about that. I can tell you right now, you will definitely go back with a car.”

5 So what did you – what did you do then that afternoon?---After that, I called one of my friend and ask her whether she can come with me to this dealership, which is quite far and it’s very unfamiliar area for me, and then she said, “Okay.” I picked my friend and I went to the school and picked the boys after school, and we drove to this place. I missed few – I didn’t know how to go, I stop and ask people and then finally we went to the dealer shop.

10 Okay. And can you explain – can you explain what happened when you arrived at the dealership?---When – when we arrive at the dealership, one of the staff came and greeted us, and told us to sit in the lounge. And after that, the manager came – he introduced another guy came over and he introduced himself as a manager. And then
15 he took me to his office.

I see. And when you went into – when you went into the manager’s office, what did the manager say?---The manager was asking me more like personal questions, just like start – like friendly questions, like which country I was from and all these things,
20 and after that he asked me whether I was working or not, and what type of job I’m doing, and all these things.

So this is in July 2012?---Yes, correct.

25 So at the time were you working?---Yes, I was working, yes.

And what was your job at the time?---Personal care attendant.

I see. And were you – what was your – what were you paid, approximately?---Approximately about 350 per fortnight.
30

I see. And did you – did you have any other income at that time?---No. Sorry, I had Centrelink payments like family tax A and B so I will get about 600, something around that figure.
35

And did you tell those things – are they the things you told to the manager - - -?---Yes.

- - - when you were speaking to - - -?---Yes, I did.
40

To him. Now, I’m going to ask you now, in your evidence you say that he rang someone. I don’t want you to say who – the name of the person?---Sure.

45 But can you explain what happened after you had had this discussion about how much income you had, what did the manager then do?---Well, while I was in his office he was on the phone on and off talking to someone. And he was talking quite long – quite some time. And after that, he asked me to go out of his office and sit in

the lounge with my – my friend and kids. And then he left the office and he went outside the car yard. And he opened the door to the car that he said that, you know, that's the car that I'm going to buy. And within, like, two minutes he came inside and he went to his room – his office and he was talking over the phone for close to
5 like probably about one and a-half hours to two hours, and then after that he called me back in, and then he asked me whether I got any other properties, and things like that. I said, "No, I don't have any properties. In fact, I'm renting in a – in a unit and I am paying about 1003 per month." And then – then he started to type and fill up – I think it must be the application form. So what - - -

10 Yes?---And then after that he asked me to sign in several places. And then he said, "You got the car. As I promised that you will go back with your car – with a car – with a new car." Not – not new car – I was asking for a new car, but he said, "You got the car, yes – yes."

15 So if we can go back a step. He – he asked you if you owned any property, did you say?---Yes, he did.

And did you – you told him that you were renting?---Yes.

20 And did – whilst he went through these questions with you, what was he doing?---He was just typing few – I don't know what he was typing. I think the application forms or something.

25 And did he make any other phone calls?---Yes, he did several phone calls. Every now and then he would make phone calls and then he would hang up and then he would type.

Was he – I don't want you to say the name of the person?---Sure.

30 But was it the same person that he was - - -?---Yes.

- - - calling?---Because he was very friendly and I had impression that the – he – the manager and the guy over the phone must be very close, so - - -

35 Why did you have that impression?---Because he was joking around and laughing, like very - - -

40 And what was he – what was he talking to him about?---I can't remember at the moment, sorry.

Okay. And during the course of those conversations was anything said about a loan for you?---You mean over the phone with the other - - -

45 Yes?---As I said, I can't remember that far.

I see. And you said that the manager pointed out a car to you?---Yes.

And what was the car that he pointed out?---Ford Focus MPN.

I see. And was that the car you were going to buy?---No. That's not the car that I wanted to buy, but then he filled up and he – he pointed that's the car that I will be
5 given – I will be buying. So I had no other choice, so - - -

I see. And what, you then said that he filled out some forms and I interrupted you. You said – did you then sign those forms?---Yes. Yes, I did. Yes.

10 And what were those forms that you were given?---Look, I didn't even see what forms I was given. All I was told to just sign, he just pointed out and said, "Sign here, sign there." That's about it.

And you've – you've signed a statement that we've gone to previously?---Mmm.
15 Can I ask you to identify a document for me, please?---Yes.

It's NDT1 to the statement. Was this the – was this one of the pay slips that you gave to - - -?---Correct.
20 - - - the manager?---Yes.

And if you turn over the page, or maybe two pages along, and is this another one of the payslips that you gave him?---Correct.
25

And you said that you signed some documents. If I can go to NDT4. Do you remember this document?---Correct, yes.

And what – and you – it's blacked out, but it probably isn't on the copy that you
30 have. Is that your signature at the bottom?---Yes.

And if you go a few pages ahead - - -?---Mmm.
- - - did you also sign – I think it's three pages ahead?---Yes.
35

Page 3 at the top. Did you also sign there?---Correct.

And what happened after you signed those documents?---Well, the manager told me, "As I promise, you got the car. It's your car now." And then he took me outside the
40 – his office and then one of – another staff was waiting there, and he said, "I will take you for a test drive." So I didn't want to go for a test drive because it was really late, but he insist and I still went. So at the end of the day, I did went for a short test drive. And came back to the car dealer. While I was driving, the – the other staff told me that this is a second-hand car. So then only I was – like being taken back. I
45 was asking, when I spoke to him over the phone, that I need a new car. I don't want to go through the process of buying a second-hand car and then later on I will have to repair these things. And also I am dealing with elderly people. I have to pick them

up and take them for shopping. I don't want to risk anybody. So that's the main reason why I wanted to buy a new car.

I see?---Mmm.

5

And who was it that – and who was it that said that to you, did you say?---A salesperson, yes.

I see. And you went for a short drive, did you?---A test drive, yes.

10

And then what did you do after that?---After that, we came back to the car dealer – yard – the car yard, and then we left – I went inside the car dealer shop and the manager was still around and he was laughing, and then he was talking to my friend and my children, and he was – he told to my friend, “Later on, if you need any car loan, you can come and see me.” So that's what he said. And we left after that.

15

I see. And did you take any documents home with you?---Yes, I did.

And did you take the car home with you that night?---No, I did not.

20

So when – what happened with the car?---I left it there, because it was a very unfamiliar – you know, for the first time I am going to drive another new car. I was very scared, and it was already dark – quite late – and then I left it there. And then I went back home that night. I went to a few documents that was given to me, and I realised that it's – it's really stated there it's a demo car, and also in one of the pages, I think I saw that it has done so many kilometres, and I was like – really like – I didn't expect that. So the next morning I call. I spoke to the manager, and I say, “Look, I'm not – I don't want this car. I am not going to come back and take this car.” He say, “No, that car belong now – it's already yours, you already bought it, you already sign all the documents. You have to take it.”

25

30

Did you – when you were reading those documents, did you notice anything else. When you got home that night and you were looking at the documents. Did you realise - - -?---Yes.

35

- - - anything else?---Also, the – I think the payments and the – it's a demo car. That's the main thing that really - - -

What do you mean by the payments?---Payments like how much I have to pay every fortnight, I think.

40

And how much were you required to pay?---259 and cents – I'm not – so 98 cents.

I see. Per fortnight, was it?---Per fortnight, that's right.

45

And what did you – what was your reaction when you read that?---I was shock and I know I can't afford to pay that. Because when I was signing or before I knew he did

not explain to me anything, how much I'm going to pay and all this. Nothing was explained to me. He just – most of the time he was always on the phone, and then only the last period of time he ask me to sign, and that's it.

5 I see. And when you spoke to the manager on the next day, did you say anything about the payments?---Yes. I told him the payments, you know, I really can't – I wouldn't be able to afford to pay those payments, and also I – after some time, I can't remember exactly, I receive a letter, I think from bank – it started on 13 June –
10 August or something like that, the first payment, and it falls on Monday. My – my Centrelink payment doesn't go on Monday.

Is this the document you got – I will show you the document. It's NDT8?---Correct.

15 And if you go to the next page. You said something about 13 August. Why was that?---That was the first payment and it falls on Monday. My payment doesn't go on Monday. Centrelink payment goes on Wednesday.

I see?---And my salary goes on the next day, Thursday. So I was – I ask him whether he can adjust the date, at least put it for Wednesday. He say, "No, you have
20 to borrow from either your uncle or someone to pay the payments."

And what happened then when – well, did you make that payment?---I did.

25 And what happened after that every time you – sorry, I should say, was the car ultimately delivered to you?---Yes. After a few days, two guys from – salesperson came in, drop it at my house and – yes.

I see. Did you start driving the car then?---Yes, I did.

30 And can you explain to the Commission what happened then in terms of your repayments to Bank of Melbourne?---Every payment I was struggling, as I told you, that my income – since I was working as a casual, my income wasn't good. So I do pick up a shift every now and then just to catch up with the payments and things like that, but I was really, really struggling. And I used to call bank of – no, yes, I used to
35 call Bank of Melbourne and ask for, like, you know, extension, this and that, quite a lot of time.

40 And when did this start happening?---I had a fall in – sometime in September, that very same year when I bought the car, and I had both of my knees – I couldn't even walk. It was quite serious. So I lost my job at that time. So then I call Bank of Melbourne and told them, like, "Look, I had this fall." And I'm – I couldn't go to work and – my normal working. And, "How am I going to pay these payments? Could you help me or could you advise me on this?" So then after that they came up
45 with a – like a hardship payment thing.

Yes?---They extended – they asked me not to pay for certain – first they told me, “Six months, you don’t have to pay anything.” But then I receive a letter saying that, you know, it’s only for six weeks. Yes.

5 I see. And so at what period of time did this happen? So you bought your car in July 2012 when you said that you had - - -?---Yes.

- - - a fall in September - - -?---September, yes.

10 When did you ring up and ask for the extension for your payment?---I think after a few months. A few months, yes.

And then, once that time passed, were you able to make repayments after that?---No.

15 So what happened then?---Every now and then I – I will – I will go to my uncle’s house and he will lend me money to catch up with the payments, and I also had my – my brother used to help me. So that’s how I used to catch up with the payments and, yes, I was really struggling. I have to stop my rental payments several months, like two, three months, stop the payment – paying rental, and because I had been living in
20 that rental property for some time, like 12, 13 years, the owner was extremely good, and when I paid this bill, I have to catch up with that. So I was just juggling around and it really, really – it was very hard for me.

25 And then did you speak to – did you speak to Bank of Melbourne again during this period?---Yes, I did. And they said no, because they have given me like six months extension that I don’t have to pay, and then they said that’s the maximum they can give, and, “You have to pay somehow.” That’s all they told me.

30 I see. And did you – did you have any other discussions with people from the Bank of Melbourne during this period?---Yes, I did. They – they used to call me several times, you know, chase for payments and things like that. Sometimes they said they – they said, “They are coming now to your doorstep and we are going to tow your car away and you have to pay whatever balance is there in full.” Like 20,000 straightforward like that. And I told them – I used to cry back then, several times,
35 “Don’t do this to me because I’ve got two kids, it’s very hard.”

40 And did you have other bills at the time and what did you do about your electricity bills and other bills?---Everything was like, you know, back – a lot of payments was really not paid. I – when they – when they ask me to apply for hardship, like electricity companies, which I did. Yes.

Hardship for the electricity company?---Yes, yes.

45 I see. And were you able to make any more payments for your car loan?---I still continued to pay, but I was really struggling with the help with my uncle and then, as I said, I don’t pay my rental, and at one point, you know, the owner is very good. At one point the real estate agent took me to the VCAT or something like that.

Yes?---And then they put me on plan to catch up with the payments, which took months.

I see. And then – well, can you - - -?---I – sorry to interrupt.

5

No, no, please?---I also sold like, you know, jewelleries, like, was given to me by my mum, and so jewellery for my sons, given by my mum, all I sold in like a Cash Converters shop, like that, just to catch up with the payments, yes.

10 And - - -?---I'm sorry.

Can you tell me about - - -

THE COMMISSIONER: Just take a moment?---Yes. Thank you.

15

Are you okay to go on?---I'm all right. Thank you.

Yes. Okay. Go on, Mr Dinelli.

20 MR DINELLI: Can I ask you a few questions about the car?---Sure.

So this is obviously over time you've been doing your best to make these loan repayments?---Mmm.

25 Can you tell me how the car was working during that time?---So when I – I – when I bought this car it was working like five, six, months it was okay. After that, I had quite a lot of problem. Like, whenever I reverse from my house, it goes to the – there's a main road there, it goes and stop right in the middle of the road. Several times. And the person who is right at the back, he used to got the guy come in ask me, "What's wrong, can I help you?" And then even he try to start, he can't start. Then he said, "I will push." He tried to, like, drive slowly to the side. And then also my son, when I went to pick my boys from the school, it stops right in the middle of the road. It starts to jerk and then it stops like that. Continuously, it was jerking and – so I called the dealer first. I called the dealer and I - - -

35

Did you speak to the manager?---Yes, I did. And I told him that, you know, "This car is jerking within six months." I don't know what's the problem. He just told me straight on my face, "It's your driving, perhaps it's your driving." And I'm thinking I doubt – at one point I doubt myself, maybe it's my driving, but then I just forgot it, I didn't want to say anything. So I started to drive, but eventually every – started – became worse, and then I called them up again. Every time I called from there on, they don't even put me to the manager. They tried to like, you know, they don't return my call, they don't – don't do anything about it. So finally I said, "I can't come to that particular dealership where I bought the car." Can you – can I go to the closest Ford company to get it checked. Before that I took to my – the mechanic that I used to bring my car and he said, "No, this one, you've got the warranty, you take it to Ford." So I went – I took it to the Ford. They checked and they said there is

45

problem with the clutch or transmission, something like that. And after that, they repaired everything, done, finished. Continue the next day, before a year, comes it starts to jerk. It happens. Sometimes I'm so fear – I am driving on freeway and it starts to jerk, and my children's in the car, "Mum, is it going to stop? We going to die." Or words something like that. Because it jerk – it really very – jerks a lot.
5 So - - -

And did you ultimately come to ring Ford about the car?---Yes, I did.

10 And - - -?---I - - -

Sorry, go on?---I took this car for three times to get – every year, three times I have taken this to the dealership to check and then every time they give me a complaint that it's a clutch or transmission problem and they get it done. So three times I've
15 taken and they've done that. And then finally one year – that was last year – they said, "Why don't you call the Legal Aid at Broadmeadows and take the advice in regards to jerking and things like that." So that's how - - -

And what did you do when you – what happened when you were told to go to Legal
20 Aid. What did you do?---I contacted Legal Aid at Broadmeadows. They directed me to Consumer Action Law in the city. Yes. That's when I spoke to the lawyers. And then – yes, from there on.

And what did you do after you had spoken to the lawyers? What did you do in
25 relation to the car?---Well, I gave her – one of the lawyers asked me documents, and things like that, I gave it to them and I'm still driving the car, but yes, it's still jerking.

Did the lawyers – did the lawyer send a letter to the bank on your behalf?---Yes, he
30 did.

And what was – what was the purpose of sending that letter to the Bank of
Melbourne?---I think to get the refund or something like that. And they have also
35 charged me quite a lot of interest and things like that. And whenever I don't pay the interest, amount was quite high. And so – yes.

And then did you receive a response from the bank?---Yes. My lawyer received the
response. They were corresponding with the – my lawyer. And after that finally one
40 day they sent me a letter saying that, you know, "We are going to pay you this amount."

And can I go to NDT16. You can also look at the screen, Ms
Thiruvangadam?---Yes.

45 Is that the letter there that you – that was sent to your lawyer?---Yes.

And you see that it said – that letter says, if you go down to the fourth paragraph:

We have reviewed all the information we have to hand and the information you have provided and we agree the loan should not have been approved.

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

5

Continuing:

Therefore, we must consider what has to be done to put Ms Thiruvangadam in the position she would have been had the loan not been approved.

10

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

And then if you go to the second page, they made an offer to you for you to:

15

Keep the vehicle –

Do you see number 1? You could:

20

Keep the vehicle and bank to offer 20,000 as full and final settlement of the loan.

Or you could:

25

Surrender the vehicle to the bank.

?---Mmm.

And the bank would give you \$24,000 as full and final settlement of the loan and the matter. What did you do when you received this letter?---I took the second option.

30

I see?---Yes. Sorry, sorry.

No, that's okay?---I took the first option.

35

The first option?---First one, yes, sorry.

So that is you kept the car and the bank gave you \$20,000; is that right?---Exactly. Sorry, yes.

40

Now, the letter that you received – the letter that you received from the bank also said that – that the application you made when you went to the dealership said that you had no existing liabilities and that you were living with an uncle at this time, and that no rent or board was taken into consideration; was that right?---That's not correct.

45

And have you been paid the money by the Bank of Melbourne?---Yes.

And did you keep the car?---Yes. I kept the car.

And do you still have the loan to the Bank of Melbourne?---No, I don't have.

5 Thank you very much - - -?---Thank you.

- - - Ms Thiruvangadam.

10 THE COMMISSIONER: Does any party other than Westpac seek leave to cross-examine the witness? No. Mr Sheahan.

<CROSS-EXAMINATION BY MR SHEAHAN

[11.55 am]

15

MR SHEAHAN: Thank you, Commissioner.

20 Ms Thiruvangadam, my name is Sheahan and I appear on behalf of Bank of Melbourne and the other companies in the Westpac group. Forgive me for keeping you here a couple of minutes longer - - -?---That's all right.

25 - - - but it will only be a couple of minutes. Now, you mentioned in your statement and in your evidence today that you made I think at least eight attempts to obtain finance for a car before you went to the dealership where you eventually obtained one?---Correct.

And that was over a period of about six months; is that right?---Correct, I think. More or less.

30 About that?---About that amount.

Now, I take it that you had decided that it was very important to get a car to replace your damaged Mitsubishi?---Correct.

35 And it was very important because you needed a car simply to remain in employment?---Exactly.

Now – and I think, if I understand what you've told us, you decided that you needed a new car so that it would be reliable?---Exactly.

40

And you thought you needed a reliable car to continue to do the work that you were doing?---Exactly.

45 Okay. Having been through that process of speaking to eight people about obtaining a car, would I be right in thinking that you had reached a conclusion that you thought you would be able to pay off a new car – it might be over five years, but assuming you could continue to work?---Yes.

And obviously, if you became unable to work for some reason, then that would cause problems; do you agree?---Yes.

5 But did you think that the risk of losing your ability to work immediately was a lesser risk than the prospect of being unable to pay off a car loan some years down the track if something went wrong?---So can you repeat that question, sorry?

10 I will withdraw that question. Now, when you went to the car dealer in question here – that was about five years ago now?---Six, yes.

Six. I just want to suggest to you that your dealings with that car dealership took place over a couple of days. That is to say, you had some dealings with them before 26 July when you went out to see the dealer?---I can't remember to that extent, sorry.

15 But it's possible you might have spoken to them on the phone a day or two before to talk about a possible car purchase and car loan?---Correct, I think. I can't remember that one, I'm sorry about that.

20 THE COMMISSIONER: She said in evidence, did she not, that she had rung the dealership and the dealer had said, in effect, "Don't worry, you will go home with a new car."

MR SHEAHAN: She did give that in evidence.

25 THE COMMISSIONER: Yes.

30 MR SHEAHAN: Commissioner, I don't need to show this document to the witness, because it's not a document she has ever seen before. It's an internal St George Bank record, but I will tender WBC.104.003.7572, which could be described as St George Sovereign screenshots for the period commencing 24 July 2012. And I have no further questions for Mrs Thiruvangadam.

THE COMMISSIONER: Exhibit – have you - - -

35 MR DINELLI: And - - -

THE COMMISSIONER: Yes, Mr Dinelli, you have seen this.

40 MR DINELLI: I'm sorry?

THE COMMISSIONER: You have seen this document?

MR DINELLI: No, I haven't.

45 MR SHEAHAN: I'm sorry, we did give notice to our friends.

MR DINELLI: That may have - - -

MR SHEAHAN: I know we have given notice of this.

THE COMMISSIONER: Exhibit 1.139, St George Sovereign Screenshot from 24 July - - -

5

MR SHEAHAN: July 2012.

THE COMMISSIONER: - - - 2012, WBC.104.773.7572.

10

**EXHIBIT #1.139 ST GEORGE SOVEREIGN SCREENSHOT DATED
24/07/2012 (WBC.104.773.7572)**

15 MR SHEAHAN: Thank you, Commissioner.

THE COMMISSIONER: Yes. Yes, Mr Dinelli.

MR DINELLI: Thank you. There's no further questions for Ms Thiruvangadam.

20

THE COMMISSIONER: Yes. Thank you very much - - -?---Thank you.

- - - Ms Thiruvangadam. You may step down and you are excused from further attendance.

25

<THE WITNESS WITHDREW

[11.59 am]

30 THE COMMISSIONER: Yes, Mr Dinelli, what's next?

MR DINELLI: I would invite my learned friend Mr Sheahan to call Mr Godkin.

MR SHEAHAN: Commissioner, the next witness is Phillip George Godkin.

35

THE COMMISSIONER: Yes. Have we actually got a witness, Mr Sheahan?

MR SHEAHAN: He shouldn't be far away, your Honour. He knows he was on.

40 THE COMMISSIONER: Maybe that's why he is not here, Mr Sheahan.

MR SHEAHAN: He's suitably courageous, Commissioner. Suitably courageous.

THE COMMISSIONER: I rather suspect your solicitor should go and find him.
45 No, here he is.

<EXAMINATION-IN-CHIEF BY MR SHEAHAN

5

THE COMMISSIONER: Do sit down, please, Mr Godkin. Yes, Mr Sheahan.

10 MR SHEAHAN: Thank you, Commissioner. Your full name is Phillip George Godkin?---That's correct.

And your business address is Tower 2, International Towers Sydney, 200 Barangaroo Avenue, Barangaroo?---Yes, that's right.

15 In the state of New South Wales?---Yes.

You are here to give evidence pursuant to a summons Mr Godkin?---That's right, yes.

20 I tender the summons which is dated 8 March 2018.

THE COMMISSIONER: Exhibit 1.140, summons to Phillip George Godkin.

25 **EXHIBIT #1.140 SUMMONS TO PHILLIP GEORGE GODKIN**

THE COMMISSIONER: Yes.

30 MR SHEAHAN: And for the purposes of this Commission, Mr Godkin, you've prepared, I think, two witness statements; correct?---Yes.

35 The first – they're both dated 5 March 2018. The first, which is the longer, we might call your general witness statement. And it is WBC – forgive me, Commissioner – WBC.900.001.0001. Do you have any corrections that you wish to make to that statement, Mr Godkin?---No, I don't.

I tender that, Commissioner, with its exhibits PG1 to PG39.

40 THE COMMISSIONER: And he affirms its content, does he, Mr Sheahan?

MR SHEAHAN: The contents are true and correct?---Yes, yes, they are.

Thank you, Commissioner.

45

THE COMMISSIONER: Yes, exhibit 1.141, statement of Phillip George Godkin, WBC.900.001.0001.

**EXHIBIT #1.141 STATEMENT OF PHILLIP GEORGE GODKIN
(WBC.900.001.0001)**

5 MR SHEAHAN: And, Mr Godkin, your second concerns the transaction involving
Ms Thiruvangadam, from whom we just heard. Are its contents true and
correct?---Yes, they are.

I tender it, Commissioner, along with its exhibits, PG21 to 26.

10

THE COMMISSIONER: Exhibit 1.142, witness statement of Phillip George
Godkin, WBC.900.002.0001.

15 **EXHIBIT #1.142 WITNESS STATEMENT OF PHILLIP GEORGE GODKIN
(WBC.900.002.0001)**

MR SHEAHAN: Thank you, Commissioner.

20

THE COMMISSIONER: Thank you, Mr Sheahan. Yes, Mr Dinelli.

<CROSS-EXAMINATION BY MR DINELLI

[12.03 pm]

25

MR DINELLI: Thank you, Commissioner. Good afternoon, Mr Godkin. My name
is Albert Dinelli. I am one of the counsel assisting the Royal Commission?---Yes.

30 You are currently the general manager, specialist finance business bank at
Westpac?---That's correct, yes.

And you, in that role, are responsible for overseeing most aspects of Westpac auto
finance business?---Yes, that's right.

35

And that business provides finance predominantly originated through car
dealers?---Correct, yes.

And that involves finance to customers for the purchase of new and used cars?---Yes.

40

And your statements that you've prepared for the Commission, they deal with car
loans made by Westpac auto finance business through dealer intermediaries only,
that's the focus of your - - -?---That is the focus, yes.

45 You provide, I think, some context about the origination of car loans through dealers
in your statement?---Yes.

And you say that the origination of car loans through dealer intermediaries is driven by consumer demand for finance actually at the point of sale; is that right?---That's correct, yes.

5 And am I right to say that at the point of sale the customer approaches the dealer about purchasing a vehicle, really; that is, they go in to buy a car and the discussion about finance occurs in that context?---In that context, yes.

10 And that's a reason that the dealer intermediary manages communications with the customer even through the loan application process?---Sorry, I'm not sure - - -

That's a reason the dealer intermediary manages communications with the customer through the loan application?---Yes, that's correct.

15 That is, there's not someone from Westpac there?---That's correct.

It's dealt with by the dealer?---By the business manager in the dealer, yes.

That's correct?---Yes.

20

An example of which – and we won't use his name – but an example of which would be the manager to whom Ms Thiruvangadam referred? She gave evidence – I don't know if you were here?---Yes. No, I heard her evidence. And – so she referred to the manager who was the person she spoke to in dealing with the vehicle, but I think there was also a business manager involved, who is the one that had the conversation with her about the loan. So I think there were two different roles.

25

Yes. And that – the person that she called the manager was the business manager?---Right. Okay.

30

And is it right to say that loans provided by Westpac auto finance are currently originated through either St George or Bank of Melbourne?---Yes, that's right.

35

There was, for a time, you offered part of Westpac was – there was another brand through which it was offered as well; is that right?---So we offer the product through what we call white label arrangements with manufacturers, and continue to do that. So some manufacturers – so, for example, you know, Holden or Hyundai or Kia, and we use their brand name in the offering of finance but it's – you know, it's our product.

40

That's right. So the – and you are the provider of the finance?---Absolutely.

That is Westpac?---Correct, yes.

45

And you've given evidence – some of which is confidential, and I don't want you to disclose that which is confidential – but I can ask you this, and I would be grateful for you to assist the Commission with an answer to this question: the number of car

loans on issue by Westpac by or through dealers in 2017 is, you know, a very significant number, isn't it?---Yes. Yes, it is, indeed.

Well into multiple hundreds of thousands?---Yes. That's correct, yes.

5

And the quantum of funds that's on loan in respect of car loans by Westpac or through dealers is similarly a very significant number, isn't it?---Yes, it is.

In the multiple billions of dollars?---Yes.

10

And am I right to say – am I right to say that the overwhelming majority of car loans issued by Westpac are those that are issued – those that are initiated by dealers; is that right, the overwhelming majority?---Yes, very much the overwhelming majority.

15 I think that might be your exact language, without disclosing the exact number?---Yes.

But you describe it as:

20 *The overwhelming majority of Westpac auto business finance is done through dealers.*

?---Yes.

25 THE COMMISSIONER: Is he able to say publicly where the Westpac car finance business sits in the market generally?---Yes. So – and talking specifically about the – the business of auto finance through dealer intermediaries, then – then we are typically number 1 or number 2. So we swap between those two spots, so - - -

30 Yes.

MR DINELLI: It's fair, isn't it, to say that Westpac as a business is heavily committed to the motor vehicle dealership model and physical point of sale model?---Yes, indeed.

35

Indeed, it's a very profitable part of the business, isn't it?---It's a profitable part of the business, yes.

40 Now, you've made a statement in – you've made two statements. The second of which you were taken was in relation to Ms Thiruvangadam. And you're aware, of course, that she made a statement and you were in the Commission while she gave her evidence?---I – I wasn't in the room, but I did see her statement, yes, and her evidence, I'm sorry.

45 And you've read her statement?---Yes, indeed.

Dated 15 March?---Yes.

And that was tendered as her evidence?---Mmm.

And it was supplemented by what she said. And you accept that she entered into a credit contract with St George on 26 July 2012?---Yes – yes. Sorry, I don't
5 remember the exact date that she signed.

It's not a memory test, but that is – you can take it from me that's the date she signed it?---Yes.

10 And in the course of preparing your statement you've reviewed her application and reviewed Westpac's processes in relation to her statement?---Yes, I have.

Her application, I should say?---Mmm.

15 And you identified, did you not, some issues with the application that was made by Ms Thiruvangadam?---Yes, I did.

Can I go to them, if I may?---Mmm.

20 So I'm taking you to your second statement, WBC.900.002.0003. That's for the benefit of the operator. But if I can go to paragraph 17?---Yes.

THE COMMISSIONER: What page?

25 MR DINELLI: 0005, and page 5 of the statement. And I'm going to take you through, if I may, what you identify as the issues with that application. The first is, as you say there, that:

30 *The application showed that her main source of income at the time was a Centrelink carer's allowance, but there was no evidence that the appropriate supporting documentation was obtained to verify this amount.*

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

35 And the only other income that she disclosed in that application was \$866.66 per month, which was inconsistent with the payslip that was provided?---That's correct, yes.

40 And in any case that wouldn't have been sufficient on Westpac's processes at the time to approve that loan?---Yes.

Just dealing with the payslip for a moment – and I won't take you to it – but the payslip which those in the room will have seen we went to in evidence, in Ms Thiruvangadam's evidence, was for 19 March 2012 to 1 April 2012. Why was that a
45 problem for the application?---It was – it was too old.

I see. And - - -

THE COMMISSIONER: What was the period you would have expected or required?---So there's a – there is a requirement that a payslip is not more than – I think it was 90 days old at the time.

5 90 days was the cut-off?---Yes.

Thank you.

10 MR DINELLI: It's also the case, is it not, that the application stated that Ms Thiruvangadam had been employed in her then current part-time role, whereas she was a casual employee?---That's – that was what we gleaned from the – the payslip, yes.

15 I mean, her evidence, as you know – and she said here – was that that application was filled out by the manager, the person we've called the manager. When you did your review, you also identified an issue in relation to a debt owed to Orange, the phone company?---That's correct, yes.

20 And what was the problem with how that was dealt with in the application?---So - - -

I think you find this at 17(d) that a document was provided in relation to the debt owed to Orange?---Yes. So - - -

25 And was that – the problem with that, that that didn't constitute proof of payment, the relevant email?---Yes, that's correct.

Now, one other thing is that – and the other thing that's identified by you is that the application had listed no expenses?---That's correct.

30 And you say that the expenses at the time were benchmarked against what's described as the Henderson Poverty Index. Can you assist the Commission by explaining what that is?---It's a benchmark for living sense – sorry, living expenses. It's similar to HEM, which I know there has been some conversation about, and we switched from the HPI to HEM at a later time, but it's a similar style of index of
35 expenditure.

THE COMMISSIONER: In particular, does it depend on – or does it vary according to the number in the household?---I – I don't know, I'm afraid. It's something we stopped using some years ago. We moved to HEM.

40 HEM is certainly something that does - - -?---Yes, it does.

- - - vary according to numbers of dependants, doesn't it, and whether it's a couple or not a couple?---Absolutely, that's right.

45

These observations you made about the application, can I just understand, were those based on material available to you in the file held by Bank of Melbourne?---Largely, yes, yes. So that and some inquiries - - -

5 Largely or wholly?---Sorry, wholly, yes.

Wholly?---Yes.

10 And were they documents that were held in the file from the time of application or had some of them been gathered later? What was the position?---All – all of the documents that I have seen – sorry, I’m just trying to be as accurate as possible. The documents I have seen have come from – that are documents that are held in our origination system.

15 And, therefore, were documents available at the time of the grant of the loan?---That’s correct, yes.

20 And the deficiencies that you identify, or the problems you identify were, therefore, problems that – to the extent to which they were apparent – were apparent at the time of origination?---Can I provide an example. So – so with the Centrelink document, for example, there was no record of that document in the system. That doesn’t mean that somebody may or may not have seen it at the time, but didn’t put it in the system. We’ve got no evidence.

25 Well, all sorts of things might have happened, mightn’t they, Mr Godkin?---Yes.

But as far as the origination file was concerned - - -?---This is it.

30 - - - no Centrelink verification; old pay slips; casual, not part-time; no expenses; and some unresolved problem with the phone company; is that right?---That’s correct.

Yes. Do go on.

35 MR DINELLI: So it’s your evidence that, properly analysed, Ms Thiruvangadam would have failed the credit processes having regard to proper responsible lending considerations; wouldn’t she?---Yes.

40 It follows that it’s Westpac’s position now – excuse me just for a moment – I think the document can come down – it follows that Westpac’s position is that the car loan should never have been granted in the first place?---Based – yes.

45 THE COMMISSIONER: Was any check done at the time of origination?---I’m sorry, I’m not - - -

Was any check made at the time of origination about the data or information that was supplied?---It should have been, yes. By - - -

By whom?---By the credit acceptance officer who would have been approving the loan.

5 Yes. And is that a process that, at that time, would ordinarily have left a documentary record of who did it and what they had done?---Yes.

10 And did you observe anything on the file – I don't want you to name the officer concerned – but did you observe anything on the file to show that a relevant credit officer had made the assessment and ticked it off?---So there were two different credit officers who approved this file over the course of a couple of submissions, but, yes. Sorry, the answer is yes.

15 You've referred to a couple of submissions, and that's an area about which I know nothing presently, but go on, Mr Dinelli.

MR DINELLI: In relation to what you – the issue raised by the Commissioner, can you go to PG2-5. It's WBC.104.001.1548?---Yes.

20 Can that just be brought down, please. Perhaps it can be just – that document can be put up for the Commissioner and for Mr Godkin?---I have a hardcopy.

25 You've got a hardcopy. Does it have the name – it has got the names of the particular people? Can it be – if it could be just brought up for the Commissioner, but not on the screen.

30 THE COMMISSIONER: We're going to have to confront this question of redactions. The redactions process is not working well at the moment. Now, I am not seeking to assign blame for it, I'm just saying we're not getting it right soon enough. We're scrambling. Mr Sheahan - - -

35 MR SHEAHAN: Sir, can I say in relation to this document – I answered a question across the bar table from my learned friend wrongly. There's no issue with redaction of this document. The only – in the course of the examination of this witness, there may be a couple of documents where it does arise. It will only arise because we were given notice last night of some additional documents that were to be put to the witness. So we have an application for rulings that has not yet been determined, but this document won't be a problem. It can go up.

40 THE COMMISSIONER: Okay. Well, let's go back to WBC.104.001 - - -

45 MR DINELLI: Before that's put up, and not to cut across my learned friend, but it is a matter of his claim for confidentiality, but this is the whole – one of the reasons why the person to whom Ms Thiruvangadam was on the phone, we didn't disclose the name, is because that person's name appears in this document. But I don't wish to create a mountain of a mole hill.

THE COMMISSIONER: Well, that's not – yes, let's put the document up.

MR DINELLI: This document – this document records, as I understand it, Westpac’s internal processes of dealing with the application to which the Commissioner asked questions previous – about which the Commissioner just asked you some questions, Mr Godkin?---Correct.

5

And can you assist us by – can you assist us by explaining how this process works within Westpac, the process of using this system?---Sorry. This – the system is quite – the – like you see, our entire origination system. So there are multiple parts to it.

10 Okay. These – the screens that you see up on the screen now - - -?---Yes.

- - - and form part of your statement?---Yes.

15 There is a heading Memos for Application. And then subject Approval Conditions?---Yes.

20 Can you assist the Commission by explaining what that process – how that process works? How is it that these matters come to be recorded?---Yes. So these will – when an application comes in and a credit officer reviews that application, these note the approval or not, depending on their assessment, and – and it’s here that you might see any conditions of an approval or at least a summary that there are conditions.

25 And, in relation to Ms Thiruvangadam, were there any?---There was a condition of approval which related to the proof that the outstanding telecommunications bill was paid.

I see. And that was one of the issues that you identified as an issue, did you not, with the application process?---That’s correct.

30 And - - -

THE COMMISSIONER: Then can I just understand the document. The condition is in the entry on 25/07; is that right?---That’s – that’s correct.

35 And then there’s another entry at 30 July:

Approved as submitted.

40 Do I read that as saying the condition is not to be met, has been met – what am I to make of “Approved as submitted” on 30 July – at first blush I should tell you I would read it as saying, “Look, yes, there was a condition, but the condition no longer applies. Go back to the submission as made and, yes, it’s okay.” Is that what I should read, or should I read something else?---Well, so I would read that – and have read that – as the condition has been met.

45

Met?---Mmm.

Yes.

MR DINELLI: So here – and I am finished with that document for now. So here we see – am I right to say that this is a process where Westpac went through its
5 processes, no responsible lending issues were raised with the application, and it was approved?---That's correct.

And it's reasonable to say that Westpac's processes in relation to Ms Thiruvangadam wholly failed to verify Ms Thiruvangadam's income for the purposes of her
10 application; that's right, isn't it?---On the basis of what we have in front of us, yes.

That is – or is there something else that ought be in front of us?---No.

That is very significant, isn't it, that the process wholly failed in relation to her
15 application, isn't it? It's also a matter that's of significance legally, isn't it?---Yes.

If I could call up RCD.0022.0001.0001. No doubt – I'm sorry, I am getting ahead of myself. No doubt you're familiar with – very familiar, of course, with the National
20 Consumer Credit Protection Act, Mr Godkin?---Yes.

So if I could go to .0099. Paragraph – I am not taking you to section 128(d), but it provides that there are – that one must – a licensee, that is relevantly Westpac, must do various things that are stipulated in section 130. In section 130 subsection (1),
25 you see that it says:

For the purposes of paragraph 128(d) –

thank you –

30 *the licensee must, before making the assessment –*

and I will take you specifically to (1)(c):

take reasonable steps to verify the consumer's financial situation.

35

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

And that didn't happen in this case, did it?---No, it didn't.

40 And the consequence of that failure was that Ms Thiruvangadam got a loan that was unsuitable for her, wasn't it?---Yes. We shouldn't have made this loan; that's correct.

Well, you will recall that she had to pay \$260 per fortnight and she went into default
45 almost immediately, didn't she?---She was in arrears shortly thereafter, yes.

And if I can take you to another section, just skip ahead to section 133, 0104. You are no doubt familiar with this section too, which provides for a prohibition on entering or increasing the credit limit of unsuitable credit contracts. Do you see that?---Yes.

5

And under section 133 sub (2) it says that – sorry, I should go back a step. First, Westpac under subsection (1) must not – relevantly Westpac – the licensee must not do various things, that is:

10 *Enter into a credit contract with a consumer who will be the debtor under the contract –*

and then, skipping to the end of the section:

15 *If the contract is unsuitable for the consumer under subsection (2).*

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

20 And by reason of subsection (2)(a) this was a contract which was unsuitable, wasn't it?---Yes, it was.

Because it was likely that the consumer, that is Ms Thiruvangadam, will be unable to comply with the consumer's financial obligations under the contract or could only comply with substantial hardship?---Yes.

25

Now, in – if I could take you to a document that was prepared at the time that Ms Thiruvangadam's application was reviewed. So you will recall, of course, that she got her application in – she got her loan in 2012?---Yes.

30 She – you have heard her evidence – did her best to pay it?---Mmm.

But was in arrears, as you've noted - - -?---Yes.

35 - - - from very early on. And she approached Bank of Melbourne through lawyers towards the end of 2017. You're aware of that?---Yes.

And then at that time there was a compliance assessment undertaken, wasn't there?---There was a review, yes.

40 Yes. I use the language – perhaps not the appropriate language, but the document is headed that way at WBC.300.003.8179. I think it might have – it's an Excel spreadsheet that might have to be opened differently. This – whilst that's getting up, being brought up, this is what's described as a Compliance Assessment Summary?---Yes.

45

What is a Compliance Assessment Summary?---So I've only seen this document in the last couple of days.

Yes?---But this is the assessment of the issue that has been recorded in our incident management system, which is called Juno - - -

Yes?--- - - - by a – the compliance team.

5

I see. And can I, without going to the document, but can I say that the column dealing with the compliance assessment states that the root cause of the issue was due to the deficiencies in the credit policy. Did you recall seeing that when you read it?---I do recall seeing that. It - - -

10

And I'm sorry, I'm not – I'm unable to pull it up for you. We will come to that document, if we can, shortly. But you will recall it had those words in it, didn't it?---I do recall that.

15

Now, when - - -

THE COMMISSIONER: Before you leave that, can you explain to me what those words mean or to what they refer, deficiency in the credit policy?---So when I saw that – which, again, is just over the last couple of days – I took that to mean the application of the credit policy.

20

Because on its face, it seems to be assigning as a root cause something much deeper than application, doesn't it?---It – it does. And - - -

25

Have you looked into that subject? I understand you've only had your attention drawn to the document - - -?---Yes.

- - - in the last couple of days. Yes, there are limits on time, but have you looked into it at all?---Into that particular comment with the author, no.

30

Because, on its face, it is a proposition of great width and of possibly no little significance?---Yes.

35

But as you sit there, at least at the moment, it's not a point that you are able to deal with other than as understanding it as referring to a deficiency in application of - - -?---That - - -

- - - credit policy; is that right?---That is my understanding, yes.

40

Just while I've interrupted counsel, can I just return to a matter about this particular application that provoked it. One of the matters you mentioned in paragraph 17 of your statement in item E was no expenses, but that wasn't a problem, Henderson Poverty Index was applied. I'm summarising, perhaps, too briefly and your words - - -?---Yes.

45

- - - should be preferred to my summary of them. But can I just explore that with you a moment. Because no expenses were listed, you had no idea what this borrower's expenses were, did you?---That's correct.

5 You had no idea whether, for example, she was caring for someone in the home or elsewhere who required significant expenditures of money for care?---That's correct.

10 So is it right to say that the absence of any detail of – about expenditure was somehow – again, my word not yours – cured by resort to the Henderson Poverty Index?---So – so we have, for the very reasons that you suggest, changed our processes to have both better quality conversation and a better recording of those conversations so that we would recognise, for example, special circumstances. The practice at the time was less rigorous, and we took the – the greater of the benchmark that we were using or the declared expenses.

15 And for what period did that practice exist or persist?---Yes. I am – the – the – our approach to – our approach to this issue has continued to evolve over the last some years. I can't give you an exact date, I'm sorry.

20 Can I then come at it this way – and, again, go to the limits of your knowledge, but not beyond the limits - - -?---Yes.

- - - of your knowledge. When were changes first made - - -?---It - - -

25 - - - to move away from this - - -?---In around 2015, I believe.

Yes?---And more – more substantive changes were made last year.

30 Last year. Are you able to say when last year?---So a significant roll-out of responsible lending training to business managers, which talked to some of that, some training through the middle – early part of the year, some specific system changes which were introduced in August 2017.

35 Yes. Including, amongst other things, trying to capture better the expenses that the borrower or proposed borrower may have?---Absolutely. So stepping the business manager, as they are asking that question, through quite a rigorous process, and including some very specific questions. For example, about special circumstances.

40 And forgive me for just pressing a little further. As part of that, was there any verification of what the business managers reported in the forms that were ultimately submitted?---Only in – generally, no. So there were some circumstances where that might happen, but generally, no.

45 You were dependent on the accuracy of what the business manager – by that you mean the car yard business manager - - -?---Yes.

- - - do you? You were dependent on the accuracy of what the car yard business manager told the company?---That is large – that is mostly correct. So - - -

5 And still the case?---By mostly, I mean in the vast majority of cases. Yes, that's correct.

And it is still the case?---That is correct.

10 Yes, thank you. One other thing. You said you had moved away from HPI, Henderson Poverty Index, to HEM; is that right?---Yes, that's correct.

Is it still the case that if reported expenses are less than HEM, the default is HEM?---That is correct.

15 Yes, I see. I really will be quiet, Mr Dinelli, for a nanosecond. Do go on.

MR DINELLI: Thank you, Commissioner.

20 This is the document – and I apologise, it has taken us a little while to get it, but we have. This was a compliance assessment summary done by Ji Hee Moon, CCO, business bank compliance. Do you know that person?---Yes, I do.

And he - - -?---She.

25 She, I'm sorry. Ms Moon did that assessment on 14 December 2017. Why would Ms Moon have done that?---So that will have followed the review of the file that followed the specific complaint or representation on behalf of the customer last year, and the inclusion of that file as an incident in our business management systems unit, and then Ms Moon will have looked at that to assess the compliance implications.

30 And - - -?---Yes.

And she said – and I quoted this to you before, but now you will see it:

35 *The root cause of the issue was due to deficiencies in the credit policy.*

What I didn't refer to is what's in brackets, that is:

40 *Rather than misselling or error at origination.*

It seems – it seems to me that that suggests that the issue of Ms Thiruvangadam is – highlights a deficiency in Westpac's credit policy, doesn't it?---Well, at – as I mentioned earlier, I took this to mean the application of the policy, rather than the credit policy.

45 Well - - -?--- I think Ms Moon was – so the review at the time found that we didn't do some things that we were supposed to do, and very specifically that relates to the

income verification. So in the review of the file, that was – that was found to be the most significant failing in the processing of this application. And so – so my reading of that comment by Ms Moon is that we didn't apply the standards that we had for ourselves appropriately, and we were taking responsibility – so we didn't think this was misselling, we were saying we should have done verification on the income in this case and we clear – we've got no evidence that we did. That's – that's how I've - - -

10 THE COMMISSIONER: The misselling you exclude is to exclude, “No, it's someone else's fault.” You were saying, “This was our fault”?---This was ours, correct.

Yes.

15 MR DINELLI: In answer to a question before, you – your evidence was that – that in relation to Ms Thiruvangadam you, being Westpac, was dependent on the accuracy of what the car yard business manager told the company, to which you said yes, didn't you?---That's – that's correct.

20 And that still is the position, your evidence – you answered immediately thereafter when you said when it was put to you:

By mostly, I mean in the vast majority of cases, yes, that's correct.

25 *And it is still the case?---That is correct.*

30 Is your answer – is your evidence that it's still the case that there is dependence by Westpac on the accuracy of the car yard business manager, what it tells the company?---So if I may, the question was quite specifically in relation to expenses but yes, the answer is yes.

Mr Godkin, the National Credit Act places obligations on Westpac, doesn't it?---Yes, it does.

35 Now, as you well know, car dealers – and I put this broadly, because each car dealer may be different – but generally there is a point of sale exemption, isn't there, in relation to car dealers?---The predominance of the dealers we work with are via an exemption – that exemption, yes.

40 But insofar as Westpac is concerned, it itself, as a licensee regulated by the National Credit Act, is required to do those things that are stated in – that are prescribed by the National Credit Act, isn't it?---Yes, it is.

45 And, in fact, it is its responsibility entirely to do those things, isn't it?---Ultimately, yes.

On the basis – if I could return briefly to the section we dealt with a moment ago, in fairness to you, so that it’s before you, it’s RCD.002 – sorry, before I do, I’m sorry, I might tender that, if I may, Commissioner. I’m sorry, Mr Godkin.

5 THE COMMISSIONER: Exhibit 1.143, Compliance Assessment Summary, WBC.300.003.8179.

10 **EXHIBIT #1.143 COMPLIANCE ASSESSMENT SUMMARY
(WBC.300.003.8179)**

MR DINELLI: Thank you, Commissioner.

15 RCD.0022.0001.0001. And if you can go to 0099, please. You will recall that I took you to this section, and said that Westpac must, before making the relevant assessment, and I took you specifically to sub (c), but, of course, you will be familiar with all of those requirements:

20 *Make reasonable inquiries about the consumer’s requirements and objectives in relation to the credit contract; reasonable inquiries about the consumer’s financial situation; and take reasonable steps to verify the consumer’s financial situation.*

25 The evidence you’ve given suggests that Westpac is in breach of section 130(1)(c) in relation to all of the material it gets from its car dealers, is it not?---I – I can’t – I’m not qualified to – to talk about - - -

30 Well - - -?--- - - - what the legal definition is. The – the position that we have and the policy that we’ve got is that we have specific verification standards as it pertains to income. For expenses, we rely on the combination of the application process and the declarations of the customer, and the business manager. And, similarly for liabilities, we rely largely on those declarations and any insight that we may glean from a credit bureau report.

35 I am not asking for a legal answer. That is a question for someone else?---Yes.

40 And a matter upon which, no doubt, Westpac will make submissions to. But your answer was as a factual matter, in relation to what you do in your job, that you are dependent upon the accuracy of what the car yard business managers tell the company?---So we are absolutely reliant on that, but in concert with, you know, the application form, the declaration from the customer. I mean, I think the questions specifically came to the issue of do we separately verify expenses, and the substance of my answer is that, in the vast majority of cases, we do not.

45 Thank you.

THE COMMISSIONER: Can I – just as a matter of human experience and people signing forms in a car dealership, people signing forms generally, do you have any view on how often people actually read the form they’re asked to sign?---I – I don’t, but I’m sure my human experience is much the same as yours, Commissioner, so - - -

5

I have been careful not to express my view, Mr Godkin. Do you think I’m right or wrong to at least wonder how often people read the form they’re asked to sign?---If I – if I can answer in a slightly different way, if that’s okay.

10 Yes?---We have put in place processes that very specifically step the business manager through a line-by-line question as it pertains to expenses and they can’t default to zero, they have to actually enter a number. We have undisclosed minimums in a couple of key expense items, so that if things are too low, like rent and living expenses, it gets referred to a credit officer for some assessment. So – so
15 that would suggest that we similarly have some concerns that we need to be vigilant.

Sure. My question was about the customer sitting in the car yard, confronted by a blizzard of forms. The last paragraph of which says, in effect, “This is a binding contract. These are statements that are – you are telling us are true.” My question is
20 am I right or wrong to wonder whether people read those and then the associated question is whether I’m right or wrong to wonder whether, even if they do read them, they understand their significance? What do you think?---So my human experience says it’s fair to wonder.

25 Yes. Because it bears on what are reasonable inquiries and reasonable verifications?---I understand.

Yes.

30 MR DINELLI: Can I ask you a few questions about the nature of the car loans that are offered by Westpac, if I may?---Please.

The car finance product that’s offered is by way of a fixed rate loan agreement; isn’t it?---That’s correct.

35

And the key features of that product, I think you set out in your – in your statement, but I will also take you, if I may, to PG116, document ID for which is WBC.104.001.7836. This document, of course, is the automotive finance lending credit policy, consumer and business, at St George?---Yes, it is.

40

Just for my benefit as I go through these documents, some of the documents that we’ve referred to are St George and some are Bank of Melbourne, and even Ms Thiruvangadam had dealings with both. Is there any relevant difference I need to be aware of?---No difference at all.

45

Thank you?---Just printing.

If one goes to 7850 of that document there's an overview of the product features, and I see there that the minimum finance amount is \$5000, maximum is 250,000?---Yes.

5 And this is still in place at the moment. This is the current policy?---This is the current policy, yes.

And the term available is 12 months to 84 months which I think, if my maths is correct, is seven years?---That's correct.

10 And there's various requirements, one is that there's a maximum age of the vehicle of 15 years. I put that to one side. What is meant by "maximum LVR"?---?---So maximum LVR is – sorry, LVR is the value of the loan divided by the assessed value of the vehicle.

15 The loan valuation ratio?---Yes.

That – and the maximum that's offered is 180 per cent. Is that still the position at Westpac, that that's the maximum?---This is – this is the current policy, so yes.

20 Thank you. And can you explain how that operates in the context of someone walking into a car dealer and buying – buying a \$10,000 car?---So the only way that it could operate in the context of somebody walking in and buying a \$10,000 car is if they came in with a trade-in which was encumbered by finance so that there was some significant negative equity - - -

25 I see?--- - - - in the trade-in, so that the loan that we were financing was for the purchase of the vehicle. And then to get that vehicle, you know, out of the showroom will quite often take it above 100 per cent anyway if we're funding more. But then, you know, with the addition of the negative equity that was attributed to
30 the - - -

They – am I right to say that you – that Westpac will loan more than the value of the car, though; is that correct?---That is correct, yes.

35 And when Westpac would lend more than the value of the car, one of the things that might be above and beyond the value of the car would be the payment of add-on insurance, or an origination fee, or any of the other fees that are imposed at the time of purchase?---Quite right.

40 Is that right?---Quite right.

In fact it's your policy, is it not, that the LVR may include insurances, with the exception of CCI insurance?---Mmm.

45 Brokerage and origination fees, all of those can come within the loan valuation ratio; is that correct?---That's – that's correct.

If that's a convenient time, Commissioner.

THE COMMISSIONER: Yes, of course. Mr Godkin, we will have to ask you to return in time to begin at 2 pm?---Sure. Yes.

5

Adjourn till 2 pm.

ADJOURNED

[12.58 pm]

10

RESUMED

[2.00 pm]

15 THE COMMISSIONER: Yes, Mr Dinelli.

MR DINELLI: Thank you, Commissioner.

20 Mr Godkin, before lunch we were dealing with an overview of the product features of the car loan agreements?---Yes.

And I was asking some questions about LVR, you will recall. Is it right that the higher an LVR, the higher the risk from a responsible lending perspective?---No, I don't believe so.

25

If the LVR is higher, is it not the – is it not the case that the amount borrowed far exceeds – or at least if it's 180 per cent, it far exceeds the asset which is the subject of the borrowing?---That's correct.

30 And is that a relevant factor for the purposes of responsible lending?---It – it might be in some circumstances, but not generally, I would have said.

Okay. If I can take you away from that document to – I think it's PG1, C22 in your materials, WBC.100.009.4848?---Yes.

35

What's this – I'm sorry, it hasn't come up yet. What's this document, Mr Godkin?---This document is the – are the guidelines for the team that does quality assurance - - -

40 I see?--- - - - in our business. So these are the notes that they would use specifically for the purpose of reviewing originated loans for quality assurance.

I see. And on the first page, in fact, it's the background says:

45 *The responsible lending obligations set out in the National Credit Act require licensees to conduct unsuitability assessments prior to entering into, suggesting, or assisting a customer to apply for a credit contract.*

Do you see that?---I do.

And it sets out then a summary of the – some of the requirements under the National Credit Act?---Yes.

5

Now, is it the case that if one goes down under the heading Methodology, there is a – an indication that the following classes are considered higher risk from responsible lending perspective? Higher value – high loan value ratios?---Yes.

10 And likewise, in terms of the sample selection methodology that's to be used, immediately below that, there's actually a focus on borrowers with an LVR of over 150 per cent. Do you see that?---That's correct.

15 So is it the case that an LVR is a relevant consideration in the course of considering responsible lending obligations?---So – and forgive me, but I may be misunderstanding the question, but – but these – these factors that you pointed to on this – on this document, this is what we use to identify cohorts of customers for whom there might be a higher risk of responsible lending issues. So – so typically, a customer who has borrowed a higher LVR might be a little more stressed in their
20 financial circumstances more generally. So that would be a good place to go and have a look to explore whether we've done everything that we need to do. So – so it's about – it – it actually describes a cohort of customers, rather than saying the LVR itself creates the responsible lending issue, if that makes sense.

25 I see. But as I understand – as I understand Westpac's policy, it's willing to offer a customer loan for 80 per cent more than the market value of the product that's being sold?---In – in some circumstances, that's correct.

30 And just to be clear – and I dealt with some of this before lunch – but one reason why it might be – you use the example of a trade-in?---Correct, and negative equity, yes.

And negative equity. And that might be one reason?---Mmm.

35 Another reason might be that it enables the payment of fees above and beyond the value of the car at the time of the purchase of the car?---In combination, it's - - -

With the car?---Yes, always with the car.

40 So certain fees are always payable, as I understand it, when you enter into a loan with Westpac. An establishment fee?---Yes.

Monthly administration fee. There might be some fees/charges on early termination. There's an origination fee?---Correct.

45

So people can go over the LVR and, in fact, in your experience, is it not uncommon for a customer to receive a loan for an amount which is greater than the market value of the car?---It's – that's – that's correct, it's not uncommon.

5 I see. Now, the next – returning to where we were previously in terms of the PG116, so this is back in the St George automotive finance lending credit policy?---Yes.

10 WBC.104.001.7836 at 7850. Another issue that's – or another feature that's raised is what's described as a “residual balloon limit”. What does that mean?---So a residual balloon, or what we refer to as balloon payments, would indicate that the borrower has chosen not to pay off 100 per cent of the loan over the initial term. So – so, for example, a borrower might decide to take out a four year loan with a 20 per cent residual, which means that there is a 20 per cent balloon payment left over at the end of the four year term.

15 I see. And is that a relevant factor in considering one's responsible lending obligations?---That is, yes.

20 And if you just go over to the next page. Am I – are these various fees, some of which I have already referred to, an accurate description of the various fees that are imposed by Westpac at the time of the purchase of a car?---So specifically the establishment fee, yes. The other two are not, no.

25 The other – and when you say “the other two”, the monthly administration fee and the fees on early termination, they're things that arise then during the course of the loan, or may arise during the course of the loan?---That's correct.

30 Thank you. Now, in your statement you set out – thank you. I'm done with that document. In your statement you set out in quite some detail what you describe as the five stages of the approval and monitoring of car loans?---Yes.

35 Now, I'm going to come to those in due course, but I would like to deal with an issue first, or at least introduce it by introducing another provision of the National Credit Act – again, one with which you are familiar – and then to deal with some issues as to the remuneration of car dealers, if I may?---Okay.

40 So the first document I will take you to is RCD.0022.0001.0001. And I will go to 0060. Now, these are what are described as the general conduct obligations of licensees. Are you familiar with these?---In – broadly, yes.

In fact, I might come to it in due course, but there's various Westpac policy documents that, of course, include these – these sort of considerations – these sort of obligations?---Yes.

45 And you're aware that Westpac must do all things necessary to ensure that the credit activity's authorised by the licence or engaged in efficiently, honestly and fairly?---Yes, I am.

And that there's (b):

5 *Have in place adequate arrangements to ensure that clients of the licensee are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by the licensee or its representatives.*

?---Yes, I am.

10 See that? I'm done with that document for now. In your statement you deal with the question – or you were asked in preparing your statement to give an explanation – perhaps I will get the exact words:

15 *To list the incentives and key performance indicators relevant to any Westpac staff or dealer intermediaries by reason of the initiation and approval of car loans.*

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

20 And can I ask you, without going to annexure E yet, can I ask you just in broad terms to explain how car dealers come to be remunerated by Westpac?---Sure. So there's three key types of remuneration for car dealers. And in order of significance, the first of those is what we in the industry refer to as flex commissions.

25 Yes?---So they are commissions which are paid as a percentage of the margin that is achieved over a base rate that we set.

30 I see?---The second of the three incentives which are typically via – tied to aggregate volumes over the course of a month – so at the end of the month we would pay a dealer some amount which was based on the amount of business that they wrote over the course of that month.

35 I see?---And then the – the third category are fees which are – I describe as generally flat in nature, ie, they don't go up or down based on any variable, it is just an amount we pay them – we might call it a marketing contribution or some other fee, but it's basically flat.

40 I see. In part of your evidence you deal with a dealer agreement. The remuneration, does that form part of the dealer agreement or is that separate to - - -?---It's typically separate to the agreement, yes.

And the first – perhaps I can take you in a little bit more detail to the first of those forms of remuneration you described as a flex commission?---Yes.

45 Now, as I understand that, Westpac sets a base rate for the specific dealer. So if I'm a dealer, you would set a base rate, and then the dealer has a discretion to determine the interest rate that is charged by the customer; is that right?---That is – that is correct.

Yes. And the difference between what's the base rate and what's the customer rate is – is – is the margin?---That's correct.

5 And am I right then to understand that the dealer gets a percentage of that margin and, in fact, I won't disclose what the margin is because of its sensitivity, but am I right to say that the – Westpac gets a percentage of that margin and the dealer also gets a percentage of that margin?---That's correct, yes.

10 Do customers ever know that there is – that that's something that is a – the way that Commission structure works?---No.

Certainly, Ms Thiruvangadam would never have known about it, would she?---No, no customer knows about that structure, I don't think.

15 And am I right – do I understand how flex commissions work, that the dealer has a – an interest in the margin being higher so that he, she or it then gets a higher Commission; is that right?---That's correct.

20 Now, up until August 2016, there was actually no maximum rate at all, was there, that was imposed by Westpac?---Sorry. I'm just checking the date, but yes, that's correct.

25 And now there is a maximum rate, or at least since that date, there has been a maximum?---That's correct.

30 So when one walks in – when Ms Thiruvangadam walks in to the dealership, or any other person who ultimately becomes a Westpac customer, the dealer earns more money the higher the interest rate is by virtue of the flex commissions; is that right?---That's correct.

35 Now, in your statement you say that in September of last year, ASIC announced that a new legislative instrument had been registered on the Federal Register of Legislative Instruments, such that flex commissions would be prohibited from November 2018. You're obviously aware of that?---Yes, I am.

And I'm not trying to trick you, but you deal with this in annexure E, at paragraph 6?---Yes.

40 Now, sitting here now, Westpac still allows flex commissions?---That's correct.

45 And are you aware of what ASIC said about the imposition of flex commissions at the time of announcing that it would be prohibiting them from November of this year?---Yes. I mean, there have been various consultation papers from ASIC and I am generally aware of their views on flex commission, yes.

And you referred to – well, you referred to the ASIC announce many. Maybe I will call that up. It's RCD.0021.0001.0337. And you will see that this is an announcement on 7 September, as you said in your statement?---Yes. Yes.

5 That ASIC has formally banned flex commissions in the car finance market. And then an explanation of – an explanation of the background. If one goes over to the next page, there's a reference to the lender and dealer share the flex amount, the percentage of flex amount kept by the dealer varies significantly, and can be up to 80 per cent of the interest charges.

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

And when you indicated you were familiar with the fact that there had been some reviews of flex commission for some time?---Yes.

15 And one of the reasons why – or a number of reasons were given by ASIC in its various – in the course of these consultations. Is it right to say that one of the concerns about flex commissions is that the interest rate charged to the consumer is not related to their credit rating or risk of default, but to what they can negotiate with the dealer; is that right?---That's fair.

Does it – is it right to say that it provides an incentive for sales intermediaries to increase the price of the credit contract?---It can, yes.

25 And I think you've already said that customers don't know about it. It's not something that's disclosed to them?---That's correct.

Now, if I can move to the next part of - - -

30 THE COMMISSIONER: Why continue it?---Sorry, why continue?

Why continue it today?---Some – something that the – that we certainly considered. The – the issue in this market is, in terms of the way that we compete, is that it would be, in our view, impossible to stop it unilaterally without stepping away from the market altogether.

Do you predict then that the situation will remain unchanged until the date fixed by ASIC as the date by which the practice must cease?---Yes. Yes, I do.

40 And no information of any sort about this is given to a consumer; is that right?---That's correct.

That the party negotiating the loan, commonly the business manager of the car yard - - -?---Yes.

45 - - - can act in a way dictated by the interests of that business?---It can, yes.

Regardless of the interests of the consumer?---It's possible, yes.

5 May that present an issue under the Credit Act about a credit representative having a conflict of that kind and neither revealing it nor preferring the client's interest to the personal interest of the intermediary?---Again, I'm – I feel unqualified to give you a legal view.

Unfair question?---Thank you.

10 You are right to call me out on it, Mr Godkin. Yes.

MR DINELLI: There's a further – a further amount which I think fits under that heading, which you describe in your statement as a percentage amount financed or a PAF, or P-A-F. Instead of a flex commission, a small number of dealers are paid a percentage of the amount financed?---That's correct.

Is that as common as flex commissions?---No. It's a – it's a – it's actually limited to a single mark or brand of dealers, which is tiny in our book.

20 I see. And if I can just explore this with you. Does that raise the same issues - - -?---Exactly the same.

25 And what about if – the third that you have in this is a minimum commission whereby there's just a minimum amount, instead of a flex commissions, which is paid when the flex commission is calculated less than the minimum commission?---It's not instead of.

30 I'm sorry?---Sorry, it's not instead of. So a minimum commission will be a minimum commission, and then there would be flex on top of that.

Yes, I see. I guess your statement says instead of, but a - - -?---Sorry, yes.

I understand the way you explain it?---Yes.

35 Then there's also incentives based on volume of loans originated. Now, this is, as I understand it, different. This is the second category?---Correct.

40 Of remuneration. And a dealer might be paid a VBI or volume based incentive on the total volume of car loans originated by that dealer; is that right?---That's correct.

And the dealer receives a higher Commission for higher volume of car loans?---That's correct.

45 Is that right? And does it matter in relation to that incentive how much the – how much the interest rate is?---No, it does not.

Am I right to say that where you have a flex commission, it raises an issue of the type that we referred to before, which is a – there is a conflict between the position of the dealer in getting as much commission as he can, or she can, and the customer who, unaware of this, ends up paying more than the base rate for their car loan?---There's potentially a conflict as – as I've said before, yes.

Is that – if I can take you to – just a private screen – WBC.300.021.7233. This - - -?---I – I am familiar with the document, if it helps.

10 You know the document I am referring to. This is a Group Assurance Report. What's a Group Assurance Report, Mr Godkin?---It's a – a second line defence. Think of it as an audit report, but internally, and it might cover operational risk, it might cover credit risk. It's a – it's a team within the – the bank that has a look at our processes and practices with a view to reporting on performance against controls.

15 Correct. And risks for the - - -?---Correct.

The company. If you can go to _0003, please. I don't think you've got the document in front of you, but I will go to the relevant part, and you said you were familiar with this document?---Yes.

20 One of the issues – I will just hand a copy to you. Thank you to my learned friend?---Thank you very much.

25 And I'm at page _0003 or page 4 of 23?---Yes.

And one of the issues identified there as issue 1, with a high rating, is this:

30 *There are weaknesses in the design of remuneration structures and monitoring of sales practices for dealerships who are originating retail auto finance loans. While prevalent across the auto industry and not unique to the St George auto finance business, current practices significantly increase the risk of unfair consumer outcomes whereby dealer behaviour may be influenced by commission plan design and the ability of a customer to negotiate.*

35 See that?---Yes, I do.

40 That's the very concern, isn't it, that we were discussing beforehand?---That is the concern, that is, and that's why we would advocate change. Yes.

And – well, when you say you would advocate change, your answer before is that it's still – it's still a charge that's imposed by Westpac, isn't it?---It's still a pricing structure in the market that Westpac participates in, yes.

45 And here, there is a – there is a reference to presumably one of your colleagues and a date:

An interim date for scoping of proposed working group plans, further dates and action plans will then be agreed.

5 None of that work has led to the removal of the weaknesses in the design of the remuneration structures yet, has it?---No. That work specifically has led to the various consultations with ASIC and the work that is now underway to meet the deadline of 1 November this year.

10 By which point – by which time Westpac will no longer charge flex commissions, obviously?---Again, so Westpac doesn't charge flex commissions, but it's part of the pricing structure, but yes.

Part of - - -?---Your – your point is right, yes.

15 I'm sorry.

THE COMMISSIONER: It is the customer that pays, not Westpac, isn't it? It's an uncharitable point of view, Mr Godkin?---The – sorry, I wasn't suggesting we pay, I was just saying we – we weren't charging it. The customer – so the Commission is built into the price, absolutely.

Yes. Yes. And you recognise there's a problem about this?---Absolutely recognise it.

25 You recognise there's a problem about poor customer outcomes?---Yes, absolutely.

And recognised a significant increase in risk of poor customer outcomes?---That's correct, yes.

30 What have you done in response to the observation that there is a significant increase in risk of unfair customer outcomes?---So – so one of those things was to introduce the cap on pricing, which we did.

That's the August '16 cap - - -?---Yes, correct.

35 - - - was it?---Yes.

40 Yes?---The second was to roll out code of conduct and customer fairness trading across our business manager network and made that compulsory, and that was in late 2015, and is now part of our accreditation process and our annual training regime which I refer to in the – in the general statement. But more significantly, and because we believe that the solution to this needs to be an industry solution, we have participated in the work which is being led by ASIC.

45 MR DINELLI: But you've referred to three things there. Can I take the first two?---Yes.

One of the requirements on Westpac, under the National Credit Act, is to have in place adequate arrangements to ensure that there's no – that customers aren't disadvantaged by conflicts of interest. Now, in relation to both the things that you've put forward, the cap still leaves the scope for disadvantage; does it not?---It still leaves the risk there, yes, correct.

Correct?---I agree.

And if I may say, you do it in considerable detail. You go through the various changes – and we will come to some of the changes that have been made and the training that's given to dealers. But let's be frank here, the dealers make more money the higher the interest rate is, don't they?---Acknowledged, yes.

So it's not an adequate arrangement to stop this issue by saying to the dealers, "Oh, act fairly, act in accordance with good practice." Because the higher they charge, the more flex commission they get, don't they?---That's absolutely right and we haven't suggested that that is the solution. It can't be. There needs to be an industry solution.

I understand?---And we are - - -

I understand that's your evidence?---Yes.

THE COMMISSIONER: But in the meantime has there been any step taken – recognising there's a significant increase in risk of unfair customer outcomes – has there been any step taken to catch or prevent or avoid that risk coming home, and there being unfair customer outcomes?---So other than the two steps that I've mentioned, no.

Thank you.

MR DINELLI: Are you aware of other players that have no longer charged flex commissions?---No, I'm not.

Have you given – has Westpac given consideration to having in place some adequate arrangements to deal with this conflict by removing flex commissions?---Considerable consideration, yes.

Can I move to another issue, please, Mr Godkin. You - - -

THE COMMISSIONER: Take this document down now, Mr Dinelli?

MR DINELLI: Yes. Thank you.

THE COMMISSIONER: Are we done with that? Thank you.

MR DINELLI: If that could be tendered subject to an application to be made by my learned friend in relation to confidentiality, Commissioner.

5 THE COMMISSIONER: Would that be exhibit 1.144, I think, a Group Assurance Report WBC.300.021.7233.

EXHIBIT #1.144 GROUP ASSURANCE REPORT (WBC.300.021.7233)

10 THE COMMISSIONER: Mr Sheahan, do you say that there should be some non-publication direction made about it?

15 MR SHEAHAN: So the particular page that the witness was asked about, no.

THE COMMISSIONER: Right.

20 MR SHEAHAN: As to the balance, just pro tem. We only found out about these documents last night, so the process of – this and a number of others – the process of examining them and getting instructions for confidentiality is continuing as we speak. And I understand our learned friends are content to have us put on those applications and deal with them in due course.

25 THE COMMISSIONER: Then if the particular page that we've got is released, no difficulty; am I right?

MR SHEAHAN: No difficulty.

30 THE COMMISSIONER: And then we can face the other difficulties as and when they're, perhaps, a little more refined. Is that convenient course?

MR SHEAHAN: It is.

35 THE COMMISSIONER: Yes, thank you. Yes.

MR DINELLI: In your evidence you have, of course, accepted that Westpac itself has significant responsible lending obligations; that's right?---Yes. I have, yes.

40 And one for which you, as the lender, and no one else, is liable for your conduct?---Yes.

45 And if I can put it this way: there's somewhat of a tension might be the – might not be the right word but the face of the sale of the Westpac loan, the face is actually the manager or the business manager at the dealer; isn't that right?---That's correct.

And, in fact, for Ms Thiruvangadam it was the person described as the manager who was the face, effectively, of Westpac. Now, I don't – sorry, I don't wish to – I know

it wasn't Westpac, but it was the face, the person, with whom she dealt?---That's – that's correct.

5 Now, the fact that that is the position heightens, rather than lowers, the requirements on Westpac to exercise care to ensure that it satisfies its obligations under the National Credit Act, doesn't it?---Yes, I think that's fair.

10 And the dealer – if I can take you to the dealer agreement at PG1-1. WBC.300.055.5963. This is the first step, I think, that you describe in your process in your statement. This is the entry into a dealer agreement between a dealer and Westpac?---That's correct.

15 And it sets out various of the obligations, rights and obligations of the parties, doesn't it, in relation to that - - -?---Yes, it does.
- - - relationship?---Yes.

Not, however, the remuneration. We've dealt with that?---Yes.

20 Now, under this agreement, if one goes to .5966?---Yes.

And where there's a reference to "us", that means Westpac. 3.1 says:

25 *A credit offer must be submitted to us –*
that is to Westpac –

in the form and manner we reasonably require.

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

So Westpac can reasonably require its dealers to provide credit offers or submit them in a particular form or manner?---Yes.

35 And they do that?---Yes.

By use of the system. What's that system called again?---Sovereign.

40 Sovereign. That's right. Sovereign would have been the system that – in 2012 too, that the manager sitting in the office – you heard Ms - - -?---Mmm.

- - - Thiruvangadam's evidence. That would have been the system that he was typing into, one assumes, at that time?---That's correct, yes.

45 Now, this agreement specifies some limited circumstances in which – and I say "limited", because they're prescribed in clause 11(f) on page 5969 – where you must – it provides that you, being the dealer:

...must as our agent carry out the identification and verification procedures required by law and our AML requirements.

5 Now AML we can put to one side. That's anti-money laundering?---Mmm.

It's not relevant. And the identification/verification procedures is the other aspect. And it's those two things that are done by the dealer as an agent, and only those two things; is that right?---Sorry - - -

10 It's those two things and only those two things that are done by the dealer - - -?---I apologise, would you mind repeating the two things?

Not at all. It's those two things – and only those two things – which are done by the dealer as an agent for Westpac?---Yes, no, sorry, I am - - -

15 THE COMMISSIONER: He's lost on what the two things are?---Thank you, Commissioner.

20 MR DINELLI: Okay. The – sorry.

THE COMMISSIONER: What are the two things?

25 MR DINELLI: What are the two things. Thank you. As our agent carry out (1) the identification verification procedures required by law. Do you see that?---Yes.

It might be easier on the screen, Mr Godkin. And Our AML Requirements?---Thank you, yes.

30 I'm sorry?---Yes.

It wasn't a trick question?---No.

Then on two pages further along, clause 13.1, No Agency:

35 *Except for any purposes specifically set out in this agreement, you are not our agent for any purpose. You do not have any authority to do anything on our behalf.*

40 ?---Yes.

13.2 says:

45 *You are under no obligation to obtain or procure credit offers or to do business with us. You acknowledge that if you do obtain any credit offer, then you do so for the convenience of your customers and in the expectation that it will assist your business.*

?---Yes.

So this dealer agreement itself makes very clear where – a distinction between Westpac and the dealer, on the other hand?---Yes.

5

But I think I'm right to say that Westpac, nevertheless, requires dealers to do a number of things and undertake a number of functions that it, that is Westpac, would have to do if it didn't have dealers?---Yes.

10 Captures information?---Correct.

From the customer?---Mmm.

15 Puts that information into Sovereign, we will come to what happens with it, but puts that information. But for the dealer, Westpac would have to do that themselves?---Correct. And importantly has the conversation with a customer.

20 Correct. And this document then, when one goes to the schedule at .5978, you will see that you also require – so leaving aside the legal matters that we've just gone to in the dealer agreement – you require, you Westpac, require dealers to do a number of things in relation to credit offers?---Yes.

One – in fact 1.1:

25 *Before submitting a credit offer to us, you must make any inquiries we require you to make to assist us in satisfying our responsible lending obligations.*

Do you see that?---Yes.

30 1.3:

Each time you submit a credit offer to us, you declare that –

35 amongst other things you get to (d):

All information given by you or on your behalf is correct and not misleading to the best of our knowledge.

40 See that?---Yes.

Clause 2, or the – point 2 is headed Information and Documentation. And it requires you, being – sorry, the dealer to submit to Westpac various documents?---Yes.

45 Do you see that?---Mmm.

Now, these things – you agree with me that these things are things that are required to be done for responsible lending?---Yes.

And you capture that information, if I can use that language. I think that's your language in your statement. You capture that information by getting the dealers to obtain that information for you?---Yes.

5 Still in this same document – and you referred to this beforehand at .5989 – this is what's described as the Code of Conduct and Customer Fairness Outcome Principles. Is this what you were referring to before?---Not specifically. I mean, it is now
10 codified in our dealer agreements, but we – we put dealer managers or business managers through specific code of conduct and customer fairness training, which is what I was referring to, which is included in the general statement as one of the attachments. One of the training story boards.

Yes. One of those story boards which deals with that aspect of the process?---Yes. Cool. So – so it's in addition to this, is the way I would describe it.

15

And that – it provides that:

*The principles below are to be applied to encourage best practice and ensure that customers who are marketed and sold products and services by you, that
20 are financed by us, receive fair, honest and measured treatment throughout the sale process.*

See that?---Yes.

25 And then down the bottom, it says:

You must comply with responsible lending practices which include –

and then three things are set out?---Yes.

30

And, broadly, that reflects what's in the National Credit Act?---Indeed.

But it's not actually a requirement generally that dealers comply with the National Credit Act, because generally they're outside of it by way of the exemption – the
35 point of sale exemption?---So not by virtue of the Act itself, no.

No. So when it says:

You must comply with responsible lending practices –

40

you are saying that's not a legal obligation on them, you are saying, by this document, "We want you to comply with responsible lending obligations"?---Well, I would probably put it slightly stronger. We are saying, "We require you to comply", as part of this agreement.

45

Under the law, though, the requirement for compliance is on you?---Yes.

Westpac?---And this is not a substitute for our obligations at all.

Thank you. But you rely – I think it’s fair to say rely heavily – on the dealers?---Yes, we do. They perform a number of functions.

5

And, in fact, the loan application form used by third party dealers, that in itself is the primary source for Westpac evidencing whether or not reasonable inquiries have been made, isn’t it?---When you say the form, it’s the – it’s the system capture.

10 The system capture in Sovereign?---But – with that – with that amendment, yes, absolutely.

So that suite of documents that we’ve gone through, there’s the legal provisions in the dealer agreement, but then those which we have gone to, schedule 1 and schedule
15 6, require declarations and/or, under the code of conduct, a statement, declaration that dealers will do all of these things in the interests of responsible lending – in the interests of Westpac satisfying its responsible lending obligations?---Yes. Yes. And its customer fairness obligations, yes.

20 Now, can I take you to a private screen document, WBC.300.060.2665. Won’t be a moment, Mr Godkin. Now, this is up on my screen, but it’s not – my learned friend is offering me lots of assistance.

25 THE COMMISSIONER: Mr Sheahan, does this document differ from the last one in some respect about whether to keep it - - -

MR SHEAHAN: The same category, Commissioner. Our learned friends have been good enough to indicate to us the pages to which they intend to take the witness. There’s no problem with those pages - - -

30

THE COMMISSIONER: So we can put this page up publicly.

MR SHEAHAN: The page can go up assuming it’s the one we were told about.

35 THE COMMISSIONER: To the extent to which we can I want to do that.

MR SHEAHAN: Of course.

40 THE COMMISSIONER: So – yes, so it can go up publicly.

MR DINELLI: It’s .2668 can go up. Thank you. So if you just go to the – you’ve got the hardcopy of the front page. Just for all of our assistance, what is this document?---Sorry, this is a – sorry, now I’ve got to find the front page. So this is a second line controls assurance memo. In – in broad terms, it falls into the same
45 category as the previous document that we referred to in that it’s a type of audit of risk controls and functions.

I see.

THE COMMISSIONER: Have we got a date on it, Mr Godkin, or at least a year?---24 February 2017.

5

Thank you.

MR DINELLI: So this is later – a more recent document?---Yes.

10 It's a document of about a year ago?---Yes.

And there, under the heading St George Auto Finance, it says – and I understand this to be consistent with what you said before:

15 *The loan application form used by third party dealers is the primary source for evidencing whether reasonable inquiries have been made by a dealer about a customer's financial situation and their requirements and objectives.*

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

20

Now, this is at February 2017?---Mmm.

So some four and a half years after the case study that we've been talking about. And there were some testing done and it indicates that "at the time of our testing", being Westpac's testing:

25

...for the 10 files reviewed the loan application forms did not articulate that the loan repayment terms aligned with the customer's requirements and objectives or whether the dealer obtained details regarding customer monthly living expenses when completing the application.

30

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

That's a matter of grave concern to you, isn't it?---So it's for exactly that reason that we have built some additional requirements into the application capture process, that allow us to verify more readily the conversation that has taken place in relationship to the requirements and objectives for a customer.

35

I see?---I mean historically, in the main – if I may, historically in the main for this business there was an acceptance that the requirements and objectives for this purpose were quite simple in that people walked into a dealer to buy a car, so we understood what they were doing. Our capability has been extended, so that we can have quite specific conversations about how they will deal with issues like balloon payments, for example, which we touched on earlier.

40

45

So am I right to say, on the basis of your answer, that at around this time – so this is February 2017 - - -?---Yes.

- - - you feared that the processes weren't working?---In – in fact, that – the changes that I've just talked about, which we released in August of last year, so August 2017, were already in – call it manufacturer at the time that this document was produced. So – so I can't say specifically when, you know, the business was having the
5 discussions which, "Hey, these areas are – are weak and need tightening up." But by the time this document was written at least part of the solution was already underway.

10 And then – and is that a reference to the fact that there was a responsible lending project in place that was commenced in November 2016? Is that what you're getting at?---That – that's correct. That was part of it, yes.

15 Can I then – and I think I did take you to the wrong time then, for the purposes of answering the question. The question that I want to put to you is October 2016, if I can put you back there?---Yes.

If I may?---Mmm.

20 At that time you feared that the processes weren't working, didn't you?---So, of course, I wasn't actually in the business – just to be - - -

Yes. Sorry, I know you're the representative of Westpac?---Yes, indeed. So - - -

25 But can I put the question based on the evidence that you give, and your knowledge of - - -?---So - - -

30 Of the business?---So through the process of the work that was being done at a group level in relation to building out a group-wide responsible lending framework, the business became more aware of some of the issues that needed addressing in this business, I think is fair.

35 Well, you recognise – Westpac recognised in October 2016 that its responsible lending obligations were lacking, didn't it?---Westpac recognised that it could do more, yes.

40 When you say that it could do more, as at the time of this testing it indicates that – and I accept it's a small sample – but of the 10 files that have been reviewed, Westpac had been doing nowhere near enough, had it?---Well, it – it certainly recognised that we were not evidencing what we were doing well enough. So – so it has always been a requirement for the business manager to have a comprehensive
45 conversation with the customer, and we had relied on the application process as verification of that conversation. What – what this report clearly demonstrated, and – and previous pieces of work was that, actually, that – that the current capture of the application process wasn't sufficient to evidence that the requirements and objectives conversation had happened.

It wasn't reasonable verification because of the issues that you've identified - - -?---Correct.

- - - was it?---Correct.

5

Is it right to say then that Westpac considered, in light of what I've taken you to, that the dealers – it was the dealers upon whom the obligations to do the responsible lending checks – it was on them to do those responsible lending checks?---So – so not in total, but it was certainly – the business certainly relied on the business managers to have critical parts of the conversations, and particularly around requirements and objectives. So yes, it was on them, and the – and the proof that we had relied on in – that that conversation had taken place, which was in the application form, you know, we grew to believe was probably not sufficient.

10

15

With the benefit of – with the benefit of the work that has been done, it was the position that at some point, but certainly in October 2013, it wasn't possible for Westpac to rely on that – on the dealers to sufficiently verify that information, could they?---Well, it wasn't – it – it wasn't – and I think you meant '16, sorry, but – 2016 – but it wasn't sufficient for us to rely on the evidence that we had been relying on, I think is - - -

20

THE COMMISSIONER: The system wasn't showing that it was - - -?---Correct.

- - - happening?---Correct. That's exactly right.

25

It made an agreement with the dealer that certain things would happen?---Yes.

But what you were seeing in the system wasn't showing that those things were happening?---Correct.

30

MR DINELLI: One of the ways this Royal Commission is working is to identify particular case studies?---Mmm.

But that's shown, hasn't it, very obviously in Ms Thiruvangadam's position, isn't it, because it simply didn't work in that case because the application form bore no resemblance to the material that was actually required?---Sorry. I'm hesitating because there's a couple of different issues here because there's a requirements and objectives conversation, and I think in that case study arguably that was kind of reasonably clear, but what we certainly missed in that case study which we've discussed previously was some of the verification around some of the financial circumstances.

35

40

Yes?---Yes.

45

THE COMMISSIONER: Is this page going into evidence, is it, Mr Dinelli?

MR DINELLI: It is.

THE COMMISSIONER: Exhibit 1.145 will be a page from the second line controls assurance memo of 24 February '17 at WBC.300.060.2668.

5 **EXHIBIT #1.145 PAGE FROM THE SECOND LINE CONTROLS
ASSURANCE MEMO DATED 24/02/2017 (WBC.300.060.2668)**

10 THE WITNESS: At the risk of upsetting the flow, might I request a short comfort stop.

THE COMMISSIONER: I'm sorry? Yes. Better you pipe up than you don't, Mr Godkin?---Thank you.

15 If I come back at, what, 10 past 3?---Thank you, sir.

Yes?---Thank you.

20 **ADJOURNED** [3.02 pm]

RESUMED [3.10 pm]

25 THE COMMISSIONER: Yes, Mr Dinelli.

MR DINELLI: Thank you, Commissioner.

30 Now, you've given some evidence about the accreditation process, which involves a number of steps including submitting an accreditation application form?---Yes.

And you exhibit that as PG1-2, WBC.100.009.8344?---Yes.

35 And if I could take you to .8345?---Yes.

There just seems to be a – the words have disappeared on the screen. Won't be a moment, Mr Godkin?---It's okay.

40 Perhaps I can – you've got this document in front of you?---Yes, I do.

Perhaps I can ask you when it was last updated by Westpac? Is it the bottom right-hand corner, the – would that be – it was - - -?---I'm not – I don't know.

45 The - - -?---I'm not sure if that refers to when we printed out the copy or if it was after.

Yes. No, no. If you don't know, that's fine. Was this one of the documents that you say has been updated over the course of – or recently, since you've started doing further work in this area?---Well, I know that we introduced the requirement for a police clearance check last year, so - - -

5

So that suggests that this is at least a relatively recent version because this refers to - - -?---To that.

- - - the National Police Clearance Certificate, doesn't it?---Correct.

10

On the second page of that document you refer to an accredited person and you say:

You are acting as the bank's agent when you arrange finance for a customer.

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

Is that what – is that what Westpac understands that dealers are doing: acting as their agent for the arranging of the finance?---I – I don't know the answer to – to that. So I'm very clear about what their role is, and I'm very clear about the processes and controls that we put in place or need to put in place to manage that role. Whether they're acting as agent or not in certain aspects of that. I just don't know, I'm afraid.

20

This – this document and the previous documents, including the declarations that I've taken you to, would it be a fair reading – would it be a fair reading to say that Westpac is effectively saying, "You are – we're subcontracting to you the need to do these things. Do them on our behalf"?---I – I think that's – I – I think that's reasonable. If I can, the way that I think about this is that we have got some documents that basically say to the dealer, "You are going to need to do what we need you to do, so that we can fulfil our obligations in the way that we need you to do it, and we're going to provide you with training and the accreditation processes to get you there."

25

30

I see. So if they – if they do their job, Westpac does its job; is that what you mean?---If we both do our job, then Westpac does its job.

35

This document also indicates that the person – the accredited person, when they come to sign this:

...will act as an agent of the bank and not as an agent of the customer.

40

Do you see that? The second dot point – third dot point, I'm sorry?---Yes, I do.

Do you see that there's a requirement that – or the accredited person needs to be able to attest to:

45

I will obtain a good understanding of the customer's needs, objective and financial position sufficient to be comfortable the product being financed is suitable for them.

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

Continuing:

10 *Take all reasonable steps to ensure that all applications for finance are true and accurate, completed in full, read and understood by the customer before submission.*

?---Yes.

15 That might be read as essentially an outsourcing of the obligation to the dealers to do all of those things, isn't it?---It – it might be read to suggest that, but it's absolutely not the case.

20 THE COMMISSIONER: Does it come to this, Mr Godkin: you make an agreement which, if it is performed according to its terms - - -?---Yes.

- - - would lead to there being a loan that is made responsibly?---Yes, yes.

25 The question then behind that is yes, you make the contract with the dealer saying, "You are bound by contract to us to do all these things"?---Mmm.

30 Then what is it that Westpac does beyond making the contract that says "go and do these things"?---Right. So – thank you. The – and – and a really important part of making this business work well. So – so the framework that we have, and parts of it are still maturing, but the framework that we have, which – which starts with those agreements, but then goes to accreditation and training, so that we make sure that the business managers understand what they are supposed to be doing. We then have what I would describe as guided processes through the system so that in some elements they are directed, very specifically, to enter fields or answer questions or ask questions, so that at least in some elements of the application process we know that they're stepping through those steps because they can't move forward if they don't step through those steps. And that will include, in some cases – and I mentioned before – undisclosed minimums in some expense fields, so if they put in zero actually it's going to get referred and somebody is going to ask some questions. 35 So that – that's a really important second part of the process. The third part of the process is the monitoring that we do across a range of aspects, and – and it's – and I do talk about it in my general witness statement but it includes, you know, calling customers as mystery shoppers post the event, it includes the quality assurance program that we talked to earlier in relation to that document, it includes the 40 hindsighting that we do on credit reviews, it includes some insurance that we do, 45 specifically around some CCI insurance and – and others. So that's a really important part of the framework. But then finally, none of that works if that doesn't

tie into a consequence management framework that takes the feedback from all of that monitoring activity and then feeds it back into the right part of our business so that we're getting corrective behaviours where that's necessary. And that's – that's part of a framework or program that has been building out over the last two years.

5 There are parts of it which are mature and there are parts which are less mature. But that is the – that is the – the kind of the four pillars of making sure that everybody in the business lives up to those agreements.

But you're not there yet - - -?---No. We - - -

10

- - - because parts of it are immature?---That's – that is correct.

What's the comparative importance of the parts that are immature compared with those that are now mature?---So the parts that are immature are some of the – so there's a couple of elements of the monitoring, so not all elements, but there are a couple of elements of the monitoring that – that need rolling out more broadly, and then more recently we have added an escalation process to the consequence management framework so that you know it's really clear that the dealer – business managers are getting the right feedback at the right time or, alternatively, you know in really bad situations finding something else to do. So I'm not sure if I've answered your question but I don't – it's hard to - - -

15

20

But what I'm trying to get is some sense of whether there are critical elements of the framework which are still immature or not rolled out?---No, I don't think so.

25

You might have to expand on the answer a bit beyond that, I think?---Yes. So we have, for example, a – the QA, or the quality assurance process, that – that we run through – which is already feeding back to the business managers. We are still maturing the consequence management framework so, instead of it being a conversation that is recorded in a call report, there is a bit more teeth to it. So you have the conversation, but understand the next conversation will be with the dealer or principal rather than the business manager. Or, you know, if we get to three conversations, you're probably going to be showing cause about why you should still be a business manager. So – and – it – it – it's difficult, because this in – like, the framework is powerful as a – as a whole thing.

30

35

Yes.

MR DINELLI: Can I take you to paragraph 37 of your statement?---Certainly.

40

And you say there that:

The dealer business managers are specifically required to not merely accept what the customer tells them, but to ask specific questions to ensure that all the necessary detail is captured.

45

You recall I referred to “captured” before. That’s where you use the word “captured”?---Yes.

5 You’re not – I’m sorry, it’s 37, unfortunately – but, of course, the capture of the information isn’t in and of itself sufficient, is it? Just merely capturing the information is not going to discharge your obligations?---No, not at all.

10 The explanation you give at – is that that – all of – or that stage of the process is still within – if I can put it this way – still at the dealership, isn’t it, the obtaining of that information?---Yes, that’s correct.

And then the next stage, if I can put it that way, you then jump to step – or the steps that you explain start at paragraph 45 where you say step 1.1:

15 *The customer selects a car, introduced to a dealer business manager.*

Do you see that?---Yes.

20 Again, that’s within the dealership?---Correct.

Then 1.2:

The dealer business manager will then fill in the customer’s application details.

25 Do you see that at paragraph 47. The first time that Westpac is involved is what you describe at paragraph 52, and that is:

30 *Once certain information is submitted, information from credit reporting bodies in respect of the customer is obtained automatically and using that information, and the information entered by the dealer business manager, a credit score is automatically generated for the case.*

Do you see that?---Yes.

35 That’s the first involvement that – that Westpac has in this process?---Correct.

If the case – if it’s below a certain threshold, as I understand it, it then goes to a credit team; is that correct?---It – there are a number of thresholds, but yes.

40 Yes. Well, your evidence here – but tell me if there’s something that I’ve missed – if the credit score is below a certain threshold or one of the – a number of thresholds are not satisfied, the case is referred to the credit team for a manual credit review?---Yes. Absolutely correct.

45 Now, if the case however meets the necessary thresholds, the case progresses to the auto finance settlements team?---That’s correct.

Now, you describe that in the form of a diagram which might assist.
WBC.103.052.8847. You're familiar with this diagram?---Yes. Yes.

5 Now, I think I've worked it out, but you will tell me if I haven't, Mr Godkin. The
customer is represented at the top, and 1.1 is their application for a car loan. And
then if we can go down a little bit, we go to the dealer, and we've dealt with the
completing of the loan details. If the system approves the person, if the credit – I'm
sorry, if the systems approve – moving from 1.2, system approved, it then goes to an
10 assessing of the application. 1.3 is the first time that we're within Westpac, isn't
it?---Yes. We're actually in Westpac in that little box above it, but the first time a
human touches it in Westpac, yes.

15 Yes. Sorry, the yellow – is your point is that the yellow is when it says system
approved?---Yes.

15 Yes. So that's the use - - -?---That's the - - -

- - - of the Sovereign system. And if the person is approved it stays in the dealer.
That is to say, it goes then to confirm security and mortgage details, etcetera, and it
20 stays in the dealer. It only goes into the credit team if the assessment is completed
and the answer is no; is that correct?---Correct.

25 Now, just to understand – and I understand it was some time ago – but with the case
study that we've been dealing with, the breakdown happened at the very first stage,
because it should never – that application should never have got through the Westpac
system right at the first stage, should it?---I – I am not sure I follow the – the – the –
the – the – the automatic process - - -

30 Yes?--- - - - that we have is – is not about approve or decline. It's about approve or
refer.

Correct?---So – so that loan application was referred at the first hurdle, which was
the appropriate response at that point.

35 But then it was approved by the credit team inappropriately, you
concede?---Approved inappropriately – I mean, the initial – yes.

If you go to 55 – paragraph 55 of your statement?---Yes.

40 That deals with circumstances where it's referred for manual credit review?---That's
correct.

45 And that requires – and that requires checking of various information obtained from
credit bodies, customers' asset details, etcetera?---Yes.

And these are the checks that are done by the credit team, and certain checks that are
done include, at paragraph 56:

If the customer's declared income is of a certain type, including for example where it originates from casual employment, etcetera, then the credit team will request supporting documentation.

5 ?---That's correct.

Now, if the thresholds are then met or the credit team gives the go ahead, then the dealer business manager can go ahead and provide the documents to the – to the customer, if having gone through that process?---Correct.

10

However, back when we first went into the Westpac system, if the case meets the necessary thresholds, the case progresses to the auto finance settlements team, doesn't it?---That's correct.

15 So it doesn't go through any manual check at all if it passes the first stage?---It doesn't go through a manual credit assessment.

Correct?---It does go through a manual compliance check, yes.

20 No. The compliance check doesn't happen till later though, does it? The compliance - - -?---Sorry, yes. You are right, yes.

Once - - -?---Once it – sorry once it gets to the settlements team that is the start of the manual compliance check.

25

Yes. But by that time the person has already signed the loan agreement, haven't they?---No, they have not. They have signed an offer.

They've signed the offer and then the - - -?---Sorry, they are making the offer.

30

I see. And then that is, to use the example of the case study, that is what happened a few days after 26 July. You will recall that - - -?---Yes.

35 - - - the sale was done on 26 July, and then the documentation arrived I think four days later, I think?---Yes.

That's the – during that time, if that process was in place at the time, that's when the compliance check would occur. Before that – before the formal document is sent?---Well, certainly before it's accepted, yes.

40

Yes. But what the settlements team does is what you describe at paragraph 66?---Mmm.

45 And I think – and correct me if I'm wrong, but it's a very different process to that which is done by the manual credit review team, isn't it?---Yes, completely.

In fact, the check is really to ensure that the offer application direct debit requests have been executed. Do you see that?---I do, yes.

5 That there's sufficient documentation to verify the information entered on the Sovereign system?---Yes.

And then the know your customer requirements and then there's also a check for the add-on insurance policies. We will return to that issue later?---Sure.

10 So that – in the case that goes through the automated process, the only things that are done are the checks that I've sjust referred to in paragraph 66?---There's also an income verification step - - -

15 Yes, and - - -?--- - - - in the settlements team.

It – in 67, that checks – that's the check of the income - - -?---Correct.

- - - at that point?---Yes.

20 And that's what you've described as the compliance check; is that right?---Well, it's the combination of that, the ID checks, and the – it might be the security check at the same time, yes.

25 THE COMMISSIONER: At 66(b) there's reference to the income check by the settlements team.

?---Thank you, yes.

30 Continuing:

Sufficient documentation has been provided to verify the information entered into Sovereign including, in particular, documents evidencing income.

35 ?---Yes, yes. Thank you.

Yes. Nothing about expenses?---Correct.

40 MR DINELLI: You would agree that some positive steps to verify the information provided by the consumer are required?---I'm sorry?

You would agree with me that some positive steps to verify the information provided by the consumer is required?---In – in some cases - - -

45 Well, are there cases in which – are there cases in which it's unnecessary for any positive steps to be taken by Westpac to verify the information given to you by your consumer?---I think that there are cases where reasonable inquiries wouldn't require

more positive steps, depending on the nature of the customer, which is not – not to include income verification, but - - -

5 Well, you've said that there's no checks of expenses?---That's correct. So – and – and there is no circumstances where we would not do income verification.

I see. How long has that been the process?---Sorry, which?

10 The process of checking income, Mr Godkin?---For as long as I know, broadly.

And in those circumstances where it hasn't occurred, such as the study we've been talking about, you can't offer any explanation for why that occurred?---No, I can't, in those circumstances. No.

15 THE COMMISSIONER: Can we bring it back to this, Mr Godkin: can you point to any stage in the process where expenditure is checked or verified?---So as – as I said earlier, in the vast majority of cases, expenditure is not verified.

20 Therefore, if the dealer business manager records that the borrower is living rent free with a relative, that just goes through without check?---So – so the practice at the time of the case study is that that would have just gone through without check. I mean there was a notation on the application to say it was boarding. The practice today is that that would get picked up by an undisclosed minimum built into the system, which would refer it to the credit team with a flag that that was what had referred it, which would require them to make further inquiries. Now, those inquiries
25 may or may not rise to the level of some form of verification, but it would at least prompt - - -

30 If the dealer does not record – the dealer business manager does not record that the would-be borrower has dependants, there is no part of the system that would pick that up, is there?---There is not. I mean, there is a separate question where we now force the dealer manager – sorry, the business manager through, but there's no independent verification of that, other than, again – and it's picked up in the – in the document that we referred to earlier in relation to the quality assurance program
35 which specifically talks about how people might think about assessing dependants, using that as an example, and – and if through that monitoring there were issues, then that would be fed back to the credit team.

40 And if the dealer business manager records that the would-be borrower has no dependants, the HEM that is taken into account in assessing household living expenses is less than the amount that would be taken into account if the number of dependants were truly recorded?---In those circumstances, yes.

45 Yes.

MR DINELLI: Are you familiar with the ASIC regulatory guideline 209?---Yes, I am.

I might call that up. RCD.0021.0001.0088. And Westpac would consider the guidelines represent good practice, Mr Godkin?---I – I can't comment on - - -

I'm sorry?---I can't comment on that. I - - -

5

Well - - -

THE COMMISSIONER: Well, it is what it is?---It is what it is.

10 MR DINELLI: If you go - - -

THE COMMISSIONER: ASIC have spoken and that's it.

15 MR DINELLI: If you go to .0107. Page 20 of the document. It should be coming up for you now. Page 209.46. :

You are obliged to take reasonable steps to verify a consumer's financial situation.

20 Do you see that?---Yes.

Continuing:

25 *Generally, this will require some positive steps to verify the information provided by the consumer. As discussed earlier, what constitutes taking reasonable steps to verify information is generally scalable and what amounts to reasonable verification will depend on information and resources that you have access to and the facts and circumstances of each case.*

30 ?---Okay.

There's no distinction drawn there, is there, between income and expenses?---Not specifically, no.

35 If you go to page .0121. Paragraph 209.93:

40 *Having completed reasonable inquiries, you must assess whether the credit contract or consumer lease is "not unsuitable" which includes assessing whether the consumer can meet their financial obligations under the contract without substantial hardship.*

Skipping ahead:

45 *This assessment will be based on the information you obtained (and verified) when you made reasonable inquiries about the consumer's financial situation.*

It's still – it's still your position – or it was your evidence previously that you rely on the information that's given to you by the dealers in this regard?---There is a significant portion of the financial circumstances where we rely on the combination of the customer declaration and the business manager declaration. Of course, there
5 are other parts of the financial circumstances where we rely on independent verification, which goes to paylips, for example.

Isn't a problem for Westpac the fact that its reliance on dealers is such that, whatever its contractual arrangements with the dealers, the dealers themselves aren't subject to the National Credit Act?---So – so that's a factor, which is why it's so important that
10 the framework that I talked about previously is effective.

Well, in many ways, the obligations on Westpac are greater, aren't they, in those circumstances?---I – I don't know that they're greater. I think they're more
15 challenging. So, you know, we have the same responsibilities if we're working with a – a directly employed distribution force. The reality is we're working with a not employed distribution force. So we need to have extra capability in place to monitor and to create consequence.

20 THE COMMISSIONER: It's a not employed distribution force that has an incentive to make the sale and close the deal?---That is also true.

Including make the sale of the loan?---That – that is true.

25 Because they get a commission if they do?---That's correct.

Yes.

30 MR DINELLI: Just returning to that question of remuneration and commission, is it right that – is it right that the dealer also gets an origination fee?---That is correct, yes.

How much is that at the moment?---I don't – I – I would say it's in the order of 400 – no, \$700, I think, but actually I don't know. But - - -
35

Ms Thiruvangadam, I think she paid 500 back in 2012?---That – that – that would make sense. So – and it's probably – you know, it will be something a bit more expensive than that now, but I don't know the exact number.

40 One of the things I didn't deal with when I went to the remuneration, is it true that the dealer also is paid a direct debit bonus?---In some cases.

What does that mean?---So that means – and this is quite and old business, and some things have kind of lasted for a long time, but at a time when direct debit was not so
45 common, the business created a specific incentive for dealers to get customers who they had originated onto a direct debit payment process.

How much is that bonus, do you know?---I don't – it's not – it's not very much in the scheme of things.

5 THE COMMISSIONER: I feel that doesn't convey a great deal to me, Mr Godkin. If you can give me – I know you don't know the exact numbers but, again, order of magnitude? Are we talking hundreds of dollars or - - -?---I – I don't know.

10 If you don't know, you don't know?---I am sure we can provide the data. I'm not trying to - - -

Yes?---But I don't know.

15 No, no. It's not a memory test, but it's still provided?---Yes. It's still – yes, there's still – it's just a – a legacy.

20 Why not cut it?---That's a good – because it's tiny and insignificant. It was, you know, included for completeness. But as – as we go through the process this year towards the implementation of flex, it will give us the opportunity to tidy up, you know, some very old legacy structures.

MR DINELLI: I mean, whatever the amount might be, it's another cost to the consumer, isn't it?---Ultimately the price is the – all the costs are added up, the cost plus a margin, yes.

25 Now, in your evidence you say that Westpac monitors the car loan portfolio through a number of monitoring practices; is that right?---That's correct.

30 The chief monitoring practices relate to a number of specific areas of concern?---Yes.

35 What are the main areas of concern for Westpac?---So the – so the chief – like the principal monitoring has been around interest rate cap monitoring, just to make sure that that's not breached. Add-on insurance monitoring in relation to some specific limits that we've got around add-on insurance has become a little bit less relevant, because we've systemised some of those limits so that it's a hard stop. The sales practice quality assurance monitoring, which is the document that we've talked to earlier which will range from, you know, potential responsible lending issues to potential add-on insurance issues to, you know, potential dealer misconduct issues. I mean, it's quite broad in its scope. Customer core monitoring which goes directly to, you know, questions around whether the dealer business manager is having the right conversation with the customer across a range of different elements of the conversation that we expect them to have. Credit review monitoring, which goes more specifically to what that credit acceptance team does, and – and a big part of that is their adherence to the credit policy, but it will take into account other elements that are more broad as well. And then the – you know, we have monitoring over the settlements team who are responsible for that compliance function that we talked to earlier. So it's quite – it is quite broad ranging.

The first two that you identified, interest rate cap monitoring and add-on insurance monitoring, I think it's fair to say that those are issues that can potentially have detrimental effects on customers; is that right? The most significant detrimental effects on customers?---In some circumstances, I think that's – I think that's right.

5

I think – is it a matter of concern to you – is it a matter of concern to you that – and this is dealing with something I have asked some questions about already but I want to take you to a particular document – is it a matter of concern that dealers might be out there encouraging people to purchase at the highest possible interest rate to increase their – to increase their return, that is, their Commission at the end of the month?---Yes, of course.

10

And you deal with this, don't you, in one of the training code of conduct and customer fairness outcome documents. I might take you to PG1C6?---Yes.

15

WBC.300.001.6570?---Mmm.

And if you go to 6577. Down the bottom it says General Conduct Obligations. We've talked about those. They are the section 47 obligations, although you have put them here for the purposes of discussion with the dealers. And the first dot point is:

20

Have adequate arrangements in place to ensure our customers are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to the credit activities.

25

?---Correct.

And we've talked about that. The example that's given is:

30

For example, this means you should not suggest or recommend a product to a customer purely based on the amount of commission or remuneration that will be received.

35

Do you see that?---Yes.

Does that occur commonly, do you think?---I can't say how commonly that occurs. I think we've acknowledged, and it has been part of our conversation today, that there is a – there is a pricing structure in this market which raises potential conflicts, and I've got no doubt from time to time people take advantage of that conflict.

40

Thank you. Can I ask you now a few questions about add-on insurance?---Please.

What is add-on insurance?---So add-on insurance refers to – in very general terms.

45

Yes?---It refers to insurance which is often sold at point of sale that will be add on to the – it's referred to as add-on because it's add on to the principal purpose of the

transaction, which in this case might – is – you know, purchasing a motor vehicle. In relation to motor vehicle transactions, it typically does not include comprehensive insurance, when we talk about add-on. So it might include products like – sorry, it does include products like consumer – credit insurance.

5

Tyre and rim?---Tyre and rim, gap insurance or some sort of shortfall insurance and in some cases mechanical insurance, yes.

10 Am I right to say that it's a very profitable aspect of the car loan business, add-on insurance?---No, you're not. So for the car loan business, so specifically for our business, it's – you know the most recent numbers is it's – it's one and a half per cent of the value of loans that we write, and, in fact, it's – because we do have, you know, monitoring and compliance and accreditation issues in that part of our business, it's expensive to run.

15

The – well, perhaps if I could just explore with you what some of the problems are with add-on insurance?---Yes.

20 Last week the Commission heard evidence from a Ms Karen Cox of the Financial Rights Legal Centre. She gave some evidence?---Indeed.

I don't know if you saw that or have read about her evidence?---I did. It's a – it feels like a while ago now, but yes.

25 Yes, it certainly does. Ms Cox noted that add-on insurance has been highlighted in recent years in a number of inquiries as being a focus of ASICs attention. She was right to do so, wasn't she?---Yes, absolutely.

30 And you would agree – you would also agree that – or you would be familiar with ASICs report on add-on insurance last year, A Market That is Failing Consumers: the Sale of Add-on Insurance through Car Dealers?---Yes, I am.

35 Ms Cox spoke about some of her experiences where consumers are sold products they don't realise they have and cannot recall consenting to purchasing?---Yes.

Do you have any views on that?---I have a view that's an inappropriate outcome, yes.

40 There's – she referred to high pressure sales tactics that are used. Do you have any personal knowledge of those?---I – I don't. I understand ASICs, you know, concerns which I think she was reflecting, but yes.

45 And her references to, you know, wearing people down with a long sales process and suggesting that the consumer needs to buy the product – needs to buy the add-on product as part of the car purchase?---Yes. I am aware of her testimony and ASICs similar findings.

Have you had – are you able to assist by any experience of that yourself?---So – so I don't have specific examples that I can – that – that I'm aware of where that's – that has been the case. So no.

5 Are you familiar that another concern that has been expressed is that unsuitable sales are made where a consumer could never actually claim because of their personal circumstances?---I certainly am, yes.

10 And that the benefits, even if someone can claim, are very limited?---In some cases, yes, I believe that's the case.

15 Now, I think I put the question to you before perhaps in an ill-advised way. When I said that it is very profitable, am I right to say that it is – who it – in your evidence, who is it – is it profitable for anyone, add-on insurance?---Historically, it has been an important source of income for dealers. And I can't speak to insurance company profitability, but - - -

20 THE COMMISSIONER: Have the dealers got the income, what, in the form of commission?---That's correct.

And commission at what sort of rate or level?---So ASIC has referred to commissions at around 50 per cent, if not higher, going back a few years. Of course, that has changed, but they're still around 20 now.

25 I think capped at 20 or 25?---It's not – I understand it's not actually capped, but the industry has moved to a 20 or thereabouts.

30 Yes. It has been a matter of considerable concern and litigation in the UK - - -?---Yes.

- - - in other contexts, hasn't it?---Yes.

Yes.

35 MR DINELLI: Can I take you to a document in relation to this issue, if I may?---Mmm.

40 It is – again, this is a private screen document – WBC.040.034.6510. Perhaps I can put it to you in - - -

THE COMMISSIONER: Is this a document that can be displayed publicly, Mr Sheahan?

45 MR SHEAHAN: I'm just checking, Commissioner, forgive me.

THE COMMISSIONER: It's not immediately apparent to me why not, but here we are.

MR SHEAHAN: I agree immediately with your observation. The only thing that is causing some hesitation here is that I don't think we had – I don't think we had notice that this was going to be relied upon, so we haven't checked the rest of it, but if - - -

5

THE COMMISSIONER: No. But this page is

MR SHEAHAN: That page is - - -

10 THE COMMISSIONER: What I am fussed about at the moment.

MR SHEAHAN: That page is fine.

15 THE COMMISSIONER: We will slice the onion very thinly, I think, if we may, Mr Sheahan. So we can display this publicly?

MR SHEAHAN: Yes.

20 MR DINELLI: Sorry to keep you waiting, Mr Godkin. This document is a memorandum.

THE COMMISSIONER: The latest regulatory report. It's not a deep dark trade secret to Westpac, perhaps.

25 MR DINELLI: It's a memorandum - - -

THE COMMISSIONER: Maybe it is.

30 MR DINELLI: It's a memorandum to the CEO of your organisation; is that right?---That's correct.

And all I'm taking you to – and I apologise for the delay in getting to this point, but under the heading The Latest Regulatory Report, there is a discussion of insurance products and the key findings were these:

35

Consumers receive much less in claims than dealers receive in commissions.

?---Yes.

40 Is that right, in your experience?---I – I don't – I don't have the experience to answer that.

And there's a reference which I would like to deal with, with you, which is F and I Income, which I think is finance and insurance?---Correct.

45

Continuing:

Finance and insurance income is consistently reporting 80 to 120 per cent of dealer profits.

5 What's meant by that?---So dealers – and I should make the point, so when I talk
about dealers, my experience is with new car franchise groups. So this doesn't mean
they don't do used cars but it's – you know, the dealer customers that we have are in
some way associated with a brand franchise that they're selling new cars for. So
what I'm about to say relates to that cohort of – for – for dealers. And some broad
10 numbers which are based on some industry work – some broad numbers based on
some industry work which is being conducted by the AADA, which is the – I don't
know – Australian Automotive Dealers Association. So dealers earn about 1.9 per
cent of sales as profit, but as a rough guide on – on average, more than 100 per cent
of that net amount that they make is equivalent to the income that they earn from
15 finance and insurance activities.

15 I see?---So in other words if it wasn't for finance and insurance activities, there are a
lot of dealers out there who would be losing money.

20 I gather that's why – and I won't take you to this page, but I will read it to
you?---Mmm.

25 That's why Mr Lindberg, the chief executive business bank, went on to say – and we
don't need to go to it, but there's a summary that he gives at the end of this memo
and he says:

*However, it should be noted that the combined effect of finance and insurance
changes are likely to substantially erode the profitability of the motor vehicle
dealership model and the physical point of sale model that we are heavily
30 committed to.*

30 ?---Yes.

35 So add-on insurance, whatever might be its vices, it's a part of that model to which
Mr Lindberg was referring that's an important part of it from the dealers point of
view?---For – for the dealers it is, has historically been an important part of their
profitability, yes.

40 And what has Westpac been doing about – about the issue of add-on insurance to
deal with this issue?---Yes. So if I might, I might just say that any comments I make
in relation to add-on insurance are very focused on the involvement of the auto
finance business in funding - - -

45 That's what you're here for, Mr Godkin?---In funding for add-on insurance. So –
and so then I might also say that our role in this industry is to fund the requirements
that a customer has, and that includes the motor vehicle and any other things that
they're financing, and some of those are add-on insurance. So we don't actually sell
add-on insurance, but we do finance it.

Right. Thank you for clarifying that?---That said, we have put some steps in place to mitigate the risk of potential misselling in this marketplace, and they include a more comprehensive and robust accreditation process for add-on insurance products which are available for financing, and that will include a review of the PDS with a view to clarity of exclusions, with a view to any potential overlap that may exist between different types of policies, with a view to exploring whether there is any life insurance component, on the basis that we will no longer finance CCI with a life insurance component, and then finally, with a view to any real prospect of benefit. So we would typically see from the insurance company now some estimate of the payout ratio, for example, which is part of that consideration process. We use an external party who is actually an insurance expert, because we are not, to do some assessment for us. And that, combined with some additional information which would include, for example, commission rates, is considered before we will accredit a product available for financing. Again, we don't sell it, we only finance it. In addition to that, we have capped the aggregate amount of insurance premium that we will fund relative to the level of the – or the value of the vehicle. And we have capped the amount of equity that a customer can have in a vehicle and have gap insurance appropriate. So in other words, if you have too much – and the number is 25 per cent. If you're over 25 per cent equity in the vehicle, it's unlikely the gap insurance would confer a benefit if the vehicle was written off. If that makes sense.

The – as I understand it what you're referring to is now part of your credit policy, as I understand it?---Correct.

It's the total amount finance relating to add-on insurance must not be greater than 25 per cent of the total amount financed is that right?---That's one of them.

That's what you referred to first, I think?---Yes.

Although 25 per cent can still be quite a considerable amount to customers, can it not?---It – it could be indeed, yes, depending on the – yes, it could be.

Can I take you to WBC - - -

THE COMMISSIONER: Are we doing something with this page?

MR DINELLI: Yes. I'm tendering that, Commissioner.

THE COMMISSIONER: Exhibit 1.146, I think, page from memorandum to CEO Westpac Banking Corporation, dated?

MR DINELLI: 22 July – no, I have got the wrong one. Bear with me. 22 September 2016.

THE COMMISSIONER: 22 September 2016, WBC.040.034.6510.

MR DINELLI: Commissioner, you will recall that I referred to the third page, but I understand – I understand - - -

THE COMMISSIONER: It's what page number?

5

MR DINELLI: I might seek, subject to my learned friend - - -

MR SHEAHAN: Commissioner, the whole document can go in because the part that's confidential is already the subject of a confidentiality order.

10

THE COMMISSIONER: So the exhibit becomes, does it, memorandum to CEO Westpac Banking Corporation 22 September '16, WBC.040.034.6510 and that's exhibit 1.146. Thank you.

15

EXHIBIT #1.146 MEMORANDUM TO CEO WESTPAC BANKING CORPORATION DATED 22/09/2016 (WBC.040.034.6510)

20

MR DINELLI: Can I take you to a memo to the board risk and compliance committee WBC.200.004.2548. Unfortunately, that's private screen too. But I shall – no. And sorry. Can we go to .2556, please, and then I will hand a copy to you. So this is a memo to the Board Risk and Compliance Committee dated – you will remind me of the date, I'm sorry?---24 April 2017.

25

Now, your evidence previously was there had been a number of changes made in relation to add-on insurance. The – what was put in this memo to the committee of the board was that ASIC, which is doing some – which has had some concerns about add-on insurance:

30

We responded on 16 February 2017 that Westpac will continue to finance add-on insurance when appropriate, but we have taken a nuanced approach and have stopped financing certain products.

35

What do you mean by a “nuanced approach”?---So not my – not my document and not my – not my words.

Sorry, what – well - - -?---If I - - -

40

How do you - - -?---If I can – so ASIC – ASIC approached Westpac with a very specific request which is, you know, “Would you stop financing add-on insurance?” Our approach was not a “no”, it was, “There are some things that we can do in relation to add-on insurance which we will help – sorry, which we think will help you and the industry mitigate the risk of misselling and get better value back in the hands of the customer.” And then they include some of those things that I've talked about earlier.

45

THE COMMISSIONER: What's the position with this page, Mr Sheahan?

MR SHEAHAN: That page is on the screen and there's no objection to it.

5 THE COMMISSIONER: Yes. It should go up then.

MR DINELLI: But the position – and Westpac's position remains that it does continue to finance add-on insurance, but subject to the policies that you referred to previously; is that right?---Yes. Absolutely.

10

THE COMMISSIONER: Exhibit 1.147 will be a page from the board risk and compliance committee, 24 April '17, WBC.200.004 at 2556.

15 **EXHIBIT #1.147 PAGE FROM THE BOARD RISK AND COMPLIANCE COMMITTEE DATED 24/04/2017 (WBC.200.004.2556)**

20 THE COMMISSIONER: Mr Dinelli, how long do you expect to be with Mr Godkin?

MR DINELLI: I think Mr Godkin will be happy to hear that I'm just about finished. Can I just have one moment, Commissioner.

25 THE COMMISSIONER: It was a question, not an interrogative statement, despite what you thought. Can we, at least for the moment, reasonably confidently proceed and finish Mr Godkin tonight, or is – am I trying to go a bridge too far? What do you think, Mr Sheahan?

30 MR SHEAHAN: I think if we can finish him tonight if my learned friend is only a few more minutes - - -

THE COMMISSIONER: It would be better if we could finish him. So go on.

35 MR DINELLI: Thank you.

THE COMMISSIONER: Yes.

40 MR DINELLI: At the start you gave some evidence about Ms Thiruvangadam's experience?---Yes, indeed.

And it appears – you know, is it fair to say that the experience that she had was not an isolated one in the experience of Westpac?---I think it's fair to say there will be other examples, yes.

45

There are – you've accepted that there are conflicts between dealers in their duties – sorry, you've accepted that there is a conflict between what dealers are doing and the

consumer when it comes to the particular remuneration of dealers?---So at the – at the risk of slightly restating, so I’ve accepted that the remuneration structure in this market is both “inappropriate”, I think is a word that I used, and creates the – the risk of conflict, yes.

5

And it’s a risk that – or a conflict that remains in existence to this day?---Yes, it does.

Now, you’ve given evidence as to some improvements, in particular since November 2016?---Mmm.

10

That have been made at Westpac, but I think it was your evidence that before that there was a recognition that the processes needed improvement?---There was – there was opportunity for improvement, certainly, yes.

15

And – but one policy that hasn’t been amended over the course of the last six years, as I understand it, has been the remuneration policy for dealers, has it?---Absent that cap that we introduced in - - -

20

Sorry, that’s right?---In 2015, you are absolutely correct.

That is between 2012 and 2018, aside from that cap, the remuneration of dealers has remained the same?---Absolutely.

25

Thank you, Mr Godkin.

THE COMMISSIONER: Thank you, Mr Dinelli. Does any party other than Westpac seek leave to cross-examine Mr Godkin? No. Very well. Yes, Mr Sheahan.

30

<RE-EXAMINATION BY MR SHEAHAN

[4.16 pm]

35

MR SHEAHAN: Thank you, Commissioner.

Mr Godkin, you were asked some questions about payments in respect of direct debit sign-ups?---Yes.

40

And I’m just going to ask you – give you some figures and see if they jog your recollection as to the order of magnitude.

THE COMMISSIONER: give evidence from the bar table, Mr Sheahan. It’s what counsel is paid to do. Go on.

45

MR SHEAHAN: It will only be evidence if he agrees, your Honour. They’re tiered according to the percentage of contracts that the dealer is able to get on to a direct debit arrangement?---That – that sounds familiar.

And the range is from \$7.50 per contract up to \$20 per contract?---Certainly, that I don't recall, but - - -

5 Don't recall it. We will have some evidence directed to it, Commissioner, in due course. Mr Godkin - - -

THE COMMISSIONER: If that's what Westpac says it is, that's what Westpac says it is.

10 MR SHEAHAN: It is what we say it is.

THE COMMISSIONER: Yes. Thank you, Mr Sheahan.

15 MR SHEAHAN: Now, you were asked a little earlier today about ASICs media release in relation to its flex commissions study, and you mentioned that there had been some consultation papers issued. Westpac responded to consultation papers - - -?---Yes.

20 - - - issued by ASIC?---Yes it did.

Can you have a look at this please. WBC.104.003.2122, if that can be brought up. See if I've read it out incorrectly. WBC.104.003.2122. All right. We will – the document doesn't seem to be on the system. I thought it was. We will tender it in due course, as it's self-explanatory. But, in short, what was Westpac's position in 25 dealing with ASIC as to what should happen to flex commissions in the industry?---Sorry. Just so I'm clear, so the position that Westpac shared with ASIC?

Yes?---Is that we should remove the link between price and commission completely.

30 Thank you. Now, ASICs - - -

THE COMMISSIONER: Sorry, when you refer to price and commission, you mean - - -?---I mean a complete prohibition of flex commission.

35 Yes.

MR SHEAHAN: Completion prohibition?---Yes.

40 Now, ASICs consultations with the industry about this went back a few years before 2016; is that right?---Yes.

And if you have a look at this, I will see if I can get this one right: WBC.103.001.4629. It's not there. We will tender that in due course. Now, Mr Godkin, you said in answer to the Commissioner earlier today that in relation to Ms 45 Thiruvangadam's loan that there were two different credit officers who approved it over a couple of submissions?---Yes.

Do you recall giving that evidence? Can the witness be shown exhibit 1.139, WBC.104.003.7572. At .7573. This was only tendered today, so that will explain why he doesn't have it.

5 THE COMMISSIONER: I can call bingo if you get one out, Mr Sheahan.

MR SHEAHAN: If I get one now I will deserve bingo, Commissioner.

THE WITNESS: Thank you.

10

MR SHEAHAN: The writing on that is very small, Mr Godkin, but are these – you recognise these are screenshots from the Sovereign system in relation to Ms Thiruvangadam?---Yes, I do.

15 And if you look at the second page which is 7573, does that enable you to identify who the two officers were involved in the approval of her loan?---So Varun Pinto and Levina Pavira are the two officers. I'm sorry, I am struggling to read that.

20 And finally, I think, you were asked some questions about the 2017 compliance assessment in relation to her loan, became exhibit 1.143, WBC.300.003.8179. And you will recall saying that you took the language in that document to mean that there had been failures in the application of the credit policy?---Yes.

25 All right. Now, have there, nevertheless, been some changes in the credit policy relevant to the circumstances of the complainant?---Indeed. So specifically in relation to the case study, the – at the time in 2012, the fact that she was receiving a carer's allowance from Centrelink was available for a credit officer to approve. Today, because it's not on the acceptable income list, it's therefore deemed unacceptable. So you would not approve the loan on that basis. In addition to
30 that - - -

THE COMMISSIONER: Just before you leave that, I may well have forgotten this. I thought she was on family benefits rather than a carer's benefit, but perhaps I'm
35 mistaken.

MR SHEAHAN: There's a complex series of components to her Centrelink benefits, I think is the answer, Commissioner.

THE COMMISSIONER: Yes. I see.

40

THE WITNESS: The – the second key change, I think, as it relates to the case study, is that a much tighter level of requirements in terms of when a credit officer can approve a credit that has what we refer to as the "low side override" which is where the credit score has not met the hurdle in that initial automatic process, and
45 because in this case the customer was not an A rated existing St George customer, or indeed a homeowner, she would not qualify.

MR SHEAHAN: So there would be no way of getting her through the current policies?---No, indeed.

5 THE COMMISSIONER: When were the changes made to those policies?---Do you mind if I just refer to my statement?

Of course not?---

10 Of course you should.

MR SHEAHAN: I think these are dealt with in paragraph 52 of your second statement, Mr Godkin?---Sorry, in my – so the case study statement?

15 Yes?---So - - -

You don't have a date there for the change in paragraph (a), and in paragraph (b) you refer to a change in August 2016?---Yes. So the second of the things I talk about was August 2016. And I don't specifically know the date. Again, we can provide it. I can search back through the change history and the credit policy to find it eventually, but - - -

20

No further questions, Commissioner.

25 THE COMMISSIONER: Yes. Thank you, Mr Sheahan.

MR SHEAHAN: If Mr Godkin could be excused.

THE COMMISSIONER: Is there anything, Mr Dinelli?

30 MR DINELLI: No, thank you.

THE COMMISSIONER: Thank you, Mr Godkin?---You're welcome.

35 You are excused from further attendance?---Thank you.

<THE WITNESS WITHDREW [4.25 pm]

40 THE COMMISSIONER: 9.45 tomorrow morning.

MATTER ADJOURNED at 4.25 pm UNTIL THURSDAY, 22 MARCH 2018

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