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TRANSCRIPT OF PROCEEDINGS

O/N H-871457

THE HONOURABLE K. HAYNE AC QC, Commissioner

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

MELBOURNE

9.45 AM, THURSDAY, 22 MARCH 2018

Continued from 21.3.18

DAY 9

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

DR M. COLLINS QC appears ANZ

MR C. SCERRI QC appears for CBA

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

MR SCARGETTA: Dennis Scargetta, victim for the public interest, Commissioner.

THE COMMISSIONER: Mr Scargetta - - -

5 MR SCARGETTA: Now that we have established the financial rorting by these banks, is the Commissioner - - -

THE COMMISSIONER: - - - would you be good enough to sit down, please.

10 MR SCARGETTA: - - - going to investigate the judiciary's involvement in this financial rorting? We have irrefutable and - - -

THE COMMISSIONER: Mr Scargetta, Would you please sit down.

15 MR SCARGETTA: - - - undeniable courtroom evidence of the judiciary's involvement in this atrocious rorting. Judgments by Victorian judges, Cosgrave, Whelan, Santamaria, subject to qualifications, Osborn and Beach are flawed and in desperate need of attention

20 THE COMMISSIONER: Mr Dinelli.

MR DINELLI: Commissioner, the next witness from whom you will hear is Mr Guy Mendelson from the ANZ and I invite my learned friend Mr Collins to call Mr Mendelson.

25 THE COMMISSIONER: Yes, Dr Collins.

DR COLLINS: Good morning, Commissioner. We call Guy Samuel Mendelson.

30 <GUY SAMUEL MENDELSON, AFFIRMED [9.46 am]

35 <EXAMINATION-IN-CHIEF BY DR COLLINS

THE COMMISSIONER: Yes, Dr Collins. Do sit down, Mr Mendelson. Yes, please?---Thank you.

40 DR COLLINS: Would you state your full name?---Guy Samuel Mendelson.

Thank you. And, Mr Mendelson, is your business address 833 Collins Street, Docklands, Melbourne?---That is correct.

45 And are you the general manager, small business bank for the Australia and New Zealand Banking Group Limited?---That is correct.

Mr Mendelson, have you received a summons to appear before this Royal Commission?---Yes.

You have a copy of that with you in the witness box?---I do in front.

5

Sorry – the original of that in the witness box?---Yes.

Commissioner, I tender the summons.

10 THE COMMISSIONER: Exhibit 1.148, summons to Mr Mendelson.

EXHIBIT #1.148 SUMMONS TO GUY SAMUEL MENDELSON

15

DR COLLINS: Mr Mendelson, have you made a witness statement for the purpose of the proceedings of this Royal Commission?---I have.

Do you have the original of that statement with you in the witness box?---I do.

20

Is there a correction to be made, Mr Mendelson, to paragraph 79 – sorry – 79 of that statement on page 18?---That is correct.

I will wait for that to come up on the screen. Is the change, Mr Mendelson, to delete the date 2014 at the end of paragraph 79 and to substitute the words “mid-2017”?---That is correct.

25

THE COMMISSIONER: Do you mind making that change: strike out what’s wrong and put in what’s right. And then if you would be good enough to initial the amendment, please, Mr Mendelson.

30

DR COLLINS: Mr Mendelson, with that correction, are the contents of your witness statement true and correct?---Yes.

35 Commissioner, I tender the witness statements and the exhibits thereto.

THE COMMISSIONER: Exhibit 1.149 witness statement of Mr Mendelson and exhibits.

40

EXHIBIT #1.149 WITNESS STATEMENT OF MR MENDELSON AND EXHIBITS

45 DR COLLINS: Thank you, Commissioner.

THE COMMISSIONER: Yes, Mr Dinelli.

MR DINELLI: Thank you, Commissioner.

5

Mr Mendelson, my name is Albert Dinelli. I'm one of the Counsel Assisting the Royal Commission. And we've just heard that your present role is the general manager of the small business bank at ANZ. Is that right?---That is correct.

10 And from August 2016 until October 2017 you had a position of General Manager Asset Finance, Commercial Broker and Transaction Banking Corporate and Commercial Bank. Is that correct?---Yes.

15 And during that time you had responsibility for ANZs response to some matters concerning alleged contraventions of responsible lending?---That is correct.

I would like to first identify the issues which I would like to deal with today with you by reference to a response – by reference to the ANZ response to the Commission's letter, or initial letter. I will call that document up so you can see it,
20 RCD.0001.0035.0003. Have you seen this document before, Mr Mendelson?---Yes.

And it's a submission in response to the Commission's letters of 15 December 2017?---Correct.

25 And you're aware that in that letter from the Commission, ANZ was asked to identify various matters of misconduct and conduct falling below community expectations?---Yes.

30 If I can go to .0030 of that document. And you will see, consistent with the issues that I would like to deal with today, from 6.46 onwards – well, first in 6.46, there's an explanation of some background to the sale of the Esanda dealer finance portfolio. Can I pause there and ask. You had a number of roles in Esanda, if I can put it that way. I understand Esanda is a business unit of – or was of ANZ. Is that right?---That is correct, but I never worked in the Esanda business.

35

I see. Although, you had responsibility, did you not, for asset finance at different - - -?---I did, but that was post the sale - - -

40 I see?--- - - - of the Esanda business to Macquarie.

And in this notification or response to the Commission, one of the things that's referred to is at 6.47, that on 18 January 2018 ASIC commenced a civil penalty proceeding in the Federal Court against ANZ for breaches of chapter 3 of the National Credit Act in respect of the Esanda business. Are you able to assist the
45 Commission today by giving some evidence in relation to that?---Absolutely.

Thank you. If we could just go ahead in that document to the next paragraph – in fact, on the next page. And one of the other issues upon which I will ask you some questions is described in 6.51, which is:

5 *Following an ASIC investigation into a car finance broker, Esanda agreed to*
 remediate more than 70 customers for car loans provided by Esanda. ASIC
 identified that between 2011 and 2014 the broker had arranged loans for
 customers who did not meet Esanda’s lending criteria by writing the
10 *application in the name of an individual who did not own or have possession of*
 the vehicle, but who agreed to guarantee the loan.

Are you able to assist the Commission in relation to that?---Yes.

15 Thank you, Mr Mendelson. And if I could just go down slightly. And, in fact,
 there’s a footnote at the bottom of that page, as well. And there’s also a reference to:

The broker also sold add-on products such as insurance and warranties to
 some borrowers without their knowledge or consent. The premiums inflated
 the amount they borrowed, thus increasing the overall amount of interest paid
20 *by borrowers.*

That’s another issue I would like to ask you about. Are you able to assist with that?---Yes.

25 Thank you. At that point, Commissioner, I might seek to tender those parts of the
 ANZ response.

THE COMMISSIONER: So - - -

30 MR DINELLI: That is just - - -

THE COMMISSIONER: Paragraphs 6.46 to what?

MR DINELLI: To 6.52.

35

THE COMMISSIONER: 6.52.

MR DINELLI: And any footnotes thereto. And - - -

40 THE COMMISSIONER: Just one moment. Exhibit 1.150 will be paragraphs 6.46
 to 6.52 of ANZs submission in response to Commission letters of 15 December
 2017, RCD.001.0035.0003 at – what are the pinpoints, Mr Dinelli?

MR DINELLI: At 0030 to 0031.

45

THE COMMISSIONER: At 0030 to 0031.

**EXHIBIT #1.150 PARAGRAPHS 6.46 TO 6.52 OF ANZ SUBMISSION IN
RESPONSE TO COMMISSION LETTERS AT 0030 TO 0031 DATED
15/12/2017 (RCD.001.0035.0003)**

5

THE COMMISSIONER: Thank you.

MR DINELLI: Thank you, Commissioner.

10 As I understand the position at the moment, Mr Mendelson, ANZ currently receives
consumer motor vehicle finance applications from two primary sources. Is that
right?---That's correct.

And what are those sources?---Third party intermediaries.

15

Yes?---And through our call centre directly.

I see. And in – are you able to assist by informing the Commission as to the
breakdown, if I could put it that way – the breakdown between those two sources of
20 business for the bank?---Approximately 85 per cent through third party
intermediaries and the balance through the call centre.

Now, I will refer to – in the course of some questions for you, Mr Mendelson, I will
refer to the processes across the bank?---Sure.

25

But I will focus in my questions on that larger part of the business, that is, third party
intermediaries. Now, am I right to say that that source involves applications from
brokers or mobile lenders who have been accredited with ANZ to introduce
consumer asset finance?---That is correct. As of December '16 we introduced a
30 training regime whereby anyone who was to sell consumer asset finance had to be
accredited. The accreditation process is 37 – well, it's actually 12 mandatory
modules and 37 required modules of reading, and at the end of that they do a test, a
30 question test. There's a pool of 37 questions. And to be accredited with us you
have to get 100 per cent in that test. And when we launched that, we discredited
35 over 500 brokers who weren't – who didn't participate in that.

Thank you. And before - - -

40 THE COMMISSIONER: 500 out of about what number, Mr Mendelson?---At the
time we had about 4000. We now – brokers in that space.

So it dropped from about - - -?---Yes.

45

- - - 4 to 3.5 - - -?---Correct.

- - - in round numbers?---Yes, but to be – to be transparent, a lot of those brokers
were not brokers that we had done very much business with. It took approximately

55 minutes to when we – to do the – the whole test. So it was – it was quite an impost on the brokers. We got quite a bit of pushback.

MR DINELLI: Before that – before that, had there been any accreditation process
5 within the bank?---There had been, but it was one of the things that we – when we sold the Esanda business that we looked at. We had a continuous improvement program around a series of responsible lending improvements. And one of them was very much around, not only training of the brokers, but also training of our staff.

10 I see. And the bank – if I can take you to the time of the sale of Esanda, that was about – that was about 14 months before the time you’re referring to now, aren’t you?---Well, the official date of the sale was October ’15.

15 Yes?---But we worked – we still had customers as we migrated them across. So officially we didn’t really finish until sort of April, May the following year.

But when you referred earlier to the fact that within the bank – am I right to say that there was concern about – or sufficient concern that you thought an accreditation process of the type that you subsequently implemented needed to be put in
20 place?---Correct.

And you had that concern – you had that concern at least around the time that Esanda was sold?---And prior. From an ANZ perspective, post the cash ASIC case, it was very clear that we needed to be very focused on enhancing our responsible
25 lending obligations right across the board. And from that moment forward we were working very closely – and, internally, the business was working very closely with credit, operational and credit risk, to ensure that we were enhancing our controls right across things like training - - -

30 I see?--- - - - monitoring, etcetera.

And - - -

THE COMMISSIONER: You said across the board. So we’re talking more than
35 vehicle asset finance, are we?---Correct. Correct. From my – look, I can only talk on behalf of vehicle asset finance.

I understand that?---But ANZ – I was a member of an Australian division-wide responsible lending continuous improvement program that was – had representatives
40 right across the Australian division.

Yes, I see.

MR DINELLI: Now, you – can you place a timeframe around when that step of
45 having a committee in place or - - -?---So I – when I arrived in the business it was already in place.

Okay. When did you arrive in the business?---In August – I was there a little bit earlier, July '16, because I was doing a bit of – a secondment but, yes. But it was well prior to that, because it was an established forum. I could get the date, but I don't know it - - -

5

That's okay, you can only assist us insofar as you're aware. So you arrive in the business in July 2016, sometime before Esanda - - -?---Correct.

A short time before - - -?---Yes.

10

- - - Esanda was sold. And you've – is it fair to say you, too, formed that view that there were improvements that needed to be made in relation to ANZ's processes?---As part of the handover into my role, it was made very clear to me that, organisationally, we needed to really be more focused on improving our controls and we were focusing on that. Obviously, we had sold the Esanda business. And when we sold the Esanda business, there were some things that we had identified, as well. So we wanted to very much continue to participate in the industry. And we knew that, if we wanted to do that, that we needed to be very much focused on a range of enhancements to make sure that we – that we were – we were tightening our controls. And we, also, obviously, knew that ASIC was very interested in this particular part of the industry, things such as flex commissions, add on insurances. And we did a lot of work around that, as well.

15

20

And we will get to those, of course. So the processes when you came into that role in about July 2016, not only was it part of your handover, but there was also a view within the business that these processes were deficient and they needed to be improved?---I wouldn't say – there was a view in the business that we needed to enhance our – our processes.

25

30

Some of the issues that have arisen within ANZ, some of the issues that are the subject of your statement, you would be well aware, were identified quite some time before July 2016, weren't they?---That is correct.

35

I'm going to take you – and I won't refer to the names of some of the entities, but I think - - -?---Yes.

- - - you know who they are - - -?---I do.

40

- - - I know who they are and perhaps we can refer to them in such a way that it doesn't disclose their names?---That's fine. You wink twice.

Thank you, Mr Mendelson. In May 2014, there was a fraud investigation conducted by ANZ in relation to falsified payslips, wasn't there?---Correct.

45

And, again, there was an issue raised in about September 2014 about incorrect information on applications. Are you familiar with that? Perhaps I can take you to

paragraph 37 of your statement. I might call it up. That might make it – if you haven't – I will call – you have got it there, I think in hardcopy?---Yes, I do.

5 THE COMMISSIONER: Do you have your statement there, Mr Mendelson?---Yes, I do.

Yes. Par 37, apparently.

10 MR DINELLI: And you will see – I think in your statement, you should see the heading there, which is redacted for confidentiality?---Yes. Yes.

I'm referring there to the fact that there was contact - - -?---It's in support of – the application wasn't incorrect. It was in support of - - -

15 The document. Okay. Thank you. And I think that was the way I asked the question. I framed the question incorrectly. And that caused an ANZ fraud team – or that precipitated an ANZ fraud team investigation?---That is correct.

20 One of the other issues that we will come to is on the next page, which concerns a different dealer?---So, just to be very clear, the first two were brokers.

Yes?---And the third one was a dealer.

25 Yes. The first two had Australian credit licences?---Correct.

But the one I'm about to take you to was a dealer?---Correct.

30 But they all fit broadly, if I can say, into this 85 per cent of the - - -?---Well, technically in that 85 per cent there are no dealers, because we've sold the business.

Yes. That's the current position?---Correct.

35 But at the relevant time - - -?---At the relevant time the dealer business was much larger than the third party intermediary business.

Yes. And all I'm identifying is, relevantly, when certain things came to the bank's attention. But in May 2015 an issue came to the bank's attention from a different source, again, about falsified payslips?---Correct.

40 And your evidence was that as of December 2016 a new training regime was implemented?---Correct.

45 There seems – I mean, it's fair to say that quite a bit of time elapsed before the identification of these issues in 2014 and the ultimate implementation of a system to improve the processes two years later?---So I would just like to be clear that that training program is not solely focused on detecting payslip fraud. That is a much

broader set of – it includes, you know, when you meet the customer and going through income.

5 I accept that?---So that was part of – in regards to payslip fraud, we have a series of initiatives that we have implemented. The challenge with payslip – at the time we had training for our assessment staff and for our fulfilment staff or our settlement staff to identify what not only fraudulent payslips looks like, but fraudulent bank statements, etcetera. And it’s something that we continue to enhance. And those staff today have to, on a quarterly basis, do at least an hour training around that. So
10 we continue to enhance that. We have continued to enhance our fraud detection system, which is at the application process. We’ve boosted, since this occurred, the number of staff in our fraud team. We have also improved the way that our collections team can identify fraud when they’re investigating it. So there is no silver bullet to detecting payslip fraud, but we have made a series of changes since
15 these incidents occurred.

You would accept that the processes were deficient back in May 2015, though, wouldn’t you?---Yes.

20 And over time – and we can explore it, but over time you would say that those processes have improved?---Correct.

THE COMMISSIONER: Can you give me some estimate of frequency, or anything that will give me some - - -?---Sure.

25 - - - feel for the size of the problem?---Yes. So we had 50,000 applications last year. We had less – we detected – the data is a little bit – there’s different phases of it, but it’s under .1 of a per cent. So we had – it is absolutely an issue. Fraud in general for the bank is a major focus area, be it cyber fraud, be it payslip fraud, be it bank
30 statement fraud. We’re seeing even things like something called salary staging, which is where people who are trying to defraud the bank will set up bank accounts and create legitimate statements, putting money in and out, and then presenting those. The level of sophistication in payslip fraud is improving regularly. So I couldn’t sit here and tell you that there’s any way that we could 100 per cent
35 guarantee that there would not be payslip fraud. I could ring – if we were to ring every employer, I could say I work for ANZ and I could get my friend in the cubicle next to me, give them their number and say do you work for the – it’s just – it’s part of doing business. It’s something that we have incredible focus on. But, as I said, the level of sophistication, we go from very unsophisticated to organised crime in
40 this part of - - -

I understand that, and human systems are human systems. But just to try and get some sense of size, at the moment you’re talking about, if it’s .1 per cent, 50 out of 50,000?---Yes.

45 Is it? Have I done my maths right?---Look, there’s – the data – because it happens at different stages, it’s no greater than 100.

Yes?---And it's no less than 50.

Yes?---On the data that I was - - -

5 Not holding you to the precise numbers?---Yes. Yes. Yes.

It's magnitude I'm looking for?---Because we also detect it at different stages.

10 Sure?---But, obviously, we've been through a long process with the regulator, and we take that – our responsible lending obligations very seriously. And we are doing everything in our power to ensure that this doesn't happen.

Thank you.

15 MR DINELLI: Yet with all those changes that you've made, sitting here now, though, can you – can you say that the relevant processes that are in place are sufficient to discharge those obligations?---As I said, they've improved, but I can't - - -

20 Can you say that they're sufficient to discharge those obligations?---I don't know what the definition of sufficient is.

25 Well, you're aware of what the responsible lending obligations on the bank are, aren't you?---Absolutely. Absolutely.

And part of that is the reasonable verification of a customer's financial circumstances?---Correct.

30 You're aware of that?---Correct.

And part of reasonable verification is things such as – and we will come to other aspects, but clearly income is one of those?---Absolutely.

35 And can you tell me that the processes as at today are sufficient to discharge ANZs responsibilities in that regard?---I don't feel qualified to answer that question.

40 Well, you're in a very senior role in relation to this issue?---We are making best endeavours, but, as I've just explained, you know, if someone is staging – you know, bank statements and payslips - - -

I'm not asking you for a guarantee, Mr Mendelson. I know you - - -?---Well, then, I would say yes.

45 Prior to the sale – why did – sorry – if I can go back. In your evidence you describe why ANZ sold its Esanda business. Were you part of that decision?---No.

Are you aware why ANZ sold its Esanda business?---Yes. Yes, I am.

And why did it?---It was part of a – it's part of a – a scope of work to simplify the bank. ANZ had a series of businesses that were not considered to be core, and that included the dealer finance business. It's, obviously – it has included exiting certain businesses in Asia, it has included our wealth business. It's part of a – as I said, a
5 bank-wide program to simplify the bank. And, also, it's related to dealing into the new capital requirements that the bank needs to - - -

Did it have anything to do with the fact that Esanda couldn't discharge properly its responsible lending obligations, Mr Mendelson?---Not that I'm aware of.
10

What's the basis for your – what's the basis for your understanding of why that part of the business was sold?---As I just explained, that it was considered not to be a core - - -

15 No, what's the basis for that? On what basis do you say that?---On what I've been informed. And, also, it's a well-known and articulated strategy that – that we talk about both internally and externally.

In your statement you make very clear that, when you give that answer, you say:
20

These announcements –

I am taking you to paragraph 17, in fairness to you. And I might take you back, actually, to paragraph 16 to give you the context. You say:
25

I have reviewed the announcements made to ANZ to the ASX on 4 May 2015 and 8 October 2015.

I have previously referred to the 8 October date?---Yes.
30

And I think at an earlier part of your statement you referred to that announcement. Then you go on to – having identified those two, you then go on to say at 17:

These announcements reveal that ANZ sold Esanda dealer distribution business as part of a broader priority by ANZ to manage its portfolio of businesses to ensure it used capital efficiently and as part of a focus upon ANZ-branded products and its core business.
35

Do you see that?---Correct.
40

You're very careful there to say you're relying on the announcements, aren't you, Mr Mendelson?---Well, as I said, I didn't work in the business. I arrived when the business had been sold.

45 So, just to be clear, your evidence is, as far as you are aware, that none of these responsible lending issues were a cause, were a factor in the sale of Esanda by ANZ. Is that clear?---Clear, yes.

Now, your evidence – and I am taking you back – and I understand you weren't in the business, but you, obviously, know – or have been put forward by ANZ as someone who can give evidence on these issues – and you explain in your witness statement that the Esanda business accounted for approximately three per cent of ANZs net lending assets?---That's correct.

And you explain the different divisions through which it operated?---Correct.

More specifically, you go on to say that:

10

Consumer motor vehicle asset finance arranged through brokers and dealers in the Esanda business comprised 1.5 per cent of ANZs total net lending assets.

?---Of the Australian division.

15

Of the Australian division, sorry. Thank you. Are you able to assist the Commission by informing it as to how large that is in monetary terms?---In the statement, from memory, we sold circa \$8 billion of lending assets to – in the dealer business.

20

Which would have incorporated that part as well as the other parts. Is that correct?---No, it was the dealer component, and then we retained the other component, which is the broker and the call centre component.

So - - -?---Which is circa two and a-half billion dollars worth.

25

I see. So - - -?---The majority of the business was in the dealer business.

Yes. And that's the one that was sold?---Correct.

30

And that was sold because, on your evidence, to manage a portfolio of business and to focus upon ANZ branded products?---Correct.

35

Now, at that – when Esanda was in business as part of the ANZ business, your evidence is that the dealer distribution channel would use the services of ANZ relevantly in two ways. It would use the operations group for credit assessment. Is that right?---Correct.

And settlement?---Yes.

40

Fraud and collection?---Yes.

And group functions for credit risk product management, those sort of roles. Is that right?---That is correct. That was after 2009 when it became incorporated. Prior to that, it was a standalone business.

45

Okay. Thank you. I've got enough to deal with. We won't go back to before 2009?---Just to be – I just want to be clear with the Commission.

Thank you. In your statement, what we've asked you to focus on and what I will ask you about, although we will deal, of course, with the processes afterwards - - -?---Sure.

5 - - - in terms of changes that have occurred is predominantly the processing of applications between about – from 1 January 2011 to 31 December 2015. That period?---Correct.

10 As I understand that process – and we will come to it in a little more detail, but you say at paragraph 19 that:

Consumer motor vehicle asset finance applications were received by ANZ via the completion of an electronic application form contained within the Esanda lending system.

15

?---Correct.

And that's known – that's known internally is it, as ELS?---Correct.

20 And when the business was sold, ELS still continues to be used, though, as I understand it?---Correct. In the sale, Macquarie elected not to take our system.

Okay?---And we continue to use ELS.

25 So the same system that was being used at the time of Esanda to evaluate applications for finance is the same system that is being used by - - -?---For consumer asset finance, correct.

30 Thank you. Can I deal with the relationship between dealers and Esanda. And I am referring to the relevant period here. And I will take you to a document by reference to which I would like to ask you some questions?---Sure.

35 The document will come up on your screen as ANZ.017.001.2571. Now, this letter was written to Esanda accredited dealers. Was the term accredited used within the business even before the processes which you've referred to in 2016? In December 2016 you've said that there is – and one of the things you have been a part of is - - -?---It's a term, but the definition of accredited changed. But, again, this is related to their accreditation as – as a dealer with – with Esanda, not the training of staff per se.

40

Yes. What you referred to later, you put in the context of accreditation, because the training is required to be accredited?---Accredited with us, correct.

45 And that training that now is given to dealers is very different, you would say, to that which was occurring - - -?---Yes. And, just to be clear, to brokers not to dealers - - -

Yes?--- - - - because we don't deal with dealers.

Yes, I understand that. And this document appears to be a communication to the dealers within the Esanda network on 5 December 2014?---Correct.

5 I assume it was quite common for Esanda to communicate with its dealers?---Correct.

To give them information about their relationship, whether it be financial matters, whether it be regulatory matters?---Correct.

10 And other matters?---And training, as well.

Thank you. Now, this document says, at the very start in the first paragraph that – if you go halfway through the first paragraph it says – well, maybe I will just deal with the purposes of it:

15

Part of the internal procedures at Esanda were in relation to our ongoing obligations and responsibilities under the Act. We are writing to remind you of your key obligations as our representative. This communication requires your attention and action to enable your dealerships to continue to introduce business to Esanda which is regulated by the Act. We require you and all employees and contractors that have access to the Esanda to read this communication, complete the attached acknowledgement form, return it to us by 16 January. Please note this communication has changed since it was last issued in November 2013.

25

Now, you weren't there in Esanda at the relevant time, but can you explain – and presumably you do this sort of thing with brokers now – the purpose of writing in those terms to the dealers?---Look, I've reviewed this document in preparation of today. The intent of it was to ensure that they understood what their responsibilities were. But we – in regards to brokers, we wouldn't be writing a letter like this, because they have their own ACL. But we do, with brokers as part of ongoing communications with them at professional development days, etcetera, etcetera, constantly educate and remind them of their responsibilities. So - - -

30

35 So what were Esanda's – how would you describe Esanda's obligations under the National Credit Act as at 5 December 2014?---Look, I don't feel very equipped to answer that question, because I wasn't in the business, but, obviously, they were running a dealer business under a point of sale exemption. And they were organisationally already – as I said, at that time there was a much tighter focus on responsible lending obligations. And the intent of this document, from my – again, I wasn't in the business, but it would be to remind, regardless of point of sale obligation or not, everybody's responsibility in doing the right thing by customers.

40

Because dealers were subject to an exemption, weren't they?---Correct.

45

So dealers, because they were selling goods or services at the point of sale, dealers weren't the subject of the National Credit Act, were they?---Correct.

But Esanda was?---Correct.

THE COMMISSIONER: This letter says, amongst other things, that the dealer was there as your representative?---Correct.

5

Yes.

MR DINELLI: When you say that – when the letter describes the dealer as ANZs representative, did that mean that it was – that Esanda required the dealer to do certain things as part of the sale that complied with responsible lending. Is that right?---That’s right. This – that’s what the intent of this letter was.

10

If one goes to .2574, there’s a heading Your Key Obligations As Our Representative Under the Act. The Commissioner asked you about representative. Is there any other explanation you can give for the use of that?---It’s very – the business operated as was explained yesterday in exactly the same way by Westpac.

15

Thank you. You told dealers that they had to advise consumers that – of your role, being the dealer’s role as a representative of Esanda. Do you see that?---Yes.

20

And you – if I can say “you” – I am referring to the business, of course, Mr Mendelson:

25

You are required to obtain from every consumer that you provide credit assistance to in respect of quotes, applications, contracts with Esanda a signed statement acknowledging that you are our representative under the Act.

Do you see that?---Yes.

30

And that was conveying to consumers that when they were dealing with Esanda, they were dealing with the person on the ground, that is, the business manager at the dealer?---Yes.

35

Now, we will come to the actual Esanda representative statement in a moment. If you go down to – sorry – I’m going to come in a little bit more detail to remuneration, but I just want to ask about one thing. There was a dealer origination fee, wasn’t there, that was part of any car loan the subject of an Esanda loan?---Yes.

40

And I am not asking you to know with specificity, but approximately how much would a dealer origination fee be?---I can’t comment, because I don’t know.

In the hundreds of dollars?---I genuinely don’t know.

45

And who – whose decision was it whether or not to charge a dealer origination fee?---The business manager.

And were consumers informed of that?---I can’t – I don’t know. I can’t comment.

If you go down to point C on this page:

If you choose to charge a dealer origination fee to a consumer, it is entirely your responsibility to explain this fee to the consumer.

5

Do you see that?---Yes.

It then says:

10 *Under no circumstances must any indication be given to the consumer by any means that this fee is in any way related to Esanda.*

Do you see that?---Correct.

15 Why was Esanda telling its dealers to say that?---Look, I'm not in the detail of it, but, again, it's a dealer origination fee; it's not an Esanda origination fee.

Was it paid for, generally, out of the amount of the car loan that was - - -?---It could be, yes.

20

Could be or it was?---Well, it depended on each individual - - -

True. In your experience, was it commonly an amount which was added to the car loan?---Again, I don't have specific experience in this business, but I would assume so.

25

Thank you. So as at December 2014, Esanda, obviously, communicated with its dealers by way of this letter?---Mmm.

30 Did Esanda, in so doing, expect the obligations under the National Credit Act to be performed by the dealers?---Look, I know this is frustrating, but I didn't work in the business, so the people who worked in the business no longer work for the bank. This letter was sent asking the dealers to read it and acknowledge that they understood it. So I don't know what you infer by that to answer that question. I
35 wasn't responsible for sending the letter out or what the background to it was. But the - you - the letter clearly is trying to make dealers aware of what their obligations are in Esanda's - from Esanda's - - -

40 THE COMMISSIONER: Can I come - I'm sorry, I didn't mean to cut you off?---Yes, sorry.

No, you finish?---No. No. I'm finished.

45 Sorry, I did cut you off. Can I come at the problem this way. The letter was reminding dealers of their obligations to ANZ. Is that right?---Correct.

And dealers complying with their obligations to ANZ was necessary if ANZ was to comply with its obligations under the Act. Would you agree with that?---Correct.

Now, I just want to focus on the “was necessary” operator in that proposition.

5 Compliance by dealers with their obligations was absolutely essential if ANZ was to meet its obligations. Is that putting it too highly? It seems to me to follow, but I you’re your view?---Again, it’s – it’s not my area of expertise, because I never worked in this business and I don’t understand the nuance between point of sale exemption and – and – and being the – the – the ACL, but my inference from this
10 letter is that’s absolutely right. And my inference from this letter is that we – even if it was – we were trying to almost retrofit a little bit more than potentially what was the requirement under being a point of sale exemption provider but, yes, absolutely, ANZ is ultimately responsible as the credit provider.

15 And a necessary link in the chain - - -?---Correct.

- - - was that the dealer did what they should?---Absolutely.

And this was reminding them - - -?---Correct.

20 - - - “Here is what you’ve got to do”?---Yes.

Yes. Okay?---It’s just I’m not a detailed expert in the law.

25 I understand that, Mr Mendelson. I am trying to get a business perspective of it?---No, absolutely. From a business perspective, the intent would have been that we wanted to make sure we were clear with our dealers what our expectations were and that they were doing the right thing by their customers. And this letter asked them to read it and sign it and return it by a particular day.

30 Yes.

MR DINELLI: So you accept, of course, that Esanda, at the relevant time, could not subcontract out in any way of its obligations under the National Credit Act?---No.

35 And, in fact, if there was – do you also accept that if there was any failure to comply with the National Credit Act, that – by Esanda, that was something that fell at the feet of Esanda and not the dealer?---Correct.

40 Now, I know you didn’t write this letter, and you’ve said that, and I understand you weren’t in the business at the time, but if one goes ahead to the next page and to point F, towards the bottom. And I am asking for your perspective as a very experienced businessman in looking at these, not as the person who wrote these letters, but it says there:

45 *As our representative, when providing credit assistance for exempted transactions (under the point of sale exemption), you are responsible for*

ensuring that all our requirements of you, as detailed in this communication and existing agreements between us are met at all times.

Do you see that?---Yes.

5

Then it goes on to say:

Failure to comply with these requirements that give rise to any cost or loss to Esanda and ANZ will result in the cost or loss being charged to you in full, together with all on-costs incurred by Esanda and ANZ.

10

Do you see that?---Yes.

An equally open reading of that paragraph, Mr Mendelson, is in fact that ANZ was saying, “We expect you, dealers, to make sure everything is done to ensure compliance with the responsible lending obligations”?---To be quite honest, I’m not 100 per cent sure how to read that paragraph. It’s very ambiguous.

15

I’m - - -?---I’m not being difficult.

20

No. No?---It’s just I’m not 100 per cent sure how to read that paragraph.

My question to you is simply whether or not it was – one reading of it was simply, “We, ANZ, are telling you, ‘you go and make sure that there’s compliance with responsible lending obligations. That’s on you. And if we suffer any loss because it doesn’t happen, we’re coming to you’”?---I think that is one way you could read it. I think the intent of that would be to say that we take this very seriously and if you don’t, we will – there could be ramifications for you.

25

I see?---But I just want to be clear, I don’t think it’s passing on the responsibility. It’s more about – I think the intent of that would be showing more about how seriously we’re taking their – their role in the – in the process. But, again, I – that’s just my view on it.

30

It might be said, though, that there was at this time – and I know things have changed – and I understand the nature of the business – but it’s certainly around December 2014 there was an expectation within ANZ, Esanda specifically, that responsible lending obligations were a problem for the dealer, not for ANZ?---I can’t – I just can’t answer that question. You know, again, from my experience of working at ANZ, it’s not about passing on our obligation. It’s making sure that we’re trying to do the right thing by the customer. And in this case we were dealing with an intermediary, being the – the dealer network and – and being – attempting to be clear about them about what we – our expectations were.

35

40

If you go to appendix A to that letter, which is two pages later. I have already referred to this, because this is the document that was referred to a moment ago where you informed dealers that they had to sign this document?---Yes.

45

And by this document you required Esanda representatives to confirm with each applicant for finance these matters:

5 *I confirm the dealer has advised me that the dealer is acting as a representative of Esanda –*

See there?---Yes.

Continuing:

10

In our division of ANZ and in this capacity is assisting me to apply for credit with Esanda. The dealer is not acting on my behalf as my agent in connection with the finance and does not owe me any duties in respect of the finance

15 Do you see that?---Yes.

And:

20 *Any origination fee charged to me by the dealer relates to the dealer's administration of my application.*

Do you see that?---Yes.

25 Mr Mendelson, are you aware – and I am not seeking to turn this into a law class, but are you aware of the obligations of Esanda at the relevant time and ANZ generally to, amongst other things, do all things necessary to ensure that credit activities authorised by its licence are engaged in efficiently, honestly and fairly? Are you aware of that?---I am aware of that, yes.

30 And are you aware that there also has to be in place adequate arrangements to ensure that clients of the licensee – so here, if I can just pausing there, a client of the licensee is the person who walks into the dealer, isn't it?---Correct.

35 The client 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?---Correct.

40 So there's an obligation on ANZ, isn't there, to have in place adequate arrangements to ensure that clients are not disadvantaged?---Yes.

And was this an attempt to – was this an attempt by ANZ to satisfy that obligation, was it?---Look, I'm – I can't comment, because I don't know what the intent of this was.

45 Well, what you can tell me is that it refers to an origination fee, doesn't it?---Yes.

Does it refer to any of the other – the other commissions that were obtained by the dealer in the course of – in the course of negotiating a car loan with the customer?---No.

5 Commissioner, can I tender that document, which is - - -

THE COMMISSIONER: That will be exhibit 1.151, circular letter Esanda to accredited dealers 5 December 2014, ANZ.017.0001.2571.

10

EXHIBIT #1.151 CIRCULAR LETTER ESANDA TO ACCREDITED DEALERS DATED 5/12/2014 (ANZ.017.001.2571)

15 MR DINELLI: Yes. It might be 001, just for the purposes of the transcript, Commissioner.

THE COMMISSIONER: Yes. One too many zeros, you are right. It's 017.001.2571.

20

MR DINELLI: You will recall that in your – that can come down now. You will recall in your statement you dealt with, amongst other issues – I am sorry – I withdraw that. You were asked to consider in your witness statement issues relating to KPIs?---Yes.

25

What is a KPI?---Key performance indicator.

I see. And, by question 4, which I won't take you to it, but the Commission asked you and you provided a statement which was to describe the incentives and key performance indicators for intermediaries or groups of intermediaries during the relevant period by reason of the initiation approval of a car loan and any add-on products such as insurance or warranties in respect of a car loan, exhibit any relevant documents that set out those incentives or KPIs. Do you see that?---Yes.

30

35 Are there any documents that set out those incentives or KPIs?---There were contracts with dealers that we – I'm sure we provided.

Did you exhibit them to your statement?---No.

40 You say in your evidence that ANZ paid accredited third party intermediaries who introduced Esanda car loans commissions calculated by reference to the number and volume of loan applications introduced?---Correct.

45 Now, in your evidence, you then gave – or went through those three different forms of remuneration, a fixed amount payable in respect of each loan contract introduced?---Correct.

A percentage of revenue associated with the extent to which the loan contract was written at an interest rate in excess of ANZs nominated base interest rate, but less than ANZ-nominated cap or maximum?---Correct.

5 Now, that's known as flex commission?---Correct.

And you know I will be asking you a few questions about that. And then the third type of payment is a volume bonus incentive?---Correct.

10 THE COMMISSIONER: Just, can I interrupt you, Mr Dinelli, and say to both counsel that I would be assisted if, before Mr Mendelson leaves the box, if it's possible, I could be taken to a contract, a dealer contract, presumably, that can be regarded as a typical – or containing a typical provision about remuneration.

15 DR COLLINS: We will take that on notice, thank you, Commissioner.

THE COMMISSIONER: Yes. Taking on notice is one thing. Doing it is another, Dr Collins. As I say, it will be helpful if I can have access to it before Mr Mendelson leaves the box. If it can't happen, it can't happen, I know, but can we see what we
20 can do.

DR COLLINS: I meant short notice, of course.

THE COMMISSIONER: You have had it, Dr Collins. You have had the short
25 notice. Do go on, Mr Dinelli.

MR DINELLI: Thank you, Commissioner.

Can you explain, for the benefit of the Commission, although this issue has arisen,
30 but your understanding of a flex commission?---Sure. So there is a base rate which the bank sets, and then that is provided to the intermediary. That base rate then, the way that ANZ operate it, allowed what was called an over, allowed the broker – the business manager or the broker then to charge an amount above that base rate. We did – we have always had caps on that. And – and, yes, that's how fundamentally
35 flex commissions worked.

Thank you. And ANZ - - -

THE COMMISSIONER: Worked or work now?---In ANZ we changed it in
40 December '17.

And what was the change in - - -?---We have adopted ASICs recommendation and put it to market. So in - - -

45 Sorry. You're going to have to explain it a bit?---Okay. So when I arrived in - - -

Take me more slowly - - -?---No, in 2016 we – we knew that ASIC was looking at this, and we undertook a – a quite an extensive review. And we wanted to make sure that it was a balanced outcome between the intermediary, the customer, and the bank. And we had a – a working document that had come up with what we thought would
5 – would work for us. And we were also, obviously, awaiting ASICs engagement around what their findings were. Our findings and their findings were relatively similar. So ASICs finding now is that there is a published customer rate, which we adopted in December '17, and the intermediary has the opportunity to discount that down to the base rate. But the customer rate is what the published rate is. And then
10 also that there is a fixed dollar amount that is paid to the broker. And we adopted that in December '17.

MR DINELLI: I see?---But, again, to be really clear, we adopted that only in the broker business, because we don't operate a dealer business any more.

15 Can I explore with you the – some of the elements of the answer you gave me - - -?---Yes.

- - - in relation to the meaning of flex commission?---Yes.

20 You said – and, obviously, I'm dealing with the relevant period as I've called it?---That's fine. No. I understand. I understand that.

25 2011, 2015. Did ANZ have – you indicated that ANZ had a cap during that period?---Yes.

That is a cap on the maximum that could be - - -?---Correct.

- - - imposed. What was - - -?---Eight per cent.

30 Okay. And is that the overs that you're referring to?---Correct, the overs.

Okay. So the base rate would have changed, I imagine, over that relevant period?---Correct.

35 But can you assist the Commission just roughly what was the base rate during that period?---We had a pricing model for risk, and it – it was, depending on the customer, sort of – from the information that I have seen, was somewhere circa six per cent to 16 per cent.

40 I see. But the base rate – your evidence was that – that ANZ had a nominated – I'm sorry. That ANZ had a nominated base interest rate. Was that the same for all customers?---No.

45 No. So when did the dealer – when was the dealer informed of ANZs nominated base interest rate?---There were published base rates that changed – I don't know the

specific. The base rate really includes the cost of the money and – and – and certain risk elements. So as those things would change, we would change the base rate.

5 And whatever was the base rate for that – whatever it might have been - - -?---Correct.

- - - from six to 16 per cent – and six per cent would presumably be if you – if there was - - -?---Less risk.

10 - - - very low risk?---Correct.

16 per cent would be a very high risk?---Correct.

15 But, whatever it was, the dealer, in his or her discretion, was able to negotiate with the customer to impose a further – or to - - -?---Yes. Yes.

20 - - - agree a further eight per cent. Is that right?---Eight – it depended on the customer. It was a – in the information that we supplied around our pricing at that time, we had a different range. So it was some – some customers it was up to 4 per cent, but the maximum was 8 per cent.

25 Thank you. And if I walked into the dealer during the relevant period and bought my car, and whether it be four per cent or eight per cent, or – was added to the ANZ base rate, what benefit did – what benefit did ANZ receive from that?---We took a percentage of that over.

30 Okay. And what was the per cent that ANZ took?---Look, it was a negotiated percentage, but it could be anywhere – from my understanding, it was anywhere from 40 to 60 per cent.

And the dealer – the dealer also got a percentage of that, or the remainder, I assume?---Yes. Yes. It was a share arrangement.

35 And so on your evidence it must be that the dealer would get between 40 and 60 per cent?---Correct.

40 Some of the – some of the work done by ANZ identified that dealers would get up to 80 per cent of that - - -?---As I said, there were different – depending on the dealer, there was no – from my understanding, there was no standard.

I understand. But on your evidence it was between 40 and 60 per cent?---But the – that was the average. As I said, there were – there are particular dealers where I know that it was higher. But, again, I've just – I don't know the specifics of it.

45 If I can ask you, obviously, to answer the question as best you can, but would a very profitable dealer, that is, a dealer that gave a lot of business to Esanda, would that

have a higher amount of the flex commission than perhaps one that didn't do as much business, as a general matter?---As a general – that's my understanding, yes.

5 And you said it was between 40 and 60 might have been the average, but it may have been higher than that?---Correct. There were instances where it was higher.

10 Now, you said that you had done – you – ANZ had done some work. And I understand that you no longer have the ANZ – the Esanda business, but the same as – I think your evidence is that the same model applied to brokers?---Correct.

So you had done some work around the time, and ASIC was looking at this issue, a flex commissions for a long time, as you know?---Correct.

15 Or for a period of time. And ASIC explained some key findings that it obtained. And I will come to those. But what was the – and this is the period before you made this decision. And I will ask you to turn your mind to perhaps a time when they were still imposed, so it might be mid-2017. What were the sort of concerns that ANZ had about flex commissions?---Transparency, fundamentally.

20 THE COMMISSIONER: Can you tell me a bit more about that, what you mean by it?---Yes. Sure. So that the customer did not understand the arrangement of – they were presented a rate, but they didn't understand how that rate was being constructed, and, obviously, who was keeping what, because the inference would be that that was what the bank was charging - - -

25 MR DINELLI: I see?--- - - - and keeping.

30 You don't descend to this level of detail – that's not a criticism – in your statement, but do you – are you able to assist the Commission in identifying, whether as a percentage or just as a general proposition, what the rates were that dealers agreed with customers, relative to whether or not it was the base rate or the – what you describe as the - - -?---As the cap.

35 - - - maximum?---Look, I don't have any empirical evidence, but I – generally, they – I can't really comment, because I don't know, but they would go generally to the midpoint, but, obviously, some would always go to the high point.

Yes?---And it's something that was monitored, but - - -

40 And one of the concerns that you said was around transparency. If we can just delve a little bit deeper into that. I mean, clearly, this gives an incentive, doesn't it, for the dealer with whom Esanda, at the relevant time, was dealing to increase the price of the credit contract in a way that doesn't actually relate to the sort of considerations that ANZ had in mind, that is, about credit risk?---Correct.

45 And it also has the – not only does it not consider relevant risk, but it also is determined, perhaps – and I will ask if this is in your experience – by nature of the

financial sophistication or degree of literacy or capacity to negotiate of the customer?---That could be the case, yes.

5 Well, obviously, within ANZ a decision was made in December 2017 to stop these flex commissions, insofar as brokers are concerned?---If I could just make a point, though. I – I accept the premise that you’re coming from, but part of what we did is we had different base rates for different parts of the marketplace. And we got out of those marketplaces, because the risk-based pricing approach was not working. So the premise that you have a high quality customer – because we had a tiered model, and we still do – still works in the sense that their sophistication may be higher. But I do accept your point, because the base rate is based on – on a customer profile, not – so the – when we were in a very detailed – we wanted to participate in all parts of the car market in the day, and we – we were – and in one of the documents that we furnished, we were – we were pricing for risk, and that did not work, so we got out of that.

10 THE COMMISSIONER: Just while you’re interrupted, you said the base rate during the relevant period varied - - -?---Yes.

20 - - - sort of six to 16 - - -?---Yes.

- - - was the range you gave. And you spoke of the overs as varying between four to eight?---Correct.

25 Now, what I want to know is how the four to eight related to the six to 16. Should I be thinking in terms of a range of 14 to 20, or should I be thinking in terms of a range of 10 to 24? Do you understand the - - -?---I understand very clearly.

- - - maths I have just done?---Yes.

30 Which is the - - -?---The latter.

So it should - - -?---The 10 to 24.

35 - - - be 10 to 24. So the higher-risk customer assessed at a base rate of 16 might be open to a flex commission in respect of – calculated at a further eight percentage points, so up to 24 per cent rate?---Yes.

40 And did the customer know anything about that?---They just knew what the rate was.

45 MR DINELLI: In your experience, how common, if at all, would it be that the over would be less than four per cent?---Look, I can’t comment because I don’t know, because I wasn’t – I don’t have that information, because I wasn’t in the business at the time. There would be occasions where it would be under, but I just – I just – the thing with – I can’t comment.

I don't want you, of course, to speculate at all, but if I can just summarise, then, what we've – where we've got to, is that flex commissions were used during the entirety of the relevant period?---Yes.

5 And the decision by ANZ in December 2017 to remove flex commissions was made having regard to the same sort of considerations as those that were raised by ASIC?---Correct. That informed us. To be transparent again, we did some financial analysis, as well, but we knew that ASIC was – we were – we were part of the industry consultation with them around flex, and the reason that we were able to
10 launch before the November – one of the reasons we were able to launch before the November '18 requirement was that we, basically, had – had come up with the same way. And we were already working about how to implement that, anyway, in our systems.

15 When you say you had come up with the same way, are you - - -?---We wanted to – we were very clear to have a – a transparent customer rate that could not be inflated. And if the – if the intermediary wanted to deflate it, that was at their discretion. And that could be – so we just wanted to – again, to make sure that that was very clear to the customer.

20

And – I mean, in many ways it's fair to say it's the complete opposite of a flex commission?---Correct.

25 THE COMMISSIONER: Before that change, did the intermediary have a conflict of interest?---Yes.

30 What did Esanda do to manage that conflict of interest or address it?---It – it had a series of – to the best of my knowledge, what I've been told, is it had a series of reporting of particular intermediaries that were constantly at the top end of those base rates, and they would – they would monitor that. I'm not aware of any dealers ever being, you know, discredited because of practices, but it may have been the case during that course of that period.

35 One of the questions I might have to look at is the adequacy of the arrangements that were in place to ensure that clients of Esanda were not disadvantaged by that conflict of interest. Now, it, therefore, may be important to know what, if any, were the steps that Esanda had taken to – “deal with” is the most neutral term I can think of – to deal with the fact that there was this conflict of interest.

40 MR DINELLI: Is there anything in the evidence that you've given, Mr Mendelson, that assists in identifying any steps that were taken in that regard?---No.

45 Can I move to another aspect of remuneration, and it's this. In your statement, you deal with the fact that some third party intermediaries sold insurance marketed under the Esanda brand and obtained a Commission directly from Alliance, being the insurance company, as a result of that sale. You are aware of that?---Yes.

So what – can you explain for the benefit of the Commission what sort of insurance that was?---At the time, it was a series of insurances that included tyre and rim, kerbside insurance, gap insurance, comprehensive car insurance, those types of insurance products.

5

THE COMMISSIONER: It's the kerbside that I don't think I'm conscious of. What's that?---If your car breaks down, like the RACV.

10 I see. So tyre and rim, kerbside, gap and comprehensive?---There was seven. I don't know them all off - - -

Yes?--- - - - the top of my head.

15 MR DINELLI: For present purposes I'm interested in this aspect of it. You're aware that Esanda – sorry – I withdraw that. You're aware that dealers were selling, as part of the car loan – or the car transaction, which incorporated the car loan, various of these insurance products to the customer?---Yes.

20 And, in relation to the sale of those, they would then be items that would commonly be part of the loan that Esanda would make to the customer to purchase the car and included in that the add-on insurance?---Correct.

25 And, in relation to that insurance, did – you weren't there at the relevant time but was there any concern that you're aware of expressed by Esanda in relation to the value of those types of insurance?---Sorry, could you ask that question again.

Was there any concern about the value of those types of insurance to the customer?---During this period?

30 Yes?---I wasn't in the business, so I couldn't comment.

Are you aware that add-on insurance has been an issue that has been raised by a number of bodies and individuals in relation to the car loan industry?---Yes.

35 Are you familiar, as it sounds like you may be, of various evidence that's been given in this Commission?---Correct.

40 And you will know that Ms Karen Cox, the Financial Rights Legal Centre, gave evidence last week in relation to, in part, the issue of add-on insurance?---Correct.

45 And you're aware, also, that add-on insurance has been the subject of – or the focus of ASICs attention?---Yes. And, to be really clear, we were – again we've done a full review of that and we now only sell two insurance products, and that is the comprehensive car insurance and the loan protection insurance.

THE COMMISSIONER: Sorry. And the?---Loan protection insurance.

Loan protection.

MR DINELLI: Why don't you sell - - -?---We did a full review of all the insurance products that we were selling post the sale of Esanda. And the claim rates on the
5 remaining insurance products that we had were nowhere near an acceptable level or an industry level, so we decided to withdraw from that part of the business.

Okay. Thank you.

10 THE COMMISSIONER: You say the claim rates were not acceptable. What do you mean by that?---There are – again, I'm not an insurance specialist, but there are industry averages, and we weren't achieving those, so, therefore, we decided not to participate in selling those insurance products.

15 Do I understand that as meaning that the premiums paid were larger than - - -?---Yes, and fundamentally customers weren't claiming - - -

- - - claims paid out?---Yes. Yes.

20 MR DINELLI: Can you assist me again in terms of a timeframe for when ANZ made this - - -?---Yes. We did that in April '16.

And the sorts of insurance – I don't put this at a high level, but the sorts of insurance that are no longer sold are tyre and rim insurance - - -?---Correct.

25 - - - kerbside insurance and ones that you referred to?---Correct. We just sell the insurance for the car and to protect them if something happens during the loan period.

30 Yes. So no doubt you're familiar with a report – the report to which I am about to refer was preceded by other inquiries, but ASIC did a report in 2017, report 292, A Market that is Failing Consumers: the Sale of Add-on Insurance Through Car Dealers. You're familiar with that?---Sorry, could you repeat that.

35 Sorry. Report 292, A Market that is Failing Consumers: the Sale of Add-on Insurance Through Car Dealers?---I don't know what – sorry.

THE COMMISSIONER: An ASIC report.

40 MR DINELLI: An ASIC report?---I'm not specifically aware of that report, but I'm very well versed in the challenges and – and, as I said, when I arrived in the business the analysis had been completed and we were in the process of rolling - - -

45 That's right, because April two thousand and - - -?---Yes. We were – we were well into not selling those products any longer.

I understand.

THE COMMISSIONER: Can you tell me what sorts of numbers were being shown by the analyses that had been done when you got into the business, Mr Mendelson?---I don't know, because it – the decision had been made before I arrived. But I did – I don't know.

5

Right.

MR DINELLI: Was that the subject of the analysis that you were referring to before?---Correct.

10

And that was documented by ANZ, the sort – the sort of issue - - -?---There are – there are a series of documents around ANZs decision to exit. I'm not sure specifically in those documents if the claim rates are mentioned there, but in my handover communication that was what I was told, we've made these changes, because we did a full review post the sale of Esanda and that we weren't comfortable with that the customer was getting value.

15

Thank you.

20

THE COMMISSIONER: Was any part of that analysis – or did any part of that analysis reveal the commissions that were being earned in the ANZ Group on account of the sale of these insurances?---Again, I've not seen anything related to commissions paid. It was really around – you know, the way it was communicated to me, it was around - - -

25

It's a done deal; it's not happening?---Yes, it's not – it's not a business that we want to participate in, because it's not demonstrating value to the customers.

Yes.

30

MR DINELLI: One of the issues – and we will return to this issue in a specific context relevant to Esanda, but one of the issues that was raised by add-on insurance was that it was being sold in circumstances where people couldn't even remember consenting to the purchase of the product. Are you aware of that issue?---In some of the investigations through what we mention in this, that is – that was, yes, the case.

35

And high pressure sales tactics that were being used. I'm not – I'm asking you at a general level here. I'm not asking – but are you familiar with those sorts of issues being raised?---I'm – I'm familiar that customers have claimed that they were not aware of agreeing to these products.

40

And you have said that, in fact, if not the determinative, one of the major factors was the fact that these sales were unsuitable where the consumer could either not claim or any claims that were made did not justify the insurance. Is that right?---Again, the details of why the claim rates were not industry averages, I can't comment on. All I can tell you is that, from an organisational perspective, we were uncomfortable that

45

we were selling products that customers were not claiming on. So that's all I can tell you.

5 Thank you. Okay. If I can ask you some questions, if I may now, about the assessment of applications that were made during the relevant period. Am I right to say that ANZ received consumer motor vehicle finance applications from dealers via the completion of an electronic form or sometimes that was sent in hardcopy form?---Correct.

10 Where the form was submitted electronically, would that information be inserted directly into ELS?---The information would be, yes.

Now, that's the Esanda Lending System that we've already referred to?---Yes.

15 And is that, then, the same system that's used by the brokers today?---Yes.

Thank you. And if a hardcopy form was used during the relevant period, then the information would be inputted by ANZ, would it?---Into the ELS system?

20 Yes?---Yes.

So all applications for car loan finance in the relevant period made their way on to ELS?---Correct.

25 Now, you describe in your statement a number of mandatory fields that had to be filled in in the motor vehicle finance application?---Yes.

30 And that included the customer information, the vehicle that was to be financed, and information which enabled the customer's ability to repay the facility to be assessed?---Correct.

Is that right? And once that information was in the system, if I can put it that way, in ELS, then there was an automated process, at least in part?---In part.

35 Yes. And can you explain to the Commission what that automated aspect was?---So once the information is entered into the system, it first of all goes through a fraud filter and then it goes into the – what we call a score card. And, depending on the information entered, a decision will be made if it will – it will be auto, what we call, approved, or it will be manually – it will be referred to a – a manual assessment.

40

Thank you. And one of the things that would be done would be analysing whether the consumer met the minimum requirements, in terms of age, time in employment, and other policy rules, such as the maximum loan term?---Correct. It's important, also, to note that the system would check at that point, as well; it would go to an external bureau, credit bureau, to see what the customer's bureau score is.

45

I think it was Veda that you referred?---Yes, Veda at the time. Yes.

Thank you. Sorry, if I can just unpack that a little bit. What were the relevant policy rules you refer to in your evidence?---To approve or not approve - - -

Yes?--- - - - or to manually refer.

5

No. I 'm referring now to the analysis of whether the customer met the minimal acceptable requirements in terms of age, time in employment - - -?---Okay.

10 - - - together with other policy rules, sorry?---It would include – obviously, they had to be over 18, they had to be in employment for longer than three months. It would check things like the state of what their bureau score would tell us. It would make a decision related to the level of their – their UMI. And then, depending on that, we would make a decision.

15 Sorry, what was the last point?---UMI, the amount of income they've got available to – to – to service the debt.

I see?---Uncommitted monthly income. Sorry. I had a bit of a - - -

20 Thank you. No. Thank you. The last point there that you refer to is the analysis of whether the financial information provided in the application established a basis for enabling ANZ to ascertain whether or not the consumer had the ability to repay the proposed loan facilities?---Correct. That's what I was just talking about

25 Yes. And you then go on to say that the manual – so if one assumes, then, that by virtue of that – if I can use this example, which must have occurred, there are then circumstances where that analysis says, relying on the information you receive from the dealer, “We don't have enough information”, then there's a manual component. Is that correct?---Correct. Or there were things in there that we would have rules.

30 For example, if the customer had had a certain number of bureau checks over a period of time, that would trigger a manual assessment. If – yes, there's just a series of different rules. If there was very tight on the – you know, if it was at the low end of the uncommitted monthly income, that would trigger out a – a manual referral, as well.

35

You then go on to say that it – that some of the steps could be a request for additional information, verification of financial information, and then an application of judgment to assess whether or not the application ought be approved. You say that they could have involved – are there any other critical steps that - - -?---No.

40 Basically, what happens is that there's – if – if the customer is in this part of the process, a trained credit assessor will look at the loan. They will work against the – there will be a – there will be a series of policy reasons why the loan has been manually referred. They will look at the whole loan, but they will look specifically at those, and then they will make a call based on – on that. And that's part of our
45 assessment process.

When you say “could have involved an application of judgment to assess whether or not the application ought to be approved, having regard to the circumstance of the consumer’s application as a whole”, are you saying that not every manual component had that?---No. Some might be just a clarification of a piece of information. Some
5 might be related to an existing customer who has a – has a bigger relationship with the bank and looking at – but generally it’s verifying something that we’re uncomfortable with that – yes, but it’s hard to – well, it’s not hard to explain, but every situation is slightly different, because every customer’s circumstances are different.

10 But these processes are critical, though, aren’t they, because these - - -?---Absolutely. There’s a very tight training regime. There’s a credit authority discretion that, depending on the threshold of what they’re looking at is. These people also undergo monthly hindsight reviews. So they will take a series of loans that they do and
15 somebody from our QA department will come in and – and look at those. There’s also a QA process where they will make sure that everything that they’ve said they have done they will do. So it’s a very tightly managed part of our business and it’s a critical part of our business.

20 Yes. And – well, you would accept, of course, that it’s critical, in fact, to what compliance ANZ, Esanda at the relevant time, could have with the National Credit Act, isn’t it?---Yes, because it’s about making sure that we’re giving not unsuitable loans by making sure that the customer can afford them.

25 It’s a critical process, but you don’t – you don’t exhibit any documents which show that process, do you?---Not in my witness statement.

You were asked to, though, weren’t you, Mr Mendelson?---Not – not to my knowledge. I can furnish any documents, but not to my understanding.

30 So there are documents in existence?---Absolutely.

In your evidence you go on to explain the key components of the assessment of the consumer motor vehicle asset finance application. Are you – and you mentioned
35 three types of documents?---Verification, not - - -

Verification, sorry. Thank you. Three components of the verification process. Is the use of the key components indicating that there’s other matters of verification that occur that you haven’t referred to?---There could be others, depending on the
40 circumstances. For example, if you don’t have a driver’s licence, which you would hope if you’re buying a car you do, but, you know, but we – you know, we might – if we’re not sure, we might – if we’re not sure of the quality of it, we might ask for a passport, Medicare card.

45 I see?---So, again, we’re trying to be as helpful to say that – when you’re assessing customers, every customer is different. And so, as I said, part of the process is to

make sure that we are taking all measures. This is not a complete list, but generally they're the key ones that - - -

5 No. Thank you for that explanation. I accept that. One thing, though, that you do in paragraph 26 is you identify a driver's licence or other acceptable forms of identification. Supply a tax invoice to confirm the description of the motor vehicle. And then documentation to verify the income figure stated in the loan application. That's an important step, isn't it, because it's – you need to take reasonable steps to verify the ability of the customer to be able to repay the loan, don't you?---Yes.

10 Although, nothing in your statement suggests that at any time there was any verification of any information provided by customers about their expenses, was there?---No.

15 And that's because ANZ didn't verify those expenses, did they?---We, like previous answers to this question, used HEM, and – as the benchmark. And if their stated living expenses is high, we will take that. I can tell you that, also, within the policy as I know it today, there are also what we call sensitised parts within the – in the expense calculations. For example, if you're a homeowner, we take a much higher mortgage rate than is in the marketplace, and apply that to sensitise that. If you have credit card – credit cards as part of your expenses, we take a percentage of the – the – of the balance of the credit card above that. So there is no formal mechanism, but we use HEM, and that's what we have been using.

25 THE COMMISSIONER: Can you tell me what percentage you apply to credit card debt?---Three per cent above whatever the balance is – the limit, sorry.

You do it by reference to limit?---Limit, yes.

30 And take a percentage of limit?---Yes.

And assume that the monthly repayment will be three per cent of limit. Is that right?---Yes, of the total limit, regardless of where they are.

35 Wherever they are?---Wherever they are. And on the mortgage I can say to you at the moment it's 7.25 per cent.

Roughly speaking, historical average rate?---Yes, exactly. And we review that annually. And – unless their – their repayment is a higher amount than that.

40 But are there any other sensitivities or adjustments that you make on the expenditure side of the ledger?---Not on the expenditure side that I'm aware of.

45 Does the application form reveal – or the application material reveal the family circumstances of the applicant?---Yes. We delve into that, yes.

Thus, the HEM that is applied is applied according to - - -?---Yes. Yes. Yes. Sorry, I didn't explain that.

5 - - - whether it is a couple - - -?---Yes.

- - - and a couple with dependants - - -?---Yes.

10 - - - as declared?---Yes. To be very transparent, we have been a little bit later in applying that in car loans, but we are in the – there now.

And other financial obligations, is there any inquiry or verification in relation to other obligations that the customer may have, other than housing loan or rent, credit card and HEM?---No.

15 So the UMI is based wholly on an outlay side of the ledger that is comprised of – I think I've got them all, but you will need to correct me – in effect, housing – so either housing loan or rent – HEM and credit card service, assuming that credit cards have been revealed?---And then we have a catchall, which is other, which could be - - -

20 Covers a multitude of sins, Mr Mendelson?---Correct.

Yes.

25 MR DINELLI: You referred to some amendments that have been made – or further sensitisation, I think, was the term that you used. Can you assist by identifying the time at which those things were done by ANZ?---I don't have that information exactly when that was put into the process.

30 You - - -

THE COMMISSIONER: Well, when it was introduced or what stage of the process. Which is the question, Mr Dinelli? Were you asking when that started or at what stage of the process it happens?

35 MR DINELLI: My question was when those changes were made to the policy.

THE COMMISSIONER: I see.

40 THE WITNESS: Yes. I don't have that information.

THE COMMISSIONER: Yes.

45 MR DINELLI: I will call up, if I may, RCD.0022.0001.0001. I'm going to ask you some questions about the National Consumer Credit Protection Act 2009, with which you're, obviously, very familiar. To go to 0098 first. A licensee, relevantly Esanda or ANZ generally:

Must not enter into a credit contract –

Of which a car loan is one. And then if one skips down:

5 *Unless the licensee has within 90 days, or other period prescribed by the regulation before the credit deed, made inquiries and verification in accordance with section 130 –*

10 I will go ahead to that page – to that section, I'm sorry, on the next page. You're familiar with the reasonable inquiries that need to be made about a consumer in section 130 of the National Credit Act?---Yes.

15 And it requires reasonable inquiries to be made about the requirements and objectives in relation to the credit contract, (a)?---Yes.

And if I take you to (c) it says that:

Reasonable steps must be taken to verify the consumer's financial situation.

20 Do you see that?---Yes.

And one's financial situation, of course, incorporates not only income, but also expenses?---Yes.

25 And during the relevant period – during the relevant period, given the processes that we've just gone to, it might be said that some steps were lacking. Is that right?---I'm not qualified to answer that question.

30 Can I take you to RCD.0021.0001.0088. No doubt you're familiar with this document, Regulatory Guide 209?---Yes.

35 It deals, of course, with credit licensing and responsible lending conduct. This is a document that sets out – or it might be described as good practice in relation to the provision of consumer credit?---Yes.

Can I take you to .0103. Is page I think - - -?---Sorry, what was your question before?

40 My question was this sets out what might be considered good practice in relation to the provision of consumer credit?---It's a guide to providing credit.

It's what the regulator says is - - -?---Correct.

45 Is – or what it provides by way of a regulatory guide?---Correct.

For the – for the industry?---Correct.

And it's something which ANZ takes seriously?---At the highest level of seriousness.

Thank you.

5 THE COMMISSIONER: This is the base, isn't it?---This is, yes – well I don't know if you call it the base, but this is the – this is - - -

I mean by base, you would like to do more but you've got to do this. is that right?---Yes.

10

Yes.

MR DINELLI: RG 209.32, if I can just have that expanded to make it easier for you, Mr Mendelson:

15

Reasonable inquiries about a consumer's financial situation will generally include –

And there's a reference to:

20

The consumer's current amount and source of income and benefits.

See that?---Yes.

25 And then (b) deals with fixed expenses, and (c), variable living expenses. Do you see that?---Yes.

And if I skip ahead a few paragraphs to .0107, specifically paragraph 209.46, in words that are akin to those we've just gone to in the Act:

30

You are obliged to take reasonable steps to verify a consumer's financial situation. Generally, this will require some positive steps to verify the information provided by the consumer.

35 Do you see that?---Yes. You're not going to read the rest of it?

No, that's – you can if you wish. I'm not hiding it from you. You would agree that ASICs assessment that the obligation to take reasonable steps requires some positive steps by a licensee to verify that information?---I'm not really qualified to answer your question.

40

Would it be good – in taking reasonable steps to verify the customer's financial information, you would agree that ANZ should take some positive steps to do that?---Again, I'm just uncomfortable to answer this question, because I don't understand the legality of what you're asking me.

45

Look, and I'm not asking for your legal opinion. My question was just put as a person well versed in – in the business of lending, that you would accept, would you not, that ANZ ought take positive steps to confirm – to verify the information provided by a consumer?---What I would say to you is that ANZ takes this document
5 very seriously. Our intent is that when we lend money, that we want to get it back and that we will do everything during the process to make sure that we are not providing credit to people that are unsuitable. Again, I feel uncomfortable to answer the question, but the intent of what the organisation is trying to do, as I said, is to do the right thing by customers. If you lend money to people, you want to get it back,
10 because that's the nature of our business. And, by not doing proper assessment, you are not availing yourself of the opportunity to get that money back at the end of the period.

Well, in November 2014 when this guide was written, that's during the relevant
15 period, isn't it, that we're discussing?---Correct.

And your evidence would apply to the approach that Esanda would take as at that time?---Yes.

20 Yet, dealing with the relevant period, you've – if I've understood your evidence you've said that there's no processes in place to require verification of the expenses at that time that were provided by a consumer?---Other than what I have stated before.

25 Thank you. Can I deal with another issue, Mr Mendelson, what is described as a guarantor swap incident?---Yes.

I think that's using the language of ANZs response to the Commission. What – or perhaps you can assist by explaining what that issue was for the business?---Sure. So
30 the issue related to we were provided a guarantor's financial information when we did the assessment.

Yes?---That was generally a better quality customer. And under those circumstances we approved the loan.
35

What do you mean by – what's meant by "swap"?---So we asked for, in those circumstances, somebody to guarantee the loan. And so they had the information for the person who was going to get the benefit of the car, and they had the information of the person who was going to guarantee that loan.
40

Yes?---And, instead of submitting the information in the loan application form for the customer that was going to get the benefit of the car, they put the information of the person who was going to guarantee the loan into the loan application.

45 And this, as I understand it, was something that had been – and I won't use the name – if you go to paragraph 72 of your statement – and you will be able to see it, I think, in the document before you. Page 17 of your statement:

ANZ detected –

what you have described:

5 *a potential guarantor swap misconduct in about May 2013 –*

from a particular dealer?---That is correct

And you found out?---Again, just to be clear, it was a broker, not a dealer.

10

A broker. And there was subsequently an investigation into what had occurred?---That's correct.

And, ultimately, there was a remediation plan that was agreed with ASIC by ANZ in relation to this issue?---Yes.

15

And what had happened – or what Esanda agreed was that it would remediate more than 70 customers for car loans that had been provided by Esanda where this issue had arisen?---The eventual number was actually 92.

20

I'm sorry?---The eventual number was actually 92. We had a series of consultations with the regulator on this case, but the eventual number was – if you - - -

I see. I'm sorry. I think at the moment you've - - -?---Yes, at this stage there was various interactions with the regulator around this issue.

25

Yes. Thank you for clarifying that?---Because we've never seen – to my knowledge, I've never seen anything like this occur in my career, and prior to this and post this. So it was quite a complicated process to understand. At that initial point in the process in May '13 when we did the investigation, we actually met with the organisation and the – there were people dismissed from that organisation. It wasn't later until we found out that there was a wider issue.

30

I see. But ANZ - - -

35

THE COMMISSIONER: Why a wider issue - - -

MR DINELLI: Sorry.

THE COMMISSIONER: - - - because it went beyond that organisation or within that - - -?---Those individuals – no, within the - - -

40

Within that organisation?---To be very clear, within the organisation.

Yes?---But we identified it. It was related to an individual. We met with the owner of that business, that person was dismissed, and at a later date it was revealed that there were more people within that organisation undertaking the same practice.

45

Yes.

MR DINELLI: And ANZ acknowledges that this – that the systems Esanda had in place at the time were ineffective in this regard?---Yes.

5

And that it constituted misconduct?---Yes.

In the response – I won't take you to it, but ANZ said that ultimately it suspended the accreditation of some individual brokers implicated in the guarantor swap issue and ceased dealing with them. Do you recall that?---Yes. Well, that's what I was just talking about, yes.

10

Yes. You say only some of them, though. Did – can you assist by explaining how, if at all, others that were implicated in the guarantor swap issue were dealt with by ANZ in terms of ongoing – or Esanda?---So once we understood the wider ramifications of what was going on, we no longer – we discredited the actual organisation, the broker.

15

I see. So it's not the position, is it, that there's – that only some of the brokers implicated were discredited? Is it the position that all of them - - -?---So, just to be clear, what the issue was was we had a broker - - -

20

Yes?--- - - - who had a series of employees. An initial investigation identified an employee that we worked with that particular broker to dismiss.

25

Yes?---We then subsequently found out that the issue was broader. And that was the start of discrediting the broker as the business, because, clearly, there were – there were issues there.

30

Excuse me just for a moment, Mr Mendelson. And what did Esanda do, and now ANZ do, to ensure that this wouldn't happen again?---So if I can draw you to – we stopped accepting guarantors, and - - -

35

When?---Well, officially we put a system change in in mid-2017. But it was my understanding that we stopped it immediately after, in preparation for coming to the Royal Commission. We did identify about 50 customers in that period between 2014 to 2017 that had some form of guarantor associated with it. So we can't confidently – we can't confidently say that – that those loans did or didn't have a guarantee. It's a – it's a – it's a field within – within the system. So we were – that's why we restated the number.

40

I understand - - -?---The date.

45

It's not a criticism. You've corrected paragraph 79?---Yes.

But can I understand the position. The position is that, as at mid-2017, no guarantors are allowed?---Are allowed, correct.

What happened immediately following this organisation and this issue arising?---As I said, originally, I was informed that we stopped taking guarantees at that point.

5 I see. But the process wasn't until mid-2017 that that stopped?---The system change.

Yes?---So, from a technology perspective, after 2017, even if you wanted to put a guarantee – attempt to put a guarantee into the system, it wouldn't allow it.

10 But that change wasn't made in 2014. You could still have a - - -?---Yes.

Using the ELS system – I assume it was ELS?---Yes.

15 So am I right to say that, on your evidence, guarantors were only stopped in mid-2017?---Yes.

Thank you. It was a footnote reference in the response, but it raises an issue I would like to explore with you, and that is that this same organisation – I mean, you know the organisation I am talking about?---Yes.

20 This same organisation had been providing add-on insurance – or perhaps I can use your language – am I right to say that in the course of this – or at around this time in October 2014 ANZ became aware of the potential sale of add-on insurance to consumers by this organisation in circumstances where the consumer hadn't consented or had knowledge of that?---Yes.

25 How did – I know you weren't there. How did Esanda become aware of that?---We became aware of it when we did the file reviews of what were the impact to customers. But, again, to be clear, this investigation, we were supplying through a series of requests from the regulator files and they were – we were informed by
30 them.

I see?---And, as part of our remediation process, if customers were impacted through the sale that they weren't aware of, we refunded that.

35 Yes. I see. I will come to that and I will ask you a question or two about that. But – sorry, was it ANZ that discovered this issue, or was it ASIC in the course of their work and then they said – because what you say at paragraph 74, as I understand it, was that ANZ became aware of it in a meeting with ASIC?---Correct.

40 That means that ASIC informed it?---Correct. ASIC were sending us, through this period, a series of request - - -

45 Under various other provisions of the Act to get information?---Yes. They were investigating this issue and we were collaborating with them to understand the extent and the nature of the issue.

How much was the remediation that was given in relation to this issue?---The total amount.

Yes?---Was \$753,000.

5

And in relation to – and I understand it’s still ongoing, but the remediation for the guarantor swap incident. How much is that?---No. This is the guarantor swap. The other, are you talking about the - - -

10 I am distinguishing between add-on insurance?---The add-on insurance, out of the 753, was \$21,158.

Thank you. And what, if anything, is now in place to seek to prevent this issue arising?---As I said before, we don’t accept guarantors for car - - -

15

And in relation to add-on insurance?---Well, we’ve ceased selling the major products. We only, as I said earlier, focus on comprehensive car insurance and loan protection insurance. And, again, we run annual checks on claim rates to make sure that what’s being sold has actually been – actually the customer is getting value from, and, particularly through the broker channel now, also we are only dealing with providers – allowing brokers to deal with providers that are APRA approved insurers as well.

20

25 Who – do you rely on APRA for it to determine the insurers or is there a separate analysis by ANZ as to who the appropriate - - -?---The regulator.

Thank you. All right. I have two broad issues to deal with. The first – the second-last is to deal with what you’ve described in your statement as fraudulent conduct by three intermediaries. Now, I am not going to mention who they are?---Yes.

30

I’ve already said something about this at the start of your evidence. You will recall that I asked you to identify the time period at which certain fraud had been identified by ANZ?---Correct.

35 So the guarantor swap incident that we’ve been dealing with and the add-on insurance wasn’t the full extent of ANZs difficulties with responsible lending obligation. It also arose in this case in relation to three intermediaries who had sold – sorry – who had falsified or provided falsified documents?---Correct.

40 And there has been a civil penalty proceeding which has dealt with some part of this conduct?---I believe it has dealt with the entire thing.

Yes. When I say some part of it, there was 12 representative motor vehicle - - -?---Correct.

45

- - - finance applications that were dealt with?---Correct.

But there were more that were the subject of concerns?---Correct, and we're remediating more.

5 And I understand that and we will come to that. Now, of these, as I think you pointed out to me previously [REDACTED] – sorry – I'm sorry. Can that be beeped - - -

THE COMMISSIONER: Perhaps we redact the name from the transcript.

10 MR DINELLI: Yes, please.

THE COMMISSIONER: I should perhaps direct non-publication of the name. So, just for the assistance of the media, the name that has been mentioned should not be reported. I will direct non-publication of the name and redaction of the transcript
15 accordingly.

MR DINELLI: Thank you, Commissioner, and with my apologies, a slip. I had done well until now.

20 The point of sale exemption applied to the company which you talk about at paragraph 38, didn't it?---Correct.

And in the course of – in the course of those previous proceedings, generally in relation to all three of those companies, ANZ was aware that payslips were a type of
25 document that could be falsified?---Yes.

And that some third parties had provided Esanda with falsified payslips?---Yes.

30 And that ANZ had reason to doubt the reliability of the information it was receiving from some intermediaries?---That's what we've acknowledged.

And in relation to some instances of conduct, there has been an acceptance by ANZ that it failed to take reasonable steps to verify the financial situations of some customers in circumstances where it failed to take those reasonable steps?---That's
35 what we've acknowledged, yes.

And, also, insofar as its processes were in place at that time, that is, broadly, because of the different companies at different times, but it's over a period of approximately three years, you accept that during that period – I'm sorry – the period was two
40 years, I misled you, from July 2013 to May 2015. During that period, do you accept that generally ANZ had failed to take reasonable steps to verify the financial situations of consumers, because of this issue?---That's what we've acknowledged, yes.

45 THE COMMISSIONER: What could have ANZ done that it didn't do?---Look, as I explained before, payslip fraud is a complicated and - - -

It's a many splendoured thing?---Yes.

Yes?---I think, for some of the things we've identified and we've put rectifications in, is we could have identified some of these cases earlier. So there were some
5 collections, calls where we could have referred the customer at that stage to our fraud team. We've now got a much better process for that in place and, also, a fraud team within the collections team. I think – you know, we are continually training staff around identifying fraud and making them aware of something, you know, that it's
10 crucial in the way that they go about it, as I said we put more staff into our fraud department. We have put more rules into our fraud detection system. We are, you know, hypervigilant around this. But, as I said, the nature of fraud is incredibly dynamic, and the type of people that are trying to defraud large organisations like banks are increasingly sophisticated, so - - -

15 But can I just – I am really asking you about paragraph 55 of your statement, I think, aren't I? If you go to paragraph 55 of your statement on page 14 of the statement?---Yes.

Continuing:

20

The admissions in the civil penalty proceedings concerned two obligations, failure to take reasonable steps and making a contract without first having taken reasonable steps.

25 It's the content of the admission that I'm trying to understand. Yes, ANZ admits it didn't take reasonable steps. What I'm trying to get a grip on is what are the reasonable steps that it admits it didn't take?---Look, fundamentally, we – there were circumstances where we could have potentially identified where human error came into the play. As I said, potentially, collections could have identified some of these
30 earlier.

But collections is after the event, isn't it?---Correct.

35 So we're talking about the point of - - -?---During the settlement.

- - - grant of the credit?---Yes. Again, I'm not well versed to explain it in a – you know, in a – in a legal perspective.

40 No?---So from our – from our sense is that, you know, our settlement team didn't pick this up.

And didn't pick it up because there was enough material it had in the information - - -?---Yes.

45 - - - it had - - -?---Yes.

- - - to point to the fact that there may be something dodgy about the payslip?---Correct.

Now, what is it - - -?---What would it look like - - -

5

And we will get to the limit of your knowledge at some point?---No. No. No. No. What would a dodgy payslip look like that they could have picked up?

Well, no. What was it that would have or could have or should have alerted settlements or whichever part of the process it was to the fact that there may be a dodgy payslip?---Anything from things such as no ABN on the payslip, different types of font, inconsistent year to date figures, because remembering they've got to have three there. So there's a series of different things that they could have picked up.

15

The payslip itself - - -?---Yes.

- - - may have been such as to provoke inquiry?---And that's part of the training that we provide to them - - -

20

Yes?--- - - - to be able to identify, when they're looking at payslips, to be really clear that – that, you know, that they're looking at those key components of what could be a fraudulent payslip.

25

I see. Yes.

MR DINELLI: When was that training put in place?---That training has been ongoing. It was occurring during the period. And it gets updated every year by our fraud department. And what we've done is we've increased the velocity of that training. So both our assessment team and our settlements team undertake at least an hour of training every quarter to keep it top of mind and to make sure that they're really looking out for – for that in their day-to-day interactions.

30

But during that relevant time – now I am talking about a different relevant period?---Yes.

35

The 2003 to 2015. But during that time, the training wasn't sufficient?---The training was there, but clearly it wasn't sufficient, because we've made these admissions. So – yes.

40

And you did your – the investigation, or at least one of the investigations, arose – was undertaken in May 2014, the one at paragraph thirty – sorry?---36(b) or - - -

45

36(b), yes?---Yes.

And you subsequently told ASIC about that in September of that year. Is that right?---The process is that this gets reported through another regulatory body.

I see. So I think on - - -?---And then they - - -

Sorry. Go on, Mr Mendelson?---I'm not sure I'm allowed to declare that, but we - - -

5 I'm asking you not in relation to any other body. I'm just asking about when you spoke – when you – when ANZ raised this issue with ASIC?---ASIC were informed through another body, because - - -

10 Yes. That – I don't need you to go any further. I'm just – if I can take you to paragraph 45?---Yes. That's when ASIC informed us. I don't have the specific dates when we informed the other organisation.

15 I see. Now, you've given some evidence about the processes that are in place to seek to prevent this happening going forward?---Yes.

In fact, you deal with this particular issue at paragraph 48?---Correct.

20 And I understand that there's confidentiality over some aspects of that, and I won't ask you - - -

THE COMMISSIONER: Can I just explain why there's confidentiality over that, namely, that if ANZ reveals its fraud detection processes, that may be something that people might take advantage of – is perhaps the most charitable way of putting it. Is that right, Mr Mendelson?---That's correct.

25 Yes.

30 MR DINELLI: And on the next page, less sensitively, but important, I am sure you will say, nonetheless, are the steps that have been taken to create a broker forum and clarification of ANZs broker consequence management framework. What's a broker consequence management framework?---Okay. So part of a broad scope of work that we've undertaken is that we – if – if you will allow me, I will talk to them all in a sequential way. Is that okay?

35 Yes?---So we've introduced a customer interview guide to make sure that when we are talking to the customer, that their needs and objectives of their loan are understood. And that needs to be signed by both the broker and the customer. And that needs to be done before any information around how the loan is going to be implemented into the system needs to occur. What we do is the obligation of the
40 broker, which is covered in the training that I referred to earlier, is to keep that on file. And we say to them that at times we will call for that to review that. So what we then do is that we have a file compliance review process that occurs monthly, whereby we use data, which is the part of the part A, which is sort of redacted, to identify any issues that have occurred during the application process by brokers. So
45 it could be multiple entries for a customer. And then we do a sample, also, of those file reviews. We then – those reviews are brought in and there's a 65 checkpoint review that we undertake to make sure that that has been properly completed. If

there are issues in that – in that 65 point checklist, what we then do is we then do what we call a qualitative file review. We do a full review of that customer. And, again, we go through all of the file to make sure that – that that is – what they have said they were going to do was actually accurate. We then – subsequent to those
5 reviews, we then have a monthly broker forum whereby there's a – there's a series of – each state – we operate a national business. Each state manages a pool of brokers. And what they will do is they will talk about the consequence management of those customer interview guides and those qualitative file reviews by state, but they talk about it nationally so there's a consistent approach in dealing into it. So some of the
10 actions of that could be to go back and educate the broker. There could be a financial penalty, or it could be disaccreditation. And since we've implemented this in March '17, we've done circa 8000 of these file reviews. And we are at the process at the moment of looking into actually disaccrediting three brokers. We are seeking financial penalty from roughly 90 other brokers. And we've had to educate 800 plus
15 brokers on just not filling in the right, you know, checklists. The process from going to educate to financial penalties, if we educate them on something and they repeatedly don't do what we ask them to do. And then the disaccreditation is related to employees of brokers submitting loans that they're – they're not – they haven't done our training. So it's quite a complex process that we undertake. The other
20 thing that we are doing, as I said, is spoken about enhancing the training around fraud both internally and externally. Obviously, we can't leave fraud documents with our broker community, because within that is – in the training packs are historical examples of where fraud has occurred across all the different types. But we go to professional development days and we talk about, not only this type of
25 fraud, but also cyber fraud, so that we can really keep everybody on top of it. And, lastly, for existing customers now in that application process that we spoke about before, if it's either a auto approve or a manual approve, we check our banking system to make sure that if they have told us they've got a salary credit, that we line that up into a – into the ANZ system. So we've – we call it a continuous
30 improvement program, because, as I said, the nature of this, it will be – it will be an evolving issue. And we work across quarterly cycles to make sure that we are continually improving it. We used to run this specifically for auto finance. It has now been rolled into a wider Australian division continuous improvement program to make sure that what we're applying is consistent across the bank.

35

Thank you. And you – you identified there the date of March 2017. That's also the date that you say in your evidence was when an internal - - -?---Sorry. Sorry. I meant March 2016, not '17.

40 That's okay?---Sorry, get my years – where are we?18? '17. You are right. Yes.

That's where the internal monthly - - -

45 THE COMMISSIONER: Where did we land? What's the right answer?---I got there in '16, so it's '17.

It's '17?---Yes.

Right. Okay?---I apologise about that.

MR DINELLI: It seems – and I understand the evidence you’ve given about those improvements, but it’s still fair to say that there’s a significant amount of time that
5 elapsed between the first investigation of fraud in respect of the first company, and, even if you take into account when the last one occurred, approximately nine months later, I think June 2015, and the sort of improvements that you say occurred as a response nearly two years later?---Yes, I accept that.

10 Can I ask you about the remediation program that has been implemented by ANZ in relation to these three intermediaries, please?---Yes.

I am repeating what I said a moment ago. The three relevant organisations and the three fraudulent activities, by the time you had wrapped up the third one, it was the
15 investigation of it, it was June 2015, wasn’t it?---The internal investigation, yes.

Yes. And I’m not seeking to make it a memory test, but you say in paragraph 38(b) that in the period from 5 May 2015 until 12 June 2015 the ANZ fraud team conducted investigation of a number of applications submitted by that organisation
20 over a period of more than 12 months.

Do you see that?---Yes.

25 And then a decision was made by ANZ to develop a remediation program?---Correct.

And, in fact, you, I think, were – you were on this team?---Correct.

30 And it was formed to develop a program to remediate customers who had been affected by these relevant frauds?---Yes.

That project team was set up in November of 2016. Do you have any explanation for why it took so long for it to be set up?---No. Just short of the fact that we were – I can’t explain why the time difference was, but when I was – arrived in the role, it was very clear that we needed to get on with the remediation.
35

I see?---It was always our intent to remediate these customers. And we were working with the regulator.

40 And you say that – well, perhaps I can take you to GSM1 of your statement, which I think you’ve got there in front of you?---I have got it.

GSM1. Thank you. We will just try and get it up on the screen, as well. It’s ANZ.800.259.0175. Can you explain to me what this document is, Mr Mendelson?---Yes. This is a explanation of the timeline of events related to the
45 remediation program for the three introducer fraud.

I see. The same three introducers that we've been talking about?---That we've been discussing, yes.

5 Thank you. And am I right to say that as at the time of this document – I think this document was prepared only last month, perhaps, is that right? Or at least recently?---I can't tell you when this document was prepared.

10 Perhaps I will put it this way. Is it still the – is this still accurate in terms of the further steps required for the remediation project?---For – can you be more specific?

Is this still the program that your team is working towards - - -?---Correct.

- - - in relation to remediation?---Absolutely.

15 That is to say, expected completion of remediation December 2018?---Correct. So we – as per our agreement with ASIC, we ran a pilot in January of 46 customers - - -

20 Yes?--- - - - to make sure that what our remediation philosophy was was going to work. The agreement with the regulator then was that our internal audit team would do a sense check over that, which they did. And we have subsequently commenced in March completing the remediation. So the remaining – we're going to remediate 324 customers, so we've done 46, so the balance of that. We say December '18 because we've learnt from previous remediations that sometimes it's hard to find the customers. So we're hoping that, if we can find all the customers involved, that this
25 will complete earlier. But we have a project team and a team of people who are currently completing the remediation.

I see. And we've heard some evidence from one of your colleagues in relation to those remediation programs. There was a – can I understand how ANZ came to
30 identify the approximately 320 customers?---Yes. So what we did is we – through the fraud investigations, there were – we thought approximately 547 impacted customers, we thought, through the fraud. And then what we agreed with ASIC was that any customer who had missed a payment by 60 days or greater would become part of the remediation group. And that formed the 324 that we've agreed to
35 remediate.

40 And can I take you to ANZ.800.240.0088. Now, I'm taking you back in time to 19 July 2017. This is, if you would like to look at it, in front of you, GSM2. Can you explain what the Esanda proposed customer remediation document in front – on the screen and in front of you is?---It was a document that we took to the – to ASIC to confirm our approach.

45 If you go to the next page, you refer to a letter where ANZ does not accept liability for the frauds. Do you see that?---Yes.

I'm not putting it that it's ANZ that was in itself that did this, but you do accept, however, that the reasonable steps to verify the financial situations of customers were lacking?---I don't really understand what your point is.

5 The reasonable – I have asked you previously when we went to the processes of verification – and I think you accepted that improvements could be made to the process to help identify these issues. Is that right? That is to say?---Well, that's what I just outlined before, yes.

10 And you say here that you – in the last dot point, that ANZ proposed to focus on those whose loans had been in arrears for a single period of 90 or more days - - -?---Correct.

- - - at any point during the loan term?---Correct.

15 That period changed, didn't it?---Correct.

And what is it now?---60.

20 And why did you change that?---That was at the request of ASIC.

I see.

25 THE COMMISSIONER: Is the premise for the remediation that the fraud is the fraud of the broker, not the fraud of the customer?---The premise of the remediation is that a customer has been impacted and we want to make sure that we do the right thing. I don't think we are, at any stage during the remediation process, trying to work out, you know, what has occurred. We just want to make sure that if customers have been impacted, that we're doing the right thing by them. And we worked
30 closely with the regulator to agree a fair and balanced outcome for the customer.

Yes.

35 MR DINELLI: What about – what about any mis-selling of add-on insurance that has occurred in relation to this - - -?---Yes. So the very last – we've said to the regulator that if we identify that through our investigation through this process, that we will refund that.

40 Is that right? Is that what ANZ said or is it only if a customer raises this as an issue?---Well, yes, but we – yes.

45 Can't it be the case, however, that you could identify in the course of your work that there has been mis-selling of add-on insurance even if, as was the case with that other organisation, some people don't even know they're being sold that?---We – the challenge with that was – the biggest issue with this whole process has been the amount of time between when the customer – the potential customer was impacted and getting a remediation program going. Internally, there has been a lot of concern

about that period from very senior leaders, including our customer advocate. If we were to include add-on insurance, the – the ability to go and find out if they had it or they did not have it would mean that we could not start the remediation process even to a later point. So our intent always was that if a customer had said that they had
5 add-on insurance, that we would absolutely remediate them.

I need to understand that evidence. Is your evidence that you, by going back to check if there had been a miss-selling of add-on insurance, it would take you longer to remediate in relation to the issue of the payslips that we've been
10 discussing?---Correct.

But that doesn't follow, does it? I mean why couldn't – if it is the position that customers have been aggrieved by this process and suffered financial loss, that is the subject of remediation, because of the issue that we've identified, why does it not
15 also follow that if there has been the same issue in relation to add-on insurance they should be remediated for that too?---I said that we would if – the trouble is – our challenge is getting the data to understand if they had or they did not have add-on insurance.

I see?---So, therefore, that would take us longer. And our concern is already the period of time with which this – between when the fraud occurred and when we're remediating the customer.

Is that what you mean when you say in paragraph 66 that you incorporated ASICs suggestions insofar as they were operationally feasible?---Correct.

So not all of ASICs suggestions have been incorporated, only those that are operationally feasible?---Again, the conversation with the regulator has been to remediate these customers as quickly as possible, given the time that has elapsed. So
30 in the conversations that we had, we were very transparent about what we could do as quickly as possible, and this was a challenge. And the position that we got to collectively was that if – was the position that's stated.

Can I ask you this. Clearly, though, is – why can't ANZ remediate someone
35 twice?---Because we – because we wanted to do, from a customer – from a customer perspective, we wanted to do the fair thing and get to it as quickly as possible. And we thought – and we spoke with the regulator about it. And the best way to do it was to start the remediation, and, if they had add-on insurance, we would – we would refund it.

40

But there wouldn't be a proactive investigation of any issues with add-on insurance from ANZs point of view?---I'm not exactly sure what you mean by proactive.

Well, ANZ would not investigate the issue of add-on insurance unless it was raised
45 by the customer?---Look, I don't have the scripts of what we're doing in front of us, but I think – I don't want you to insinuate that we're reneging our responsibility towards the customers, because that's not our intent. Our intent is to remediate

customers that we impacted by a fraud quite a substantial period of time ago. We've gone through quite a long process with the regulator, and we want to get to it. We're not – we're not skirting our responsibilities.

5 I've put it – the point I'm making is this. ANZ is – and no criticism is made of this – is remediating, albeit it won't occur fully until the end of the year – is remediating in relation to the issues that have arisen in relation to those three intermediaries. That's right, isn't it?---Correct.

10 In relation to add-on insurance, there is no remediation in place?---But – no, but the issue that we are remediating is the payslip fraud.

I understand?---So through the process we have been very clear to the regulator. And I'm, obviously, not explaining myself clearly enough to you – is that we see – if
15 the customer through the process has been unduly impacted by being sold add-on insurance, we will - - -

If that's?--- - - - fulfil our obligation to remediate that.

20 And I understand your evidence and that is different, though, to the other organisation, where you had knowledge that there had been sales of add-on insurance without the person's consent?---Again, we remediated those customers, as well.

Yes?---As previously stated.
25

Can I go to – there's one final topic I would like to deal with. At the time that you made your statement to the Commission, ANZ continued to receive consumer motor vehicle applications from two primary sources?---Correct.

30 And they were brokers and direct sales?---Correct.

Now, last Friday, as I understand it, there was an announcement by ANZ. Can you tell the Commission what that announcement was?---The announcement related to
35 ANZ suspending its consumer finance – its consumer car loan business, as of April 13 2018.

So what – does that mean that both the – both the sources that we were referring to will both be halted?---Yes.

40 And how long – you say that this will happen as of 13 April of this year?---30th.

30th, I'm sorry. 30 April?---Correct.

45 And perhaps I can call up ANZ – it might be RCD.0021.0001.0303. This is the media release of last Friday?---Correct.

Continuing:

ANZ today announced it will suspend providing new secured asset finance loans for retail customers in Australia while it undertakes a detailed review of its business.

5 Do you see that?---Yes.

And ANZ says in that – or describes what we’ve just – in the second paragraph, the fact that it covers both direct and broker-originated channels?---Yes.

10 And that it will continue to service its current customers?---Yes.

And why was that decision made by ANZ last Friday?---Sure. So the background to this decision – the situation was that when we sold the Esanda business, the ELS system that we’ve referred to, the Esanda Lending System, was not integrated into
15 key ANZ systems. The business imperative was to secure funding to ensure that occurred. We have been through various cycles of funding, and we have been given different timeframe gates which we have not been able to meet internally as – from a – from a funding allocation perspective. And this decision had been made and we furnished documents. I was in a meeting in January ’18 with the CEO of the
20 Australia division and the chief risk officer where the decision was made to cease it. The announcement came out last Friday, because, obviously, I was due to come to the Royal Commission, and we didn’t want customers and staff and shareholders to find out if I was asked the question. But the decision to pause had already been made, and reported not only to the CEO, but to the board of the bank through the
25 chief risk officer. So, as I said, the announcement was made because I didn’t want to – I wanted to be – I have to be fair and honest, and – to the Commission. And, as I said, we didn’t want it to be revealed by me sitting here being asked the question and being – perverting the course of justice, so to speak.

30 Thank you. And - - -

THE COMMISSIONER: Why – you said that, amongst other things, step one was the ELS was not integrated into key ANZ systems?---Correct.

35 And the second step, I think, was that it was necessary to ensure funding to do it?---Correct.

Why was that necessary? I can understand it might have been convenient to do it. Why was it necessary to do it?---Why was it necessary to - - -

40

To integrate ELS into the wider ANZ system?---Because – the bank has particular risk profiles. And we have a whole series of very sophisticated new particularly credit systems, both at the beginning of a customer’s journey with us and all the way at the end, and that’s the way that the bank operates. And if the auto finance
45 business wasn’t integrated into those systems, we couldn’t – we didn’t feel like it was an acceptable risk to operate the business.

What was the – the risk is not acceptable. Are you able to tell me what the risk was, or the nature of the risk?---The nature of the risk.

Describe the risk?---The nature of the risk is we had potential to be – continue to
5 have responsible lending challenges. So the big – big piece is to make sure that all
the systems are integrated into one set of systems so that we can operate the business
efficiently and effectively and with an acceptable risk profile. So, as I said, our
systems are not integrated into ANZ, because Esanda historically was not – you
know, pre-2009 was not part of the bank. It was not incorporated. And it's – it was
10 – it was an unacceptable risk that the bank said that it couldn't accept. But it's
fundamentally related to making sure that we're providing the right outcomes for
customers.

MR DINELLI: A lot of the evidence we've gone to today suggests that a lot of
15 steps were being made in relation to ANZ's responsible lending in this car loan part of
its business that had improved the responsible lending processes, wasn't
it?---Correct.

But the very reason why this part of the business is being halted as of 30 April is
20 because of the risks to responsible lending within ANZ, isn't it?---No, it's not the
whole reason. The rationale for doing it is that we don't – we want to scale the
business, we want to participate in the business. We don't have a system that will
allow us to scale it. And, by not having a system allows us to scale it, it puts – it puts
the bank at risk. And so one of those issues could potentially be responsible lending
25 issues, but it's much broader than that. And, as I said, the obligation of – one of the
key responsibilities – to be – without going into a lot of detail the bank has been
running a new asset finance system for the last probably seven years, a project called
Global Asset Finance. And the last part of that was to get this part of the business on
to it. As I said, we've not been able to secure funding. There have been other
30 priorities in the bank. And until such time as we can secure funding, what we will be
– what we said at the end of that is that we're going to undertake a strategic review
which may include partnering – white labelling with another party who might issue
loans on our behalf, but we will use their technology. It may be that we will get
funding in the next bank year, which commences in October.

35 Ms Noble is attributed in that statement to the increased technology costs required to
effectively compete in secured consumer asset finance market, but it's also the fact
that on the basis of the current technology there are real risks to responsible lending
within ANZ?---I don't agree with that.

40 Can I tender that document, please, Commissioner.

THE WITNESS: As I said, the – the key piece around operating a business like this
is to – and to be competitive in this space is to have – have a technology system that
45 allows you to operate efficiently, effectively, at scale. Part of it is providing a better
digital proposition to customers, as the world evolves. And we are dealing with –
ELS was launched in 1982. So we are not in a position where we would be able to

be competitive. And, as I said, the key – one of the key premises has been to make sure that ANZ operates all its systems integrated.

5 THE COMMISSIONER: Exhibit 1.152 will be ANZ media release 16 March 2018, RCD.0021.0001.0003.

10 **EXHIBIT #1.152 ANZ MEDIA RELEASE DATED 16/03/2018
(RCD.0021.0001.0003)**

MR DINELLI: Thank you, Commissioner. Can I take Mr Mendelson to ANZ.800.128.0420, please. Can you tell me what the Operational Risk Executive Committee is?---Yes. That is the highest risk committee of the bank.

15 And you indicated previously that you were part of a decision in January. Is that right?---I was – my line manager was on holidays and I was sitting in for him. And there was a meeting that was held between the head of our retail business, our chief risk officer for Australia and CEO for Australia.

20 I see. And a decision was made at that meeting, was it, to do that which was announced on Friday?---Correct.

25 And at – on this 12 February meeting one of the issues – and I will take you to it at .0450, the background as explained is there are two high/extreme risk acceptances extensions relating to asset finance and commercial lending that are under review and CRO endorsement is pending. Does that mean that there was two things that were listed as high/extreme risk that were coming up for review by the bank? Is that an accurate summation of that first sentence?---That's correct.

30 And one of those was, which is the first point:

Responsible lending currently rated as extreme.

35 Do you see that?---Yes.

And further explained then, under (1):

40 *Responsible lending obligations apply to the sale of consumer asset finance products through ANZ proprietary channels and commercial broker first and third party distribution channels.*

That's what we've been discussing today, haven't we?---Yes.

45 And then the first dot point:

In light of the external regulatory environment, Asset Finance increased the residual risk rating of responsible lending risk from high to extreme.

Can you see that?---Yes.

5

Continuing:

The extreme risk acceptance was endorsed at group OREC –

10 Which I think is the reference to Operational Risk Executive Committee, the very committee - - -?---Yes.

- - - there:

15 *In May 2017 the risk acceptance was approved to 31 October and was dependent on funding for the global asset finance program.*

Is that what you were referring to before?---Yes.

20 So am I right to say that the risk, in relation to responsible lending within ANZ during 2017, was listed as extreme?---So my understanding that the responsible lending risk was taken to extreme was related – and this is to my knowledge – was related to the three introducer fraud, not to the system.

25 THE COMMISSIONER: Well, risk is forward looking, isn't it, Mr Mendelson?---Yes, and at that stage we weren't sure of the consequence of the investigation into – into that investigation.

30 MR DINELLI: Is that your – is your evidence that the extreme risk that is referred to there is something limited to the issue that we were discussing previously, those three intermediaries?---That is my understanding. Can I just ask you what date this - - -

Yes, this is the 10th – this document is - - -

35

THE COMMISSIONER: 12 February '18?---So, again, my understanding was I was in the business at the time.

40 12 February '18?---No, but this was – the extreme risk acceptance was endorsed by OREC in 2017, May 2017.

Yes?---My understanding of that is that that was related to the three introducer fraud, because we weren't – we weren't sure what ASIC – we hadn't had a final engagement with ASIC on that.

45

MR DINELLI: I put it to you that the extreme risk was not related solely to the three intermediaries, but was, instead, an issue which arose – which arose because of

the continuing legacy of relying on ELS?---I understand how you've got to this premise, but if you read the second point and the third point, everything in our world was related to get funding for Global Asset Finance.

5 Can I take – can I tender that, please, your Honour – Commissioner.

THE COMMISSIONER: Exhibit 1.153 will be minutes operating risk executive committee ANZ, 12 February '18, ANZ.800.128.0424.

10

EXHIBIT #1.153 MINUTES OPERATING RISK EXECUTIVE COMMITTEE ANZ DATED 12/02/2018 (ANZ.800.128.0424)

15 MR DINELLI: Can I take you to - - -

THE COMMISSIONER: Just before we leave that document - - -

MR DINELLI: Please.

20

THE WITNESS: I can – I can clarify that point.

THE COMMISSIONER: Well, do you want to add something, do you? What do you want to add, Mr Mendelson?---Well, that – my recollection of this was at the time that the risk for our business was taken from – from high to extreme related to the three introducer fraud. It had nothing to do with what you're alleging.

25

Well, I draw your attention to the second dot point under paragraph 1, in particular the last sentence of that second dot point?---I understand.

30

Can we just break it up a little so that I can understand what it is telling me:

The extreme risk acceptance was endorsed at group OREC in May 2017 and the risk acceptance was approved to 31 October '17.

35

So, pausing there for the moment, a risk is noted as extreme. The risk is accepted with a limitation of time. Is that a fair - - -?---Correct. Correct.

40

- - - understanding - - -?---That's a fair - - -

- - - of what been told there?---That's a fair understanding.

45

And the limitation and acceptance was dependent on funding for the GAF program. Is that right?---Yes. The – as I said to you, since I arrived in the business and before, the whole premise of this business was to get consumer asset finance on to the GAF program.

Yes. In particular, the extreme risk acceptance was not tied in this document in any respect to the outcome of dealings with ASIC, whether in respect of the three introducers or otherwise, was it?---Again, I'm – I'm not well versed in this document, but my understanding was that, in working with the risk department, that we agreed that the businesses – we were the only extreme risk in ANZ at the time. And that was related to the ASIC investigation. That is my understanding. I've – as I said, I understand where you – what the wording says, but that is my understanding.

10 Yes.

MR DINELLI: I'm going to take - - -

THE COMMISSIONER: Sorry. You were about to move elsewhere, Mr Dinelli.

15 MR DINELLI: Related to this issue, if I may. Can I go to ANZ.800.315.1639. What's this document, Mr Mendelson?---I believe this is the chief risk officer's report to the ANZ board.

20 So this is the chief risk officer when he attends the board of the company?---I don't know if he – when he attends or if he just has to provide it to the board. I assume when he goes to the board he presents this, but I don't know this for a fact.

25 So this document makes its way to the board, I assume a reference – I know it's not your document. But "for noting" indicates it's a matter that goes to – is it the risk committee of the board?---Again, I can't comment. I don't know. I - - -

THE COMMISSIONER: But it's either to the board or a committee of the board?---Of the board, yes, correct.

30 Yes.

MR DINELLI: Thank you. Can I take you to .1647, please:

35 *Australia division has undertaken a number of initiatives in recent years to reduce operational and compliance risk within the asset finance business, eg, changed commission structures, improved fraud controls and enhanced governance/monitoring of brokers*

40 They're all the things we've discussed today, aren't they?---Yes.

Continuing:

45 *However, continued reliance on ELS as a legacy system raises potential risks, due to its limited connectivity to other ANZ systems and inherent complexity.*

?---That's what I – that's what I outlined before.

Do you want to revisit your evidence as to why this part of the business will be halted on 30 April?---I'm not quite sure what you mean by that, because I said – I said previously that the entire premise for this has always been that we needed to have connectivity, as it says there, to ANZ systems. So I'm not sure the point you're trying to make.

What I'm trying to make is there hasn't been connectivity to other ANZ systems – sorry – my point is there has been limited connectivity to ANZ systems during the relevant period and beyond, hasn't there?---Yes, with the express understanding from the organisation that we would – there would be a period of time where it would be acceptable, and, if we didn't meet those deadlines, that we would – we no longer could operate the business. And that's where we've got to.

THE COMMISSIONER: And couldn't operate the business, because there was a risk related to responsible lending?---That's one of the considerations, yes. And I said that in – previously.

Look, I just want to be sure of - - -?---Absolutely, but I just want to be clear. Are you saying that you think we're closing the business because we're not meeting our responsible lending obligations?

MR DINELLI: I'm asking you the questions, Mr Mendelson. I'm saying the reason for ANZ halting that part of the business as of 30 April is that which is set out here, that is, that the continued reliance on the ELS system raises potential risks in relation to responsible lending?---So if you define responsible lending as making sure that you engage with the customer and that they've – their needs and objectives are being met, that you then get financial information to be able to ensure that the facility that you are giving them you've got the right information and then you verify it, so it's not an unsuitable loan, ELS has been able to do that. The issue around this is that if you want to be competitive in this marketplace, you need find – you need to find ways to do that better than the way we are doing it currently. And some of the information that we want to collect to enhance our responsible lending practice is not just in – in what we're doing here, but right across the bank, will not be able to occur because there will be changes. The challenge that if you're not integrated into the main part of the bank is that you will not keep up with the pace of change that is occurring. So as we continually evolve the business, if we're not integrated, we will get left behind and there will be a chance that we will create greater problems later down the track. So I just want to be really clear that we are – it is a consideration, but it's not the reason, and that if you take responsible lending as those key points, we are – you know, we've had some deficiencies in our processes but, you know, as I've explained today, we've done an enormous amount of work, because our philosophy and our approach was that we would always get funding and we would continue to participate in this part of the market.

THE COMMISSIONER: But not growing your business is not something that would constitute a risk, is it, that would be reported by the chief risk officer to the board?---Not growing your business?

Yes. If your business was starting to stagnate?---No. No. It's not a risk issue. It's not a risk issue.

5 It's not a risk issue at all?---But the point is that if – we've made some decisions in certain parts of the way that we operate not to get scaled, because we're uncomfortable that the system is not scalable. And, as the world changes at furious pace, if you don't have a good digital offering – and remember I'm – ELS is a system that got launched in 1982. And it's just we won't have a business. And if we continue to not be integrated, even if we kept it the same size of business that we
10 have today, and we weren't integrated into the ANZ systems, the ANZ systems will get updated and we will be in the dark ages and we will put more risk into the bank. And that is – that is the truth of the rationale of the decision. So I – I appreciate how you get to this by looking at some of the wording, but that is the fundamental rationale for the decision. It is – since I arrived in the business, as I've said on
15 numerous occasions, it was – of all the things that we were dealing with, this global asset finance system, getting it into – into – into – the consumer asset finance part on to it was mission critical number 1. And, you know, there's a whole team of people in ANZ who want to continue this business, but if we can't get funding and there are other priorities for the organisation, well, then, a decision will be made later in the
20 year what we do moving forward.

Yes.

25 MR DINELLI: But the system was good enough to continue to operate during the whole of 2017 when there was an extreme risk related to responsible lending?---Again, I would like – is it possible for - - -

30 The answer is yes or no, Mr Mendelson?---I have answered what I understand the rationale for the extreme risk was. I would like – is it possible for me – as I said, my understanding of what the extreme risk was was related to the ASIC investigation. It had nothing to do with – with ELS.

35 THE COMMISSIONER: I think – at least I understand that that's how you want me to understand the documents. My difficulty, so that – and I think we've grappled with it enough, but, if we haven't, this is your chance – I don't see in the documents - - -?---I understand.

- - - anything about that?---I understand that.

40 You tell me that I should read them through the lens of the three intermediary ASIC investigation. Is that right?---I'm here under oath.

45 Yes. Yes?---I'm telling you what I believe is the truth. A lot of these documents, even working in the business I'm not privy to. I don't attend this. But that has always been my understanding. If there's something different, I am happy to come back and clarify that.

MR DINELLI: I have nothing further.

THE COMMISSIONER: Yes, thank you, Mr Dinelli.

5 MR DINELLI: Thank you, Commissioner.

THE COMMISSIONER: Does anyone other than ANZ seek leave to cross-examine? No. Dr Collins?

10

<RE-EXAMINATION BY DR COLLINS

[12.51 pm]

DR COLLINS: Yes. Thank you, Commissioner.

15

Mr Mendelson are you a member of the Operational Risk Executive Committee?---No.

20

Were you a party in any respect to the decision to increase the risk rating for asset finance to extreme?---I wasn't party – so, to be clear, my understanding – I was told by the Australian risk officer that that was her desire, and I didn't push back on it.

25

Okay. In answer to a question from the Commissioner, you said that one of the problems with interactivity between the ELS and the broader ANZ system was that the wider ANZ system has sophisticated new credit systems. Can you explain what you meant by that?---Yes. It – we have invested an enormous amount of money as an organisation in upgrading all of our credit operating systems from acquisition and including the collection system. So they are a far more accurate, far more efficient and I'm not well versed in exactly what they do, but it has been a major project that has been going on for quite a few years. And we were always – as part of the GAF program, we were – the expectation was that we would be integrated into those systems.

30

35

Are you able to put a rough dollar figure on the investment in the sophisticated new credit controls in the wider ANZ system?---It would be – my estimate would be it would be well over \$100 million, if not greater.

40

And to what extent, if at all, do those sophisticated new credit systems relate to responsible lending obligations?---Well, in my understanding of responsible lending as I outlined before, they will make it more efficient, but it will not – we still will – you know, we still are within our obligations, as we are with the ELS system, but it will – it will make the efficiency of executing that far greater and will allow the business to scale, as I said previously.

45

THE COMMISSIONER: More efficient and more accurate or just more efficient?---I think – potentially – more accurate – more efficient, more accurate. I

can't comment – more accurate – I'm not well versed enough in the systems to give you a really an honest answer.

Yes.

5

DR COLLINS: Mr Mendelson - - -

THE COMMISSIONER: As I say, we can take you to the limits of your knowledge. We can't take you beyond that, Mr Mendelson. Yes.

10

DR COLLINS: Mr Mendelson, the Commissioner asked a question about the typical dealer contracts which explain the remuneration structure within Esanda during the period of the frauds that you've given evidence about. I wonder if the operator could display ANZ.800.159.1151. I might just say for the transcript I'm instructed this is a document that was produced in response – with other documents to notice to produce NP007. Are you familiar with this form of document, Mr Mendelson?---No, I'm not, because I never worked in the dealer business.

15

I might have to do what Mr Sheahan did yesterday. Can I ask – can the operator scroll - - -

20

THE COMMISSIONER: Just swap places with Dr Collins. Swap places with the witness. We will be right. Yes. Go on.

DR COLLINS: We will see how I go. Could the operator go to the bottom of the page. There should be a footer at the bottom of that page. Does that assist you? Did you recognise it as a document from the ANZ system, Mr Mendelson?---Truthfully, no.

25

Could I ask the operator to go to the next page. Do you see it's a document now headed Dealer Agreement, Esanda Dealer Agreement, Australia and New Zealand Banking Group Limited. Have you seen documents like that before?---Not dealer agreements, no.

30

I can't take this any further, Commissioner.

35

THE COMMISSIONER: Can I – the point of my inquiry, Dr Collins, so that you can at least point me in the right direction, is I want to see the term or terms that governed things like flex commission, dealer origination fees, those issues.

40

DR COLLINS: This document does all of that - - -

THE COMMISSIONER: Yes. And - - -

DR COLLINS: - - - and I can take you through, it if that assists, Commissioner, but I would only be doing it from the bar table.

45

THE COMMISSIONER: Well, I just need to be pointed to what you say – let's cut to the chase. I need to know whether ANZ accepts that this was a document typical of the time, whether ANZ can point to the terms that governed charging of flex commissions and the like. Now, the witness can't help you, I understand that, and
5 we need to go as far as we can with the witness to get him to the point of being released. So you might take those questions on notice and tell me immediately after the adjournment.

DR COLLINS: This document - - -
10

THE COMMISSIONER: Is that the most convenient way of dealing with it?

DR COLLINS: That would be convenient.

15 THE COMMISSIONER: Now, is there anything else you need to deal with with Mr Mendelson?

DR COLLINS: No, Commissioner.

20 THE COMMISSIONER: Is there anything that arises, Mr Dinelli?

MR DINELLI: No, your Honour, other than a slip on my part not to have tendered the last document.

25 THE COMMISSIONER: I will come back and deal with that. That will be exhibit 1.154, chief risk officer report, 21 February '18, ANZ.800.315.1639.

30 **EXHIBIT #1.154 CHIEF RISK OFFICER REPORT DATED 21/02/2018
(ANZ.800.315.1639)**

THE COMMISSIONER: We will come back and deal with the dealer contracts. There's nothing else, then, we need of Mr Mendelson, is there, I think?
35

MR DINELLI: No, Commissioner.

THE COMMISSIONER: Mr Mendelson, thank you for giving evidence. You're excused further attendance.
40

<THE WITNESS WITHDREW [12.59 pm]

45 THE COMMISSIONER: It's almost precisely 1 o'clock. If I come back at 2 o'clock, is that – yes. We will adjourn until 2.

ADJOURNED

[12.59 pm]

RESUMED

[2.00 pm]

5

THE COMMISSIONER: Now, Dr Collins, this dealer contract, if you can just identify the relevant clauses of it.

10 DR COLLINS: Yes, of course. Could the operator display ANZ.800.157.1632. Commissioner, we're instructed that this is a template document which sets out how commissions, including flex commissions, were charged on Esanda Finance asset acquisition contracts at least in the period 2014. But we've seen equivalent versions from other periods, and the same structure is evident in all of them.

15

THE COMMISSIONER: And is this to be read together with the earlier contract to which reference was made?

20 DR COLLINS: That's right. Now, the contracts, of course, varied from time to time, and this is the template only of the Commission pages. Would it assist if I talked you, Commissioner, through how it works?

THE COMMISSIONER: How can I put this nicely, Dr Collins - - -

25 DR COLLINS: No?

s
THE COMMISSIONER: Not yet, is perhaps the nicest I can put it, Dr Collins.

DR COLLINS: Commissioner, I tender the document, and we will sit down.

30

THE COMMISSIONER: Exhibit 1.155 will be dealer contract ANZ.800.159.1151.

EXHIBIT #1.155 DEALER CONTRACT (ANZ.800.159.1151)

35

THE COMMISSIONER: Exhibit 1.156 will be ANZ.800.157.1632, business partnership and dealer arrangement form.

40

**EXHIBIT #1.156 BUSINESS PARTNERSHIP AND DEALER
ARRANGEMENT FORM (ANZ.800.157.1632)**

45 DR COLLINS: Thank you.

THE COMMISSIONER: Yes, thank you, Dr Collins. Yes, Mr Dinelli.

MR DINELLI: Thank you, Commissioner. As I indicated in my mini-opening in relation to the car loans issue, I intend to tender a statement of Mr Michael Saadat of ASIC. So if I may do so. He will not be required to give viva voce evidence, and he received a summons, which I tender.

5

THE COMMISSIONER: Exhibit 1.157, summons to Michael Saadat.

EXHIBIT #1.157 SUMMONS TO MICHAEL SAADAT

10

MR DINELLI: And second, I seek to tender his statement, dated 5 March 2018, with exhibits. And that is WIT.0001.0003.001.

15 THE COMMISSIONER: Exhibit 1.158 will be statement Michael Saadat, 5 March 2018, WIT.0001.0003.001.

**EXHIBIT #1.158 STATEMENT OF MICHAEL SAADAT DATED 05/03/2018
(WIT.0001.0003.001)**

20

THE COMMISSIONER: Yes.

25 MR DINELLI: Thank you, Commissioner. Commissioner, we've now reached the sixth and final topic of the consumer credit topics to be addressed in the course of these hearings. That topic is credit card lending. As at January of this year, there were 16.7 million credit card accounts in Australia. In the same month, that is, in January of this year, the total value of outstanding balances on credit cards in
30 Australia was 51.6 billion, of which 32.6 billion was incurring interest.

Lending associated with credit cards, however, comprises a relatively small proportion of the assets of ADIs, about 1.8 per cent of the gross loans and advances of ADIs in January 2018. Credit cards provide consumers with two main types of
35 service: access to a means to conclude payments and access to credit. Typically, credit cards offer a period of grace of up to 55 days prior to interest being incurred. Customers who pay their outstanding credit card balances off in full within that timeframe incur no interest. They mostly use the cards for the purpose of concluding transactions. They're sometimes called transactors. Revolvers, on the other hand,
40 tend to continually rollover their monthly credit card balances incurring interest at the prevailing rate. Annual fees and other charges are also common.

Reserve Bank of Australia data indicates that the typical interest rate on a standard credit card has remained at 19.75 per cent for the last three years. For low interest
45 rate cards, the typical interest rate was 12.95 per cent in February 2018. In its 2015 submission to the Senate Economics References Committee Inquiry into matters relating to credit card interest rates, the Reserve Bank of Australia noted, and I quote:

That interest paying revolvers account for about 30 to 40 per cent of accounts and about 20 to 25 per cent of transactions, but close to two-thirds of the outstanding stock of debt.

5 The RBA also noted that the proportion of revolvers is somewhat higher for lower
income households than higher income households. Credit cards, including charge
cards such as American Express and Diners Club are an increasingly popular mode
of concluding transactions, with the proportion of transactions made via credit cards
10 increasing from 11 per cent of all transactions in 2007 to 22 per cent in 2016. Over
the same period, the proportion of value of daily transactions made via credit cards
increased from 23 per cent to 28 per cent. Technological advances such as tap and
go technology are likely to further increase the share of transactions concluded by
credit cards.

15 I wish to say something about ASIC regulatory action. ASIC has taken regulatory
action in respect of contraventions of the National Credit Act in respect of credit card
lending. For example, ASIC has sought remediation for consumers of credit card
limit increases, particularly the failure to properly assess whether a credit card limit
increase is not unsuitable following the use of automated processes. ASIC has also
20 sought remediation for affected purchasers of consumer credit insurance in relation
to credit card products in 2017. Further, as Senior Counsel Assisting noted in their
opening statement made on 13 March, ASIC has obtained four outcomes against
three credit providers for breaches of responsible lending provisions of the National
Credit Act since 2010. These outcomes include \$1.5 million paid in civil penalties
25 and 11.3 million paid to remediate over 34,000 customers.

ASIC has also sought changes to compliance systems, processes or frameworks,
including in relation to changes to a credit card interest rate policy on the default rate
of interest, effective from 28 February 2012. Regulatory guidance and reports have
30 been published by ASIC on the prohibition of the unsolicited sending of credit cards
and debit cards to consumers in 2010. And sales practices for credit cards and
consumer credit insurance products in 2011 and 2017. ASIC has also publicly
disclosed that it is conducting targeted industry surveillance on credit card insurers
on the effect of credit card design and use on borrower debt levels.

35 A final report is scheduled to be released in the fourth quarter 2017/18. Legislative
reforms are also in the pipeline. One issue that has arisen in respect of the
assessment of suitability of credit cards is that the obligation relates only – to only
the minimum repayments required to be made to the entity issuing the card. This
40 sets a somewhat low threshold for the consumer’s ability to meet their financial
obligations under the contract. As the Commission heard in the evidence of Ms
Karen Cox, coordinator of the Financial Rights Legal Centre, the centre has observed
credit card increases made to people in circumstances where they could not
necessarily pay the credit they already had.

45 Recent amendments to the National Credit Act will change this, so that if a consumer
would be unable to repay an amount equal to their credit limit within a specified

period, they will be taken to be able to comply with the contract obligations only with substantial hardship. These changes will come into effect on 1 January of next year. Another upcoming reform is to introduce a ban on unsolicited offers of credit limit increases from 1 July 2018. Providers will also be required to give consumers
5 online options to cancel cards or to reduce credit card limits from 1 January 2019. The reforms will also allow consumers to reduce credit limits and terminate credit cordon tracts, including by online means.

I now turn to say something about the case studies about which you will hear over
10 the next day. In the first case study presented today, we will hear evidence from a consumer, Mr David Harris, who provided a public submission to the Commission. As the Commissioner is aware, many Australians have made submissions to the Royal Commission. As at today, there are 2581 public submissions, and there will be more in due course as the Commission's work continues. One of those 2581
15 public submissions is Mr Harris. Mr Harris will give evidence about his experiences in being offered and obtaining credit cards and credit card limit increases from the Commonwealth Bank of Australia.

Mr Harris had a gambling problem of which CBA was aware, at least when credit
20 limit increases were offered, and perhaps ought to have been aware earlier. Nevertheless, Mr Harris was offered a credit limit increase only days after telling the Commonwealth Bank of Australia, who has already given evidence before the Commission, will respond to Mr Harris' evidence and also provide an insight into the Commonwealth
25 Bank's credit card operations more generally.

The next case study will look at Westpac Banking Corporation's bank initiated credit card limit increases from 2012 to 2014. They were later the subject of a remediation of customers facing financial difficulty after ASIC raised concerns that Westpac had
30 failed to make reasonable inquiries into the income and employment status of customers before offering and approving limit increases. In its response to the Commission's letters of December last year and February this year, Westpac acknowledged that ASIC had raised such concerns. Westpac noted that in December 2014, it temporarily suspended credit limit increase invitations until it had
35 implemented changes to its processes. As part of its ASIC-approved remediation program, Westpac made customer refunds and write-offs of around \$11.3 million and contributed \$1 million over four years to support financial counselling and literacy. Both Westpac and ASIC released media releases in relation to this issue last month on 7 February 2018.

40 Westpac also acknowledged in its response to the Commission's request for information that in 2012 ASIC became concerned that a message sent by Westpac to customers about credit limit increases created the impression that a customer had to consent to receive invitations for credit limit increases in order to receive the full
45 benefits of their credit card. About 3700 customers had responded to that message providing their consent. In response to ASICs concern, Westpac withdrew the message and agreed not to rely on the consents received pursuant to it.

Westpac also acknowledged two other instances of misconduct in relation to credit cards. In 2015, Westpac identified that it had applied interest rates to the starts slow stays low card outside of the lowest quartile in the market which was inconsistent with an enforceable undertaking provided to ASIC to monitor the card and keep it in the lowest quartile. Approximately 67,000 customers were affected, and Westpac conducted a remediation resulting in payments totalling \$2.1 million. A further case study will concern the investigation of the structure of remuneration packages of the credit card sales, marketing and product teams, including the use of sales and other targets in respect of credit cards as part of staff key performance indicators.

To that end, statements have been received by the Commission from Mr Gareth Russell, CBA's general manager, human resources, retail products, direct channels and digital and from Ms Carol Separovich, Westpac's head of reward and performance management for consumer bank, business bank and support functions. Finally, Commissioner, you will hear about city link's [erratum: Citibank's] practices relating to international transaction fees and credit and credit cards. In its submission, Citibank did not distinguish between misconduct and conduct falling below community expectations. Rather, it established a single category of reportable matters. One such matter, acknowledged by Citibank, related to the charging of a fee on Australian dollar transactions in situations where customers purchased from retailers who may not necessarily have an obvious foreign connection and are thus subject to the imposition of an international transaction fee.

International transaction fees are charged when online merchants charge consumers in Australian dollars, but process the transaction through an international merchant acquirer, triggering the scheme international transaction fee and the issuer international transaction fee. In those situations, it was identified that Citibank's disclosures to customers could be improved, so as to convey a clearer understanding of when particular retailers are subject to international transaction processing fees by card schemes. ASIC released a media release in relation to this issue on 31 March 2017. The media release noted that Citibank had refunded approximately \$5 million to around 230,000 customers. Commissioner, having introduced the sixth and final topic, I now call the first witness, Mr David James Harris.

THE COMMISSIONER: Just before Mr Harris comes forward, I think have we got to change counsel at the bar table. Do you mind if we get on and do that straight away. I won't leave the bench. Sorry. You were all geared up to go, Mr Harris, and I promptly interrupted. If you would come forward, Mr Harris.

<DAVID JAMES HARRIS, AFFIRMED [2.18 pm]

<EXAMINATION-IN-CHIEF BY MR DINELLI

THE COMMISSIONER: Mr Harris, do sit down. Thank you. Yes, Mr Dinelli.

MR DINELLI: Thank you, Commissioner.

Mr Harris, can you please tell the Commission your full name?---David James Harris.

5

And you have provided the Commission with your address. I won't ask you to say it. What is your occupation?---I am a roofer qualified in both roof tiling and roof plumbing.

10 Thank you, Mr Harris. Mr Harris, have you received a summons to appear today?---Correct. Yes, I have.

I tender that summons.

15 THE COMMISSIONER: Exhibit 1.159, summons to David James Harris.

EXHIBIT #1.159 SUMMONS TO DAVID JONES HARRIS

20

MR DINELLI: Thank you, Commissioner.

And Mr Harris, in preparing to give evidence today, did you prepare a statement?---Correct, yes, I have.

25

And you signed that on 18 March 2017?---Correct.

And it's got a number of exhibits?---Yes, correct.

30 And is that statement true and correct?---Yes, it is.

I tender the – that statement.

THE COMMISSIONER: Exhibit 1.160, statement of David James Harris.

35

EXHIBIT #1.160 STATEMENT OF DAVID JAMES HARRIS

40 MR DINELLI: Thank you, Commissioner. Mr Harris, can you tell the Commission about yourself?---So I'm from England. I came over in January 2013 on a working holiday visa. I started working within two weeks of being here, and then I got sponsored at the end of my first year, which mean I was on a 457 visa, which run until February 2018.

45

And I understand you've applied for permanent residency in Australia?---Yes, correct. I'm still waiting for that.

And you work as a roofer?---Yes, I'm – yes, roof tiling and roof plumbing.

I see. And how long have you worked in that job?---Since I left school, since I was 16. So 14 years.

5

And your statement and your evidence before the Commission concerns credit cards that you obtained from the Commonwealth Bank. Can you explain to the Commission how you came to obtain a credit card from the Commonwealth Bank?---Yes. So in around November/December 2014, I applied for my first credit card. I was going to Thailand in – I was going back home first just before Christmas and then Thailand in January where I was getting my teeth done. So I wanted to make sure I had enough money while I was there just so I didn't – just be able to get my teeth done while I was there. So that was my first credit card which was approved which had a limit – had a limit of \$10,000.

10

15

When you say your first credit card, you hadn't had any other - - -?---I have never had a credit card in – nor – in either in Australia or back in England.

20

I see. And you were working at the time?---Yes, I was – so when I applied for that, I had been – I had just done nearly my first year of my sponsorship. So I was on a salary.

What, if I may ask, was your salary at that time?---\$70,000 a year.

25

Is that still your salary now?---No my – it went up in around June 2017 to 77,000.

I see. And you said you got your first credit card at the end of 2014?---Correct.

30

For what – what was the credit limit?---\$10,000.

Thank you. And did you then use that credit card?---Yes, I used around – over half of it. I think I put around \$6,000 on it for my teeth and a couple of hotel payments, and then I got back to Australia in February of 2015. I paid that card off, I believe, within a month and a-half to two months of being back in the country.

35

Yes?---And then I began gambling on my card.

Okay. And you said that you started gambling – when – what period was this?---It would have been early – first half of 2015, obviously after I got back from Thailand.

40

I see. Had you gambled before that?---I've gambled before, but never to the extent that I had done here. So it was always with my own money. I gambled for – I gamble a weekend for fun, not – never excessive amounts of money, just a few bets here and there.

45

And were you using that credit card for that gambling?---Correct.

And how were you using - - -?---Transferring money from my credit card to my bank account, then from my bank account to the betting companies.

5 I see. And did you – did you use the full amount on your - - -?---I’ve used it quite a few times. So I would max it out, pay off chunks. I would try and work over time to help pay off chunks of it as well and then wait until it – I got a big win or either I had saved up a load of money to pay it off, and then I would do it again.

10 I see. And I think you described that about April or May 2015?---Yes, in - - -

Did you – and you had one credit card at the time?---Yes.

15 When did you come to get a second credit card?---It was in May – in 2015 I got my second credit card with a limit of \$7000.

I see. And why did you get that second credit card?---To gamble with. I kept – I kept – I had the – so I think at the time I – I had maxed out the \$10,000 card. I was panicking about trying to pay it off, and the only way I could see was to try and win some money to pay it off.

20 And then, as I understand it, you got a third credit card?---Correct.

25 Later that year; is that right?---November. In November, I got my third credit card which was \$8000.

Was that also through CBA?---Yes.

All right. And what was the credit limit for that?---8000.

30 Okay. And in your evidence you say that then soon after that, you were offered a credit card limit increase on - - -?---I believe that was three to four weeks after I had got the third credit card. They offered me an increase on my first credit card from 10,000 to – I believe 12,100.

35 I see. And they offered that to you – how did they offer that to you?---I – I – it was through a letter they sent to my house.

I see. And you accepted that, did you?---Yes, I did, yes.

40 So between your three credit cards then at the end of 2005, what was your credit limit?---27,100.

And were you still – were you still in that cycle that you described - - -?---Yes.

45 - - - of maxing it out and then paying - - -?---Consistently, yes.

And were you using that for your gambling?---Yes.

And how did you – or were you able to continue paying off some or all of - - -?---Not in – not in full amounts, this – it’s ridiculous. Ridiculously large amount of money for somebody who was earning my wage that I do. So I was working six and seven day weeks, pretty much – pretty much the last three years. At one point, I done 62
5 days in a row. Had one day off and then done over 40 days straight, which isn’t easy when you’re working on roofs in the sun.

Obviously. And you then have given – or in your statement, you go on to explain a process of consolidation of those credit cards?---Yes.

10 How did that happen?---So I believe I – I banked some money at a cash point and it didn’t – sometimes it goes – automatically straight into your account, and it hadn’t gone in so I rang up the bank to find out why it hadn’t gone in, and then the woman started asking why I had three credit cards, saying that they could consolidate into
15 one, so I would – rather than paying the three different lots – rates of interest, they would put it on to my lower rate card so I was paying the lower rate of interest.

I see. And you proceeded to consolidate – they were consolidated then?---Yes, yes, correct.

20 And the total limit of which – so then you had one card with \$27,100?---Yes, yes.

Now, that occurred, I think, in about April - - -?---April.

25 2016?---Yes.

You had a discussion with CBA in around – with the Commonwealth Bank, or one of its representatives in October 2016?---Yes.

30 Can you tell the Commission about that?---So in October, I rang the bank to – basically, I had tried changing my address online so I could get a new statement with my new address on, and it wouldn’t let me print it out. So I rung up – rung up the bank so they could get one sent out to my post with the new address on. After they sorted it out obviously the statement I needed, the bank proceeded to say that I was
35 eligible for another credit limit increase to which I replied no, and they carried on asking what – what do I want to do with it. So I explained that clearly, I’m a gambler, I have a gambling problem. They can clearly see I’ve got a gambling problem because of the transactions I’ve been making. I can’t understand why they keep offering me more money.

40 And you then received a letter - - -?---10 days later.

That’s right. Is this – I might call up DJH3. Is this the letter that you’re referring to, Mr Harris?---Yes, correct.

45 Offering you an increase from 27,100?---To 32,000.

That's right. And then - - -?---Four weeks after that.

Well, if you could – maybe I will call up the DJH4?---Yes.

5 It might be the next page?---Yes, second page of it.

Is this the letter - - -?---Yes, yes.

- - - four weeks later?---Yes.

10

And - - -?---They proposed 27 – they changed it from 32,000 to 35,100.

Did you accept that invitation?---Not immediately, no. I ignored it for around another month and a-half or something. And – so at – at that time as well, every time
15 I was making transfers on my bank account, paying my rent or anything, it would come up you are eligible for a credit limit increase, you are eligible for a credit limit increase every time.

15

And did it – did the credit limit – was it ultimately increased to 35,000 - - -?---Yes, in
20 January of 2017, I increased it.

20

And then what did you – what happened after you had the \$35,100 - - -?---I maxed it out within a space of month, two months, then borrowed 35,000 off my boss to pay it off. I went into the bank to close my account where my boss came with me to make
25 sure I was closing it because he knew I had a problem. He was trying to help. I went into the bank, and they said in the bank that I couldn't close it in the branch. I would have to call up to completely close the account. So I rang the bank to completely close the account, and they said I had to do it in a branch. So ultimately I decided just to cut up the card and not use it for, I think, around three months.

25

30

So you cut it up, did you?---Yes.

But had you closed the account?---They – I don't believe so because I tried to close it. I tried to close it in the branch, tried to close it on the phone, and they told me
35 either one that I had to go to the other one, basically.

35

And so what did you – you said that you cut up your cards?---Yes.

Was that the end of your using the credit card?---For a while, yes. For around two
40 months, two to three months.

40

And then what happened?---And then I applied for a new credit card – just a replacement card, which got sent through, and then I maxed it out again in an even
45 shorter period.

45

You raised a complaint with the Commonwealth about this?---Yes, so after maxing out again, I – I was falling behind. I couldn't afford the payments. So the bank kept

chasing me for money, started sending letters, phone calls. I was getting phone calls all the time. A lot of them went unanswered because they were calling from a private number, and I wasn't happy speaking to my bank on a private number and giving them my details when I don't know who is calling me. So I lodged a
5 complaint against them because obviously I had reached out to the bank and two – two of the hardest things you can do when you are suffering from any addiction is (1) admit you've got a problem, and (2) reach out for help, and in that phone call with Commonwealth, I tried to do both.

10 THE COMMISSIONER: Just take a moment. Take a big deep breath, and if you want me to stop, I will stop?---It's fine.

Well, just - - -?---I tried to reach out for help and I didn't get any. I got the opposite. I got more credit limit increases sent through when I tried to tell them I had a
15 problem.

MR DINELLI: And did you have then some further discussions with - - -?---Yes, with – so nothing – nothing happened for a few weeks. I didn't get any – any – any
20 phone calls back or anything, didn't hear anything back about my complaint, just got more phone calls saying that I'm missing payments, I've not paid anything. So I launched a second complaint with – while I was on the phone to one of their – one of the people from the bank. I launched a second complaint, which was then dealt with. I got passed on to the financial assistance team and probably took three to four weeks of discussions between me and the financial team before we came to an agreement.
25 They – they offered to knock off the interest, but I basically spelt out in a very long email to them that that wasn't – I didn't think that was sufficient. So they came back with another offer, and they knocked off \$10,000 which I agreed to. So I started making payments under that agreement, which was \$100 minimum a month, but I will try to pay \$100 a week. I've been paying my payments and continued to receive
30 letters from the bank saying that I still need to send them through more paperwork for my financial assistance, even though I had already been paying it, and getting more phone calls saying I've missed payments and stuff like that.

And are you still paying off - - -?---I haven't paid in a couple of weeks because the
35 last – my last discussion with Lex who I was dealing with from the bank, I told – I told them they don't need to contact me any more. I'm already making the agreement. This was after I had received a few letters telling me that I still need to send through more documentation. I told him that if they send me any more letters, I am not going to continue paying them because it's just causing me stress. I don't
40 understand how they are not communicating. The agreement is already in place, and it has been paid for a couple of months – for two to three months it had been paid. And then I'm still receiving letters now.

And in your correspondence with the Commonwealth Bank - - -?---Yes.
45

Or perhaps I can take you to DJH6. This is around that time, September, I think you were referring to?---Yes.

You were sent a – sorry, I will let you get to that document?---Yes, I've got it.

Continuing:

5 *I am attaching our personal money plan for you to have a look at and send
back to us at your convenience in the next couple of weeks. I'm certainly here
to help –*

10 sorry. This is from a representative of – is that - - -?---Yes. That's Lex who I was
dealing with.

I see. And he says:

15 *I'm certainly here to help, and I am confident we can organise a long-term
solution to remedy you for the negligent oversights we made with your credit
facilities*

See that?---Yes.

20 He then says:

*In the interim, I have cancelled your credit card and stopped any future fees or
interest.*

25 So is it the position that the credit card is presently cancelled?---Yes.

And how much do you still owe on the credit card?---Around 23,400.

Thank you very much, Mr Harris?---Thank you.

30 THE COMMISSIONER: Do other parties seek leave to question Mr Harris? Mr
Scerri?

MR SCERRI: No, sir.

35 THE COMMISSIONER: Thank you. Mr Harris, thank you for coming in and
giving evidence. You're excused from further attendance?---Thank you.

40 <THE WITNESS WITHDREW [2.36 pm]

THE COMMISSIONER: Yes, Mr Dinelli.

45 MR DINELLI: Thank you, Commissioner. Commissioner, I might invite my
learned friend Mr Scerri to call Mr van Horen back to the witness box.

THE COMMISSIONER: Yes.

<CLIVE VAN HOREN, RECALLED

[2.37 pm]

5

<EXAMINATION-IN-CHIEF BY MR SCERRI

10 THE COMMISSIONER: Mr van Horen, you are still responding to the summons initially issued, and the oath that was originally administered still persists. Do sit down.

15 MR SCERRI: Mr van Horen, have you made a statement dated today in relation to this matter?---Yes, I have.

Do you have it with you, sir?---Sure.

20 Is it – does it have the ID number CBA.9007.0001.0001?---Yes, it does.

And does this replace an earlier statement you made about the same topic?---Yes, it does.

25 Now, the only changes to paragraph 59(g) and 59A?---Yes.

Are the contents of that statement true and correct, sir?---They are.

I tender that statement, your Honour.

30 THE COMMISSIONER: Exhibit 1.161, a statement of Mr van Horen, CBA.9007.0001.0001.

35 **EXHIBIT #1.161 STATEMENT OF MR VAN HOREN (CBA.9007.0001.0001)**

THE COMMISSIONER: Now, you said it was a document of today's date; is that right?

40 MR SCERRI: Yes, your Honour, it replaced an earlier version where we made - - -

THE COMMISSIONER: This got into the system?

45 MR SCERRI: I'm sorry, that's the document, your Honour. It was given a new number, your Honour.

THE COMMISSIONER: All right.

MR SCERRI: Could we just scroll down to paragraph 59A, just to be absolutely sure. 59A, please. Next page, please. 59A is new, your Honour, and there has been two sentences added to the end of 59(g).

5 THE COMMISSIONER: Yes.

MR SCERRI: And they refer to two new documents that we refer – Mr - - -

10 THE COMMISSIONER: What I will say, Mr Scerri, is yes mistakes happen, yes, mistakes have got to be corrected, but it is much better if it is done much sooner than on the day.

MR SCERRI: Yes, your Honour.

15 THE COMMISSIONER: It presents real difficulties for everyone.

MR SCERRI: Yes, your Honour.

20 THE COMMISSIONER: And it's a problem to which I will have to return, I'm afraid, with respect to the evidence that will be called next after this witness. Late – I know things go wrong. I know things have to be amended. Not the night before. Do go on.

25 MR SCERRI: Thank you, sir.

<CROSS-EXAMINATION BY MR DINELLI

[2.40 pm]

30 MR DINELLI: Hello, again, Mr van Horen?---G'day.

You told us earlier this week – in fact, you may have now told the Commission on two previous occasions that you are the executive regional manager of retail products within the retail banking services business unit of CBA?---That's right.

35

And relevantly, for the purpose of today, you are responsible for overseeing most aspects of the retail products offered by CBA, including credit cards?---Yes.

40 Now, am I right to say that CBA issues credit cards under two separate brands?---Yes. The group issues cards under the CBA brand, obviously, Commonwealth Bank, and also Bankwest. Bankwest is not part of my area of responsibility.

45 I see. So therefore, your statement and what we're going to talk about today deals with CBA branded credit cards?---That's right.

Now, you will recall me doing a similar thing on the last occasion we were together, but throughout the evidence you will be giving today, I am going to refer to a particular period as the relevant period?---Yes.

5 And I would like to refer to that period November 2014 to November 2015?---Sure.

And during that period, CBA offered credit cards to new and existing customers?---Yes, we did.

10 And as I assume your organisation still does, you do that in a variety of ways, the two of which – sorry, the three of which you identify at paragraph 7(a) is between conversations between CBA staff and customers in branch or over the telephone?---That’s right.

15 Or in, I guess, conversations with relationship managers?---Yes, typically private bankers or Premier bankers, yes.

I see. Messages delivered using net bank or the Commbank applicant?---Yes.

20 And mail or email correspondence?---Yes.

The – just for – just so I can maybe use your language from the bank, the assisted channels – that’s where you have a discussion with a person, either in person or over the phone?---Correct, yes.

25

That’s what you call the assisted channels?---Correct.

And the digital channels are via messages delivered on the website or the CommBank app?---Yes, the net bank which is an existing customer secure portal or
30 Commbank available to anybody or the app which is on your mobile phone.

Or and – perhaps the more traditional way by mail - - -?---Yes.

- - - and even by direct email?---Yes.

35

And you saw – you were in the hearing room moments ago - - -?---Yes, I was. Yes, yes.

- - - when Mr Harris gave evidence. So at various points in his conversation or
40 interactions with the bank, he had discussions over the phone about a credit limit increase via messages and mail. We saw examples of that?---Various interactions I think. The applications, as I understand, the initial three were digital, online, and the credit limit increases were in relation to – he responded to CLR’s. There were other interactions as well around statements, questions and various others that Mr Harris
45 referred to and other interactions.

Of course. Of course. And we will return to Mr Harris. And he will be a case study that I would like to explore with you?---Sure.

5 And I will come to that in due course. Now, am I right to say that during the relevant period, CBA would receive credit card applications through these assisted channels and also from the digital channels by people completing an online application form?---Correct.

10 And the form that you – that CBA used in relation to these credit applications varied depending upon the customer’s eligibility?---Yes, and the customer’s status or history with the group. So if – if, for example, it was a customer who was brand new to the Commonwealth Bank, we typically took them through what we call a long form, in other words, asking them significant amounts of information about employment, dependants income expenses, assets and liabilities and so on. On the
15 other hand, if it was an existing customer who had been with us for more than six months, we had credit history with them, then we would use a short form which is a shortened version of that application process.

20 I think you described the people for whom you would give a short form or a medium form – I will deal largely with short form. I will ask a question in a moment about the medium form, but the short form, if someone – I think you have already given this evidence – if someone is a customer for at least six months, low risk of missing future repayments, had a credit card product in the last six months, less than 70,000 of unsecured commercial lending exposure, hasn’t been flagged as a recipient of
25 Centrelink benefits and their salary was in a CBA account – deposited into a CBA account, you would be entitled – entitled might not be the right word, but you would be eligible to use the short form application is that right?---Yes, two points. One is this is about eligibility to go through a short form process and just one slight modification to what you said, and it is in paragraph 13 of my statement, to be
30 eligible for short form, they had not been declined for another credit card in the previous six months. I think you said had received. It was on the contrary.

I’m sorry, I’m sorry?---If you had been declined, you wouldn’t go short form.

35 So they had not been declined. If they had been declined a month prior for another credit card - - -?---They would have to go long form.

40 Okay. I understand. And is the distinction – to put it at high level, is the distinction between short form, medium form and long form the amount of information you obtain about the customer?---It’s – it certainly is – it will change the amount of information we ask for – ask customers to supply us with. The reason we can do that is because, for existing customers, we already have a lot of that information and, therefore, we don’t ask them to re-provide the information. We generally would present some of that back to them to confirm that it is accurate.

45 I see. And is that what you refer to in paragraph 13(f) where you say their salary income was deposited into a CBA account? Is that because you’re able to

prepopulate, essentially, their income?---I wouldn't say prepopulate as much as we – we historically performed an eligibility assessment. In other words, we would look at the customer's profile and for customers who had their salary deposited into CBA account, we, therefore, had a fair amount of information about what it was. And that
5 would then be used to screen the entire 3 million customer base on the credit card side to see who was eligible to go down a short form path. If they were ineligible for other reasons, then they would knock out of that and they would go through a long form or medium form.

10 I'm with you so far. And if it was a short form, what you required was the number of dependants, (1); (2) the person's expenses; and (3) the person's liabilities held with other financial institutions. Is that right?---Yes, that's right.

15 And I think we called them OFI liabilities on the last occasion we were together?---Other financial institution liabilities, OFI, yes.

Okay. And CBA would automatically derive the customer's income, as I understood – and you can correct me – but the – for the purposes of the short form, CBA – to automatically derive the customer's income based on the value of deposits and,
20 therefore, put into that form what their income was?---Yes. So I think it's important to think of – there are two stages. The first stage is determining who may be eligible. So there's an eligibility - - -

Yes?--- - - - thing that we do in the background. The second stage is when a
25 customer initiates an application. Then they will go down one of those paths. So once they have initiated a short form application, then you're correct. We would say, well, based on the information we have, from what we see look like salary credits, we think your income is X. Please confirm or change it if it's not X. And if it's not X, then they would need to tell us what it is.

30 I see. Because some of the eligibility things I think you would concede some of them are not very discerning. One of them, for example, is just if you've been a customer for six months, you sort of automatically tick one box?---Yes, correct. And, as I say in the evidence, it's set out six criteria here – it's and, it's not or.

35 I understand?---It's all of the above, not just – not just banking with us for six months.

40 Yes. Correct. Yes. And one of which is that you've less than 70,000 of unsecured consumer lending?---Yes. Yes.

I mean, again, that's, if I may so, not that discerning?---It's a high bar. I agree with that.

45 Now, for the short form one would have before – that is, the Commonwealth would have before it the information that has been put in and the customer's income, sort of prepopulated subject to the change, any change that would be made. And then after

– and it also requires, then, CBA to confirm that they’re not – that the customer is not aware of any further changes or future changes to their circumstances. Is that right?---That’s right.

5 Now, in terms of the way in which CBA verified that information in respect of the short form application, as I understand it, CBA would go to an external credit bureau check. Is that right?---Yes. So the verification path varied slightly depending on whether it is short form or long form. But in either case we would do an external bureau check. And if it was a long – do you only want to know about short form or
10 you want short form and long form?

No. Let’s deal with short form first?---Short form. So we would verify the customer’s income based on internal records which we think is possibly the most reliable of ways to verify income, because if we know the salary has been credited
15 and we can identify it is a salary credit, then we’ve got high confidence that’s correct. So that would be the way we would verify income, would be by looking at the credits in the own account.

I see. And you say that CBA, in your evidence, verified living expenses by – or perhaps I will take you to the way in which you put it under the heading Reasonable Steps to Verify the Customer’s Financial Circumstances in paragraph 25(e). And you say that the customer’s declared living expenses were compared against an internal benchmark, the higher of which was used in CBA’s assessment of serviceability. Now, we’ve discussed that before, you will recall. That involves,
20 does it not, the – the use of either the living expenses that they provided or the internal benchmark, a HEM-like - - -?---Yes, it was derived from HEM initially. And, as I have said, in previous testimony, we’ve changed to the income-based HEM, but in either case we always took the higher of whatever the customer declared themselves and what the benchmark suggested the expenses should be.
25
30

And, again, I’ve asked you this, but I want to clarify it the same in relation to credit cards. But CBA didn’t take any step to verify the customer’s living expenses that were provided?---No, we – we would consider that – we ask the customer what their expenses were and, you know, the notion of reasonable inquiries – and a lot of this
35 comes back to what is reasonable for credit applications like this. We tested that declared living expense against the benchmark living expense.

I see. And for some customers who had a low income were considered higher risk, there would be an additional check. And you would verify CBA – any CBA
40 liabilities against CBA’s records or any – or documents OFI liabilities which – against documents provided. Is that right?---Correct. So the supply where customers had an income below certain level or a credit score below a certain score in our internal scoring models. And so, if it was triggering those, then we would do the verification by looking at bank statements or the like.
45

I see. And you would do that on the basis if they had a low income?---Yes. From memory, it was an income below \$37,000 a year. And the internal score probably wouldn't mean much, because it's a credit model on a rating scale.

5 But presumably in relation to that person on – earning that much money, the credit limit that they would be interested – that they would be applying for would have some relationship to \$37,000. Would be the case?---Yes, this goes to the responsible lending question, but yes. And that's the next step in the responsible lending processes, is to test for serviceability and suitability.

10 So, in short, as I understand what happened at the relevant time, and it may have changed, but let's just deal with the relevant time, you would confirm their income, they would declare their expenses, declare their liabilities, declare the number of independents and pass an external credit check. Is that a fair summary of the situation?---Correct.

15 Now, I have put to you previously that the requirements of the National Credit Act – and I can take you back to it if you like, but you would recall from our discussion the other day and also from your knowledge of the National Credit Act, that the CBA is, of course, prohibited from entering into a credit contract with a customer without making reasonable inquiries?---That's right.

20 About their financial situation. And also taking reasonable steps to verify the customer's financial situation. I can't recall if I did take you to it, and forgive me if I did, but it might be worth returning to, RCD.0021.0001.0088.

25 THE COMMISSIONER: I think we have been here before with Mr van Horen, have we not?---Yes. I'm reasonably familiar with that.

30 MR DINELLI: Thank you. It might have been Senior Counsel Assisting or in fact it could have been me that went to this. Can I just remind you of a couple of parts of this regulatory guide?---Sure.

35 This is regulatory guide 209 – .0103. And if that could be expanded. You will recall there that reasonable inquiries about a consumer's financial situation will generally include the consumer's current amount and source of income or benefits?---Yes.

And, (b), the extent of consumer's fixed expenses?---Yes.

40 And, of course, the extent of the – sorry – the consumer's variable living expenses, and variable expenses, such as dependants and any particular or unusual circumstances. Do you see that?---Yes.

45 And you've given evidence that the extent to which you consider the declared expenses is only if they exceed the relevant HEM that you use. You don't otherwise verify those expenses?---No. We – we would take the higher of those two amounts.

In a short form we would not verify those expense numbers. If the customer says it's higher than the benchmark, then we would use that number.

And then if I could take you to the next paragraph:

5

Depending on the circumstance of the particular consumer and the kind of credit contract or consumer lease they may acquire, reasonable inquiries could also include the consumer's other expenditure that may be discretionary, such as entertainment, take-away food, alcohol, tobacco and gambling.

10

Do you see that?---Yes.

So, depending on the circumstances, reasonable inquiries could also include considering those matters?---Yes, that's right.

15

And you would concede, at least after Commonwealth Bank found out about Mr Harris' gambling, that is, after that conversation, it didn't make any reasonable inquiries before giving him a credit limit increase, did it it?---So, just to be clear, are we talking about the last credit increase from 27 to 35?

20

Yes. I'm just dealing with that?---Yes. I think, you know, as I have set out in my witness statement, we've acknowledged we should not have provided that final credit limit offer. And the basis for saying that is, having had the conversation with one of our staff members in a contact centre and declaring that Mr Harris had a gambling problem, to use the simple description of it, without in any way trying to minimise the challenge that presented, that information was not in any way passed through to credit decisioning systems. And, you know, that's a failing and we acknowledge that and we've got to find ways to address that. So, to that extent, having declared it to somebody working in the Commonwealth Bank, we did not use that information for the subsequent credit – credit offer.

30

I see. And we will come to this, but, of course, the subsequent credit offer being at the highest level of what a credit limit increase could be, \$8000?---Yes. We cap any – any one CLI, if I can use the phrase, credit limit increase, CLI. Any one CLI in our decisioning is capped at a maximum of \$8000, regardless of any other circumstances.

35

I see. If I could take you to .0107 - - -

THE COMMISSIONER: Just before we part from RG 209.33, take the case of a customer who does not identify that he or she has a problem or an addiction, but acknowledges that he or she often gambles at a stated level – take an arbitrary number, 500 a week just as a purely arbitrary number?---Yes.

40

What do you say the bank can do, what do you say the bank should do, if armed with that information?---Yes. Commissioner, complex area, and – so if I try and explain what we do do and ought to do. So my understanding of the responsible lending legislation, the RG 209 – and we should probably put scalability alongside this. I

45

know it's a phrase that's used a bit loosely at times, but it is relevant to this. There's no obligation, as I understand it, in law to take extra steps to understand how customers are spending the credit that's advanced to them. Now, you might say is it not reasonable that we should? And I would say I do believe it is reasonable that we should. And, in fact, we have started to do that. Unfortunately, it was after Mr Harris' case. But two things that we did to try and manage scenarios like this. So in April last year we changed our credit decisioning rules such that if we observed high levels of gambling spend in a customer's credit card, we would not offer them any further credit limit increases. So that was a change that happened in April last year, which in isolation should have meant we wouldn't offer significant CLIs to customers who exhibited high gambling spend on their credit card. Then in December last year we extended that a step further. As I say, I think that's going beyond where any legal requirement is. In December last year we created the capability – or implemented the capability to look at spending in both the credit card and the debit card or transaction account, because, as we see in this case study and in many others, customers are moving money between their credit card and other accounts and gambling on the other account. So simply saying credit cards for gambling doesn't actually solve the problem, because they can just transfer to the other account. And so what we've done is now, if somebody is in that scenario that their spend level on their combined accounts exceeds a threshold of income or total quantum dollar value spend of X, then we would not only not offer a CLI, we will also not accept an offer – sorry – an application for additional credit. So - - -

No. Go on. Finish?---Long answer. I think, you know, we fully acknowledge gambling is a very challenging area and, you know, Mr Harris' case study demonstrates that in spades. The challenge we have as a bank is gambling is legal and, therefore, the choice – choice we've grappled with is at what point do we say it's not okay for an adult to choose how much to spend on different activities. You can quickly see the slippery slope that puts us on if we say you can't spend on gambling. Well, then what about other, you know, addictive spending on shopping or on alcohol or any other causes? So, you know, this is what we've grappled with. Absent any clear legal or regulatory guideline, how do we determine when we intervene and impose limits?

Now, it's – I just want to tease out a bit further, not with a view to coming to some landing about what the law requires or doesn't require, but I notice in RG 209.33(a), the rubric is that, depending on the circumstances of the customer and kind of credit contract – let's confine it, therefore, depending on the circumstances of the consumer and a credit card contract, reasonable inquiries, the guide says:

Could also include other expenditure that may be discretionary, such as entertainment, take away food, alcohol, tobacco, gambling –

all of them perfectly legal activities. So my question comes to, “Can the bank do anything?” Second part of the question, you will foresee, is, “Should the bank do anything?” But let's stick with, “Can the bank do anything to identify whether the customer that is either being offered or is seeking a credit limit increase has a

spending pattern that shows that, at least up till now, he or she has been spending large sums on entertainment or take away food or alcohol or tobacco or gambling, or all of the above, or some combination”?---Yes

5 Now, can the bank identify that?---Yes. Commissioner, it’s – in many cases, yes, but not always, because scenarios exist where a customer could have a credit card with us and a transaction account with another bank.

10 Sure?---They could draw down on their credit card from our side and make a cash advance and transact on the other bank. We wouldn’t know what they’re using the cash for. They could - - -

15 Well, then – sorry – do finish?---Yes. So I think – I don’t want to try and get cute or anything, but, you know, clearly we can do these things, and have, as I said, implemented some changes which do try and identify significant cases where customers are gambling a lot. But it is – it is always going to have gaps – I say always – certainly as we sit here there are gaps and loopholes in that, because customers can move money between accounts. There are also complexities about not always knowing who a merchant is, because descriptors aren’t always clear.

20 Customers can use cash and go and spend money on pokies. We would never know that either. So, you know, I think with limits, yes, we can. Ought we to? The second part of your question. I suppose that’s a question of interpreting that guideline in RG 209.

25 Then there comes a question of law?---Yes.

And I don’t want to take you down the point of you offering legal opinions about it, certainly - - -?---Yes. Exactly.

30 if uncomfortable?---You sort of go back to the National Credit Act, which is all about making reasonable inquiries.

35 Yes?---Which is what the law says. And I don’t like to sort of rely too heavily on the scalability argument, but it is a reality because the guidelines do say scalability – you have got to have regard to the complexity of the facility, the size of the loan. From our point of view, you know, we receive upwards of 40,000 – 40,000 applications a month for credit cards, another 20,000 for CLIs. So what in those circumstances is it reasonable to expect us to do, noting that the large, large majority of people who do use their cards for gambling, you know, they are very occasional gambling spenders?

40 And, therefore, rather than that rather complex set of inquiries, does the inquiry become simpler and more relevant as saying that the bank, as lender, should look at at least its own records to see the comparison between money in and money out?---For – for responsible lending purposes, Commissioner, or for gambling - - -

45 No, just - - -?---Just generally?

Regardless of what money is going out for – assume – it’s Micawber, isn’t it?---Yes.

What was it? Income 20 pounds, expenditure 20 pounds or sixpence, etcetera. It’s a long time since I read Copperfield. But the basic question is money in, money out.

5 If you look at your customers’ accounts and you see that money out each month is greater than money coming in each month, or whatever period you take, should that be a flag that says, “Look, we might need to inquire about why the customer wants a credit increase or whether we should offer the client a credit increase”?---I see where you’re going, Commissioner.

10 Well, I’m glad you do?---The difficulty – the – yes. You know, I don’t want to sort of put problems in front of that question, but, you know, in a perfect world we would have complete visibility of all the ins and outs, all the income and the expenditure of a particular customer, but the nature is many customers are - - -

15 That’s why I say of your – what you’ve got?---Yes.

And you can’t at the moment look at what other financial institutions - - -?---No.

20 - - - have got, and all you can see is what’s going through your bank?---Yes. Yes. And that sort of comes back to the heart of the responsible lending obligations, to make those reasonable inquiries about financial position, income, expenses, OFI liabilities, own liabilities, and so on.

25 What I’m, I think, grappling towards - - -?---Yes.

- - - and very imperfectly, is whether the inquiries about the expense side of the ledger need to, in effect, begin from the premise that “Our records show that you, Mr or Ms Customer have outlays of X dollars per month”?---Yes.

30 “You need to tell us, as lender, what your X dollars a month is going on”?---Yes.

Rather than trying to build up from you spend X dollars on food, Y dollars on this, Z dollars on the other?---I think, you know, it’s an idea that we’ve been trying to execute on. For example, so if I can sort of play the scenario back, so we have a thing called Spend Tracker, which I think is a little bit to what you’re describing, Commissioner.

40 Right?---Correct me if I’m wrong. But, essentially, where customers do transact with us, that – and it’s tools available for free or our online apps and so on – where spend is categorised according to different categories. So it could be, you know, groceries, entertainment, transport or whatever. Now, we’re not there yet, and this is definitely not, I don’t believe, required anywhere in legislation. We’re trying to deliver this value to customers to say, well, we can help you understand your spend, and track and categorise your spend every month, so that you can get a better feel for how much you spend on transport, on entertainment on everything else. Now you could fast forward that idea, you know, a long way with its imperfections and that

could create what I think you are describing, which is data-driven view of customers' actual expenses, which could then be used in decision-making. Have I captured that correctly?

5 Yes. Or – and/or – and they're not true alternatives, they're perhaps cumulatives. Are we at a point where you should be saying to customers, "You show me that you've got a surplus reasonably regularly that would enable you to service at the rate of, here insert number, the further credit increase that either we're offering or you're asking for, or however it has arisen." Is that what is required?---Yes.

10 Could that be delivered? Could it not be delivered?---Yes. It's a – if I can try and interpret that differently, it's a different way of describing a serviceability assessment, because serviceability assessment is saying, based on the income, based on the expenses, we think you've got X left at the end of the month to service your credit card or home loan or anything else.

Well, "based on what you've told us under these categories, you've got X left"?---Yes, more granular information. Yes.

20 Yes?---Yes.

Well, and - - -?---Yes, absolutely. You know, aspirationally, that's where we want to get to, noting that there are a lot of complications, because we only ever have a partial view of a customers' financial situation. You know, invariably, customers will be multi-banked, they will have accounts elsewhere, and we just wouldn't know what that is. Comprehensive credit reporting will help with that in some ways, but not on the expense

30 Is it common for customers to multi-bank, as you put it?---I believe it is. I mean, you know, competitively, commercially, we would, obviously, love that not to be the case, but if you look at the number of products our customers have – and this is published data – on average, customers of the Commonwealth Bank have around three products per customer with us, and other banks are not that much different to that, a little bit less but not a lot less. On average, Australians have more than three products with financial institutions. You know, typically it will be a transaction account, a credit card, a mortgage, insurance of some kind, savings accounts, etcetera. So, you know, I think, statistically, not many people would have all of their banking with one institution.

40 I have interrupted you far too long, Mr Dinelli.

MR DINELLI: Mr van Horen, can I continue taking you to a couple of provisions of the regulatory guide?---Sure.

45 209.46, which is on the screen now. You would agree, would you not, with the statement – or ASICs statement that:

You are obliged to take reasonable steps to verify a consumer's financial situation. And, generally, this will require some positive steps to verify the information provided by the customer.

5 ?---Yes.

And at 209.93 on page – I think it's 34 of this – at .0121, you would agree, again, that the assessment of whether a credit card contract is not unsuitable – I the last sentence:

10

Must be based on the information you obtained and verified when you made reasonable inquiries about the consumer's financial situation.

?---Yes.

15

And, at least insofar as the short form is concerned, there's no verification of liabilities, is there?---I believe in the short form process, we would check our own data on customer's liabilities - - -

20

Yes?--- - - - but not OFI liabilities, unless they fall below that income or risk score threshold I mentioned earlier.

And we've already dealt with expenses. And, other than the application of the HEM or the modified HEM, you've said that there's no other steps taken in relation to the expenses that are provided by the prospective customer or the customer seeking a credit card or credit card limit increase?---Yes.

25

Now, if you go – if I can take you to your assessment, if a card is not unsuitable, this refers to a term you used with the Commissioner a moment ago about serviceability of the product. So the process that you will use is set out in those four subparagraphs?---Yes.

30

And I will take – well, I will put it up on the screen, but it's on page 5 of your statement. And, specifically, at paragraph (k) it is that:

35

The serviceability assessment, which was an automated process, took into consideration the customer's financial position and assessed the customer's servicing surplus.

40

Now, is the servicing surplus – am I right to say that the servicing surplus is the amount of income over the expenses – is that what you would describe as a servicing surplus?---Yes. Income minus expenses equals servicing surplus.

Yes. And when you describe it as \$25, you then go on to say:

45

The minimum serviceability required the customer to have a surplus of income over expenses and liabilities the higher of 2.5 per cent of their credit card limit or \$25.

5 ?---Yes, that's right. So, you know, whatever the servicing surplus is, that needs to be the greater of \$25 or two and a half per cent of what their proposed credit limit is, the one they're applying for.

\$25 over how long? Is that over a month?---That's monthly, yes.

10

Yes. I see. So your assessment will be that a person is able to get a – if I'm right, if they, on the basis of the expenses they declare or the application, if that's below the HEM - - -?---Yes.

15 - - - and the income, if their surplus is \$25, am I right to say that that will – and they want a \$1000 credit card limit?---That's right. Times 40, yes.

20 That will then satisfy it?---Yes. You know, I think you should probably – with respect, I would suggest you focus more on the two and a half per cent, because the majority of credit card limits are more than \$1000.

Well, I will give you - - -?---So the relevance of the two - - -

25 Please?--- - - - and -half per cent – so what this is – what this is doing is testing the not unsuitability of that customer for that credit limit. The two and a half per cent is relevant because the minimum repayment is, as I am sure we will come to, on any credit card is two per cent. Two per cent of the outstanding balance.

30 Yes?---And so think of this as a small buffer to say that you need to be able to pay two and a half per cent, in other words, slightly more than the minimum.

I mean, Just using my example, though – using my example of the \$1000 if I may?---Sure. Sure. Yes.

35 I will use higher amounts. But, using my example, the buffer that they have is \$5 over the course of a month?---Yes. Obviously, the bigger the credit limit, the bigger the buffer.

40 Absolutely?---Yes.

But you require customers to be able to pay two per cent of their credit limit – sorry – I withdraw that. Two per cent of what they owe on their credit card?---Is the minimum, yes.

45 Is the minimum per month?---Yes.

So if we assume that someone has – this hypothetical person has a \$100 credit card, they will be required to pay – and it's fully – assume it's the \$1000 – they will be required to pay \$20?---That's right.

5 And on your servicing surplus, you say – or your process is that the credit card is not unsuitable, provided that there is, in the case that I just gave, a \$5 surplus available per month?---Yes. I think the maths will follow and it will vary depending on what limit you are using.

10 Absolutely?---Absolutely, yes.

Absolutely. And is that an issue that you've given consideration to about whether or not that appropriately reflects what is a not unsuitable – or what is – the Act says is a circumstance which is a not unsuitable circumstance for the giving of credit?---Yes.
15 We've given a lot of consideration to this in lots of different respects. And, as you indicated in your opening earlier, you know, never mind what we've given consideration to, the law is going to change shortly, which will require, not a different repayment, I might clarify, but a different number to be used in the serviceability assessment. So that number is still to be put out by treasury and ASIC.
20 But there will – the indications are that that two and a half per cent that we use will be a bigger number, you know, of the order of three and a half, four per cent or there or thereabouts. It's not going to be 20 per cent is all indication we've had to date.

Using – again, returning to my – and it may be just my mind's need for simplicity, but the \$1000 example, if you look at the \$1000 example, I'm right to say, aren't I, that once you've gone through your process of verifying the income and taking one's
25 word on expenses or using the HEM, a person is considered to be not unsuitable for the grant of a credit card, provided that they have \$25 in that servicing surplus per month?---Yes. We're using the – we're using the reasonableness test, and that's
30 where the reasonableness test will lead us.

Well, that is where Commonwealth Bank considers the reasonableness test is?---We do.

35 And if, then, one pays simply the minimum repayment on your – on my example, I should say, there's \$5 left over the course of the month?---Yes.

You will recall when we discussed discretionary payments – and I'm not focusing on gambling here or any of the other discretionary payments. But that concept of
40 discretionary payments ought have regard to, as I understand, unforeseen payments that might arise?---Are you referring to the – the income-based HEM discretionary - - -

Does that have regard?--- - - - the way that's constructed?
45

Does that have regard to unforeseen payments?---I would have to check what all the components are. That's based on survey data which looks at large numbers of

Australians and determines what their average – or their median discretionary expenditure is. So I couldn't tell you how much unforeseen stuff is in there.

5 You know that under section 131(2A) of the National Credit Act a person is unsuitable – sorry – a credit contract is unsuitable if a customer could only apply with substantial hardship?---Yes, that's right.

10 And substantial hardship is something that you've considered in coming to that figure in the minimum serviceability assessment?---Yes, we have. And as I – as I keep saying, it's in the context of what the law says around reasonable inquiries. And reasonable inquiries is, you know, very, very open to interpretation. And having regard to what ASIC has said about scalability, you know, that is – it is an important concept that we have taken into account in arriving at that conclusion.

15 So when you're talking about scalability, though, in scalability, that's a verification of - - -?---Not my reading of RG 209. So my reading of RG 209 is that scalability applies to both the reasonable inquiries - - -

20 Yes?--- - - - and the verification.

And – correct. And that is right. But you – my question to you is that is it the position that CBA presumes that a person will not be in substantial hardship if they have \$25 or more available to them after their expenses are deducted from their income – dollars of which would be paid – if the credit card was maxed, would be paid to the Commonwealth Bank?---Yes. I follow your maths and I'm not going to argue with your maths. You know, I keep making the point about having to make the right kinds of inquiries. And that's what the obligation is and what we try and do. And we try and do that with a buffer as well.

30 Well, it doesn't leave much to go wrong, though, does it, on the serviceability on your – on those figures, it doesn't leave much to go wrong. An extra coffee puts you on the knife edge, does it not?---I would – I would say it's very important – so if I just take a step back. And there's industry data that will bear out what I am about to say. Our strategy, as a rule, is not to grant the biggest credit limit to a new customer. 35 And this is borne out by comparisons between us and other banks. We deliberately will allocate lower credit limits to new customers, and over time we will increase those credit limits. We don't increase them any more than our competitors but we deliberately choose to start with a lower credit limit. There's a very important reason for this. We haven't even talked about CLIs yet. I'm sure we will get there. But the 40 reason for that is there's no better predictor – in our view, no better predictor for a consumer's future behaviour than the actual current behaviour, as distinct from, you know, forms, projections, estimates of expenditure and so on. So our CLI strategy is built on this premise we would rather start with a lower more conservative credit limit, not necessarily go to your example of, you know, the thousand in that 45 hypothetical case – to go to a smaller number, and then, based on actual behaviour, in other words, customers demonstrating their ability to manage that debt comfortably, to increase – or offer increases to those credit limits over time.

I understand that, although I'm focusing here though on where there's an application made, because where there's an application made there's no verification of expenses, of course. There's the - - -?---Well, you need to qualify that with the HEM benchmark verification.

5

With the HEM. I accept that?---Yes.

But, other than that base being applied, if I can put it that way. And my point is simply that on the analysis that we've been doing about my hypothetical \$1000, it's .5 per cent or \$5 - - -?---Yes.

10

- - - which is the leeway for someone who has a full credit card?---Mathematically, you are right. As I say, maybe – and I couldn't give you this definitively – we may not offer them the \$100 limit in that case, given the strategy I have just outlined.

15

I see. Although, your processes allow that to happen, don't they?---We have credit decisioning models which are calibrated. And it's not a simple go to the maximum. Those models are calibrated so that credit limits are offered based on what we think customers can afford.

20

Although, I may have misunderstood it, in 25(k) that's an automated process though, is it not?---Correct, yes, these are automated decisioning models.

25

So it's not right to say there's different processes insofar as the calculation of a serviceability surplus is concerned.

MR SCERRI: Commissioner, that paragraph says the minimum serviceability required, which is the converse of the maximum amount.

30

THE COMMISSIONER: Yes.

MR DINELLI: There's – that's an automated process, isn't it, that you're talking about - - -?---Yes. Correct, yes.

35

- - - that you talk about in 25(k)?---Absolutely. And, you know, as counsel has said, the minimum is required to be that two and a half per cent. As I said earlier, we don't always go to the maximum limit, which is the inverse of - - -

40

No, and I'm not asking about that. I'm dealing only with the minimum at this stage?---Yes.

45

Now, am I right to understand that the only difference between the short form and the medium form in terms of the analysis that's done by the Commonwealth Bank is that, if internal salary credits aren't available for a medium form, rather than a short form, a customer is required to provide supporting documentation. Is that right?---That's right. For their income.

But it's the same serviceability that we've just been discussing, isn't it?---Correct.

As you predicted, I would like to ask you some questions about credit card limit increases. At all relevant times, CBA offered credit card limit increases via direct
5 banking, its digital channels and direct mail, didn't it?---That's right.

And as I understand your evidence – and perhaps unsurprisingly in relation to changes that have been made in the law – written offers were only made to customers who had opted in to receive those invitations?---That's right.
10

And they had – those people had to be pre-assessed to be eligible for a CLI; is that right?---Correct. So pre-assessed is something we do in the background. It's not something that a customer initiates. We would look at our customer base and do an eligibility assessment in advance of them potentially applying for a CLI.
15

Well, Mr Harris, there must – that must have happened with respect to him?---Correct, that occurred, yes.

Okay. And he then got – well, we saw in the evidence that he gave, whilst you were
20 in the room, that he was first offered a smaller increase, and then he was later offered by direct mail a larger increase?---That's right.

Now, if I can understand this process: we're now talking about Mr Harris' situation after he had his three credit cards. They were consolidated of course, but we're
25 talking about the limit increases?---That's right.

So this is a situation where, on the basis of the evidence that you've given, you're in a better position because you know about the repayments that person has made over the course of the last so many months that they've had a credit card?---That's right.
30

And to be eligible to apply for a CLI, that is, to receive a letter, the criteria you set out are at paragraph 33 of your statement?---Yes.

The credit card had to be open for at least six months. It's been at least six months since the last change. The customer has made regular repayments. Their monthly average repayments over the last six months were equal to or greater than two per cent of the new limit to be offered?---Emphasis on new limit, yes.
35

Can I ask when you say two per cent, is that two per cent of the new limit, not of what you're increasing it by?---Of the potential new limit. So if the limit was 20 and is going to 30, it's of the 30,000. It's of the great - - -
40

So in that?---Of the potential new limit.

I see?---In other words, the ability of the customer – in order to even get into the CLI eligibility population, we are testing at a high level would they be able to repay two per cent of the new limit.
45

How long does it take if you pay – if you just pay off two per cent of your credit card every month – you stop using it. You stop using it and you just pay two per cent, how long will it take to pay off your whole loan?---Well, the answer is it depends on many factors, and so I could jump forward a little bit to, you know, if I can use Mr
5 Harris’ statement, which is part of the exhibits here.

Yes?---There is a requirement under the National Credit Code to put in a minimum payment warning which appears in the bottom of every credit card and I would expect all our competitors. And it says – it’s called a minimum payment warning
10 and it is exactly that. It says if you pay the minimum every month, then it will pay you X years to pay off this balance. Then it says if you want to pay it off over two years, you need to pay X dollars every week.

Yes, yes, I am familiar with that?---Now, you know, when I saw Mr Harris’
15 statement, I have to say I was quite surprised it said 138 years. Having investigated that more, and I looked at my own credit card statement, and I was also surprised, there are a number of important assumptions there. So if you go online you can use any of our repayment calculators, you can use ASICs – the online tools, and they will come up with a very different answer and a couple of very important reasons why.
20 So that - - -

Can I just stop you Mr van Horen. I will call up DJH5 which is the document to which you were referring?---Yes.

25 And you - - -?---Sure

Are you referring, when you refer to that, to the – this is CBA.0507.0025.0150. I am sure it won’t take 138 years and one month, but - - -?---I am familiar with you if you want to carry on.

30 This is Mr Harris’ statement he received – he didn’t go to it in evidence, but this is where he gave an example of the amount of money he was spending on gambling. And this is on the 23rd – the period for 23 May 2017 for approximately a month. And your evidence was about the requirement which is on credit card – commonly
35 on credit card statements or ought be, that it would have taken him 138 years and one month to pay off his account if he just made the minimum payments?---Yes. So a couple of important factors that determine this, and we’ve chosen – we’ve chosen a methodology here, and it can get a little bit technical, but that presents the most – the worst case outcome for a customer. And it is designed to be that minimum
40 repayment warning encouraging them to pay more than that minimum. One of the most material and obvious things is that that calculation assumes you only pay two per cent of the prior month’s balance. Now, if you go online and use an online calculator, and you know in this example two per cent of \$35,000 in rough numbers is \$700 a month. If a customer chooses to keep paying \$700 a month forever, not
45 two per cent of the balance as it reduces, then the repayment period is dramatically shorter. It’s like eight years or thereabouts.

I see?---So, you know, that's one assumption we make. Another assumption we make in this is – it depends on the interest rate. The minimum repayment percentage of two per cent is intended – I don't believe it's legislated anywhere, but it is industry practice – it's intended to always exceed whatever the interest charge will be, and, therefore, that the customer is at least slowly – is at least reducing the amount of debt owing, assuming they don't re-spend it. And the assumption we make here is that we use the very highest possible interest rate which applies to the cash advance transactions.

10 I see?---21.24 per cent.

But in any case - - -

15 THE COMMISSIONER: No, let him finish. Yes, go on, Mr van Horen?---Yes. So if a customer, as was the case with Mr Harris, he would have had a combination of cash advance balances, and the low rate card which is a 13 per cent interest rate, and every dollar that gets paid knocks off the highest interest rate first until it gets to the lower interest rate. So this assumes that everything is at that 21 per cent interest rate which is extremely rare for any customer. Having said all that, you know, it certainly has impact when you read 138 years, and clearly, that's part of what we want customers to be aware of, is to pay more than the minimum.

25 And were most of Mr Harris' drawings cash advances?---Commissioner, I haven't calculated it, but there were a very significant number of cash advances.

At least a reasonable - - -?---A reasonable part would have been cash advances. So this is - - -

30 Therefore attracting 21 per cent?---On that component of the \$35,000, yes.

Yes. So making some less conservative assumptions, that is, in particular, assuming continuing to pay whatever two per cent of this month's balance was, every month thereafter - - -?---Yes.

35 - - - what sort of period would you have come up with?---I would prefer to do that online myself. It will take two seconds, but I have done it, and from memory, it's between six and nine years depending on which interest rates you put in.

40 And just to relate that back to the evidence you gave earlier about approvals, where you take a \$25 or 2.5 per cent of limit figure to account, are we speaking of periods of the order of greater than five or six years to wipe out the debt if you paid it at that rate from month to month?---Yes, Commissioner, it's of that order. And just to calibrate that with the new regulations that treasury and ASIC are going to implement shortly under the new legislation, as I understand it, the discussion that's happening is targeting a period of paying off that balance, number to be determined, but, you know, three, four, five, six years, but it's of that order. It's under 10 years. And what that translates back into if you is a monthly minimum repayment of –

in the order of three to four, or thereabouts, per cent. It's not 8 per cent or 10 per cent.

5 But again, let me try to put this into a slightly broader context. That – the decision to grant a credit card at all or to allow a particular level of credit is made according to calculations that if borne out in experience would mean that the debt incurred on the credit card would take of the order of five, six, seven, eight years to clear; is that right?---That's right. Can I just add an if – a proviso to that.

10 Yes?---Because a credit card is a – is a revolving - - -

Revolving debt?--- - - - facility and, therefore, you know, if the customer spends back up to the limit again, you know, it's back to the beginning.

15 But the very best case is that the customer is taking a limit which if used once and once only, would take of the order of more than five years to meet; is that right?---Yes, it will be of that order. Again, it depends on the interest rate as well. If you're on 13 per cent versus 21 per cent, it will obviously make it - - -

20 The calculation is done once for all on the assumption that – or on the criterion that the customer can service at a rate that will yield that result?---Correct.

Yes?---Yes.

25 Thank you?---And can I just add one other factor, Commissioner.

30 Of course?---Because we've spoken a lot about applying for new credit cards where we've used the 2.5 per cent, and it's in my evidence. If we're talking about CLIs, and this would have applied in the case studies we've referred to, if you look at my paragraph 41, then we apply three per cent. So, you know, it's definitely not going to solve for all cases, and certainly not Mr Harris' case but for CLIs, we do have an assumption or an expectation of being able to service three per cent, not two and a-half so to try and build in more of that buffer.

35 And the time period comes down to, what, still something more than five years, does it?---Yes, I'm estimating now without having a model out.

40 I understand?---But it would probably be of that order. Five years, you know, if you're on a low rate credit card, it will be shorter. If you're on an awards credit card, it could be something like 7 or 8, but it's of that order.

Yes?---If it would help the Commission we would be happy to provide you some scenarios just to give you exact numbers later on.

45 Let's see what comes out in the issues that have to be addressed in submissions. Yes, Mr Dinelli.

MR DINELLI: Thank you, Commissioner. And if I can make the point that – and your answer to me – you will say that this is just the eligibility, but it is fair to say that the eligibility criteria are also not very discerning when it comes to the eligibility for use of the CLI short form, are they?---I’m afraid I can’t agree with that
5 because - - -

Well - - -?--- - - - you know, discerning is a very subjective word. I think the – the really important point is CLIs are based on actual behaviour, actual repayment patterns, and with all these criteria that I’ve outlined here, but not, you know,
10 missing payments and being in arrears and so on. And, you know, we do believe, rightly or wrongly, but we do believe that customers’ actual repayment history is a very, very good predictor of future repayment capability.

Although you would concede that the two per cent is only actually proof that they’re able to – proof is perhaps not the right word particularly in this forum – but is only evidence – the two per cent only evidences the fact that they would be able to pay the minimum repayment on the increased limit?---Yes, and just recall we’re talking – or if I am - - -

20 Eligibility?---Eligibility, yes, there is still another step to come which is the serviceability, suitability assessment.

Does the – as a matter of analysing that eligibility, one question that arises is whether or not the – it’s in the bank’s interests for the person to only pay the
25 minimum?---You know, I don’t think it is. You know, you might say, we will maximise our interest revenue. It’s not in our interests to have customers who are in a position of financial difficulty. We’ve put in place a lot of tools to try and assist customers to manage their debt. I mentioned one or two. So at a tap of a few buttons on a phone a customer can decrease their credit limit not increase decrease.
30 Permanently. Customers can put caps in place on amount that they can spend which are hard caps. They can change them later, but they are hard caps. Ability for customers to close their credit cards on line with a tap of a few buttons. That was later than Mr Harris’ closure attempt. So I think trying to demonstrate intent about are we only about trying to maximise the amount of borrowings, I don’t believe the
35 facts bear that out.

You go on to explain at paragraph 38 and following the analysis that’s undertaken of a credit limit increase application is actually made using the short form. And you say at paragraph 41, you’ve drawn the Commission’s attention to this already, that the
40 amounts included in the questions referred to in subparagraphs 38(c) and 39(c) – so they calculate the after-tax and expenses, how much money is left to repay the credit card. That’s what 38(c) and 39(c) refer to?---That’s right.

45 And those amounts ought be, to satisfy the application, three per cent of the new limit selected by the customer; is that right?---That’s right.

So if someone can pay, according to their expenses – I don't mean to sound like a broken record, but of course that's the expenses calculated on the way that you've said previously?---That's right, yes.

5 If they can pay three per cent of that new limit, that entitles them to – or they would satisfy the requirements of the credit limit increase?---Yes, the serviceability component, yes. Suitability, should I say.

10 And you then go on to describe the – you then go on to describe under the heading Responsible Lending Obligations in relation to the credit limit increases, you say that:

In assisted channels, for both forms of applications –

15 this is paragraph 45 – you say at subparagraph (f):

For CLI short form applications, the customer's average repayments over the last six monthly statement cycles were verified to be at least two per cent of the new limit.

20

Do you see that?---That's right.

25 How is that any different when it comes time to assessing eligibility from the eligibility to get the offer as compared to what is applied to whether or not the increase should be granted?---Sorry, just repeat your question.

30 Why is that any different to the figure that's used to determine whether or not they're eligible for – for a CLI offer?---So this is around – are you referring to paragraph (f) just

35 Yes, 45(f)?---It is a bit confusing because there's various two per cents and three per cents. So the first three per cent I referred to was in paragraph 41 which refers to CLI short forms, which is based on three per cent of the new limits. In other words, the net servicing surplus, if you will, equals three per cent of the new limit. That's the way that the serviceability assessment does that calculation. And then you're asking me about the verification.

40 I'm asking when you say at 45(f) that for CLI short form applications you say in support of the bank's responsible lending obligations, that the customer's average repayments over the last six monthly cycles were verified to be at least two per cent, that is the minimum of the new limit?---So that's – this is looking backwards. Paragraph 45(f) is saying the average repayments over the last six months - - -

45 I see?--- - - - are – and that's what we're looking to see – as I was saying earlier, the customer's ability to – the best predictor of ability to pay in the future is their actual past repayment record. So that's what 45(f) refers to.

Mr van Horen, these policies are creating circumstances, are they not, where banks are giving credit to people based on whether minimum repayments can be made, not whether or not they can pay off the credit card?---It certainly is checking that they can make at least the minimum, but as we were discussing with the Commissioner a second ago, if they sustain their payment at that dollar value – so \$700 in the – in the case study, they would pay that off a lot, lot quicker. And so that’s a choice customers make, and some customers will choose to pay the absolute minimum. Certainly what we’re encouraging you just use our calculators on line or go to ASICs calculators, it will give you the answer if you sustain your payment at the same amount rather than keep reducing it every month.

But you know paying only the minimum repayments would lead to just a cycle of the debt continuing for a long time?---Yes, which is why we encourage customers and assess customers’ ability based on more than the minimum when we can.

If you pay the minimum of \$100 per month on a credit card balance of balance of \$5000, how long would it take you to pay off the credit card?---I would need to use the calculator because you’ve got to accrue interest there as well. My maths is not that good that I can compound interest.

No, no, no. If I could take you to RCD.0021.0001.0390. Perhaps instead of 0390, 0394. I think it’s the next document. So if I understand correctly, the eligibility – sorry, you point to in the responsible lending part of your statement that the customer’s average repayments over the last six months were verified to be at least two per cent of the new limit. My question to you was how long will it take to pay off a credit card if you pay off two per cent of the limit – and I’ve used the example here on this page?---Yes.

Is a \$5000 credit card?---Right.

So using a different example, probably more in line with perhaps what you might say is a more realistic credit card limit. It’s a platinum awards card like Mr Harris’ – or, I think, Mr Harris’ second card – and there’s a payment of \$100 a month?---Yes.

And if we go to the next page, this is obviously on the Commonwealth Bank calculator?---Yes.

It tells the reader that it takes around nine years and three months to pay off that amount. Do you see that?---Yes. That’s exactly right. So two of the examples we quoted earlier, and I said it depends on the interest rate. So this is the – an awards card which has the highest interest rate, 20 per cent. If you do the same calculator at a 13.24 per cent which is a lower rate or 9.99 which is a new product launching next week, in fact, that number of nine years will drop a lot. I don’t profess to calculate it in my head, but it will be five or six years.

Can I put it to you, though, the use, though, of two per cent by way of the responsible lending processes to which you point to is not sufficiently robust to consider whether

or not there will be significant hardship to a customer?---Well, I would – I’m afraid I can’t agree with that. I think, you know, the question would be, well, what else is reasonable to do in the circumstances.

5 I want to just ask you a couple of questions about Mr Harris. That can come down. Can I – actually if that – can that be tendered.

THE COMMISSIONER: Of course. Exhibit 1.162, credit card repayment calculator RCD.0021.0001.0394.

10

**EXHIBIT #1.162 CREDIT CARD REPAYMENT CALCULATOR
(RCD.0021.0001.0394)**

15

MR DINELLI: Thank you, Commissioner.

You say that in April 2016 was the first time that Mr Harris incurred direct charges for gambling on his credit card; is that right? Paragraph 52 of your statement?---Yes, I believe that’s right.

20

And - - -?---So just to clarify, that’s based on reviewing all the credit card statements – initially the three and then the consolidation to the one, into the lower rate card. The first time we could identify a gambling related transaction on the credit card was in April ’16. Prior to that there were cash advances coming out of the credit card to another account.

25

And Mr Harris has given evidence about what he did that for?---Absolutely.

I put to you that you, Commonwealth Bank, was aware of that. I don’t put to you that the cash advance – that you were aware that he was using those cash advances for gambling just to make it clear?---Sorry, you said – if the question is were we aware in April 2016 – is that the question?

30

No, I was asking you whether or not that was the first time he put charges on his credit card?---Yes, yes.

35

The - - -?---The obvious point is should we – to your question earlier, should we have had algorithms or something that was identifying gambling spend.

40

Now, though, you would identify that, wouldn’t you, in respect to Mr Harris. I’m not asking you to say the first time he gambled in 2016. But if your evidence at paragraph - - -?---Yes.

- - - at 62(a) which you gave previously, that in April 2017 CBA introduced new rules to exclude credit card customers from receiving credit limit increase offers?---That’s right.

45

And that you go on to say that there was – that other changes have been made?---That's right.

5 What would have been – what would have happened differently in the case of Mr Harris?---Well, I – it would not have – you know, I don't know if this is commercially sensitive, but I will share to the best I can. The rules that we've put in place are taking into account identified gambling spend, and seeing – and it varies slightly if it's a brand new customer or existing customer, but essentially if it exceeds a certain dollar value – and I might get the numbers wrong if I guess them – if it
10 exceeds something like \$10,000 over three months of the order of – you know, these are estimates and from memory – of the order of 25 per cent of income over the previous three or six months has been spent on gambling – so that gives you an idea of the kinds of rules that is happening – therefore, if a customer is making an occasional transaction would not trigger that. It's not designed to do that and it's
15 certainly not our role to stop people, you know, betting on the Melbourne Cup, or whatever the case might be.

And – but it certainly would have picked up – and I am not putting this as a criticism of the bank on this issue, because no credit limit increase was offered after June, but
20 in June 2017, the statement that we went to before which had 138 years on it?---Yes.

That was a statement where \$18,000 was taken out over the course of a weekend?---Yes.

25 And that would have triggered?---It would have triggered, yes, absolutely.

But at the relevant time - - -?---Yes.

- - - it didn't?---Correct.

30 And you accept that you were on notice in October 2016, the conversation that evidence was given in relation to that conversation by Mr Harris, that as at that date CBA was on notice of his gambling?---Yes. Yes, look, I definitely don't want to sit here, you know, contradicting the evidence of Mr Harris, knowing the circumstances
35 that he has been through. I would add one thing, though, to that October 2016 conversation. And it's in the transcript and I've listened to it myself, which is that, you know, you say on notice. It was part of that conversation which was had with the person in the contact centre. So yes, to the extent that the Commonwealth Bank somewhere had information to that effect, yes, we did. We did also in that very same
40 conversation, the same call centre agent said, having heard from Mr Harris that he had a gambling problem, in his words, and she said there's a – I see there's a CLI offer. Would you like me to cancel it? And Mr Harris said no, don't, I may do that later. So, you know, I just add that for the completeness of the record.

45 What you point to is that which is at CBA.0516.0001.0038. Sorry. It might be .0036 at .0038. And I think the previous page, which I won't take you to, but the previous page the operator said:

Final question I have, just in regards to the credit card that you have got with us at the moment, you are conditionally approved to increase your credit limit.

And Mr Harris say:

5

I've seen that. Seen that. Nah.

Yep. So what are you wanting to do with it?

10 And that's when Mr Harris says:

15 *Not just yet. I need to – I do not really understand why they've offered me that, considering they know clearly that I use for gambling and stuff like that. Yep. So I think it's pretty bad for them to be offering me that when I clearly have a gambling problem.*

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

20 And then you pointed me to the fact, rightly, that there was a – I'm sorry – before I get to that, then the operator said:

Well, I mean, you can choose to do on your card. We can't control. We, obviously, look at payments and things like that.

25 Now, you've given evidence that the position would be different now – sitting here now, but in 2016 that was what the operator said?---Yes.

In relation to the Commonwealth's processes. David:

30 *Of course. Of course. No, I know. But, really, they should look at that and go, 'clearly, right, he gambles, so we're not going to give him any more money.'*

Operator:

35 *Yep.*

At one point I had three credit cards and they let me max them out and then put them all into one, and then offered more money. Yes, I will decline the offer, um, but yeah.

40

Then you are right to say that he said:

I wouldn't decline it yet. I am going to increase it, but not just yet. I want to sort my gambling stuff out first.

45

Do you see that?---Yes.

And then Commonwealth Bank proceeded to send the letter, I think, 11 days after that phone call offering him that very limit though, didn't it?---Yes. So, as I said earlier, you know, we absolutely acknowledge we shouldn't have-- in a perfect world we would have used this information from the telephone call to find its way back into our credit models. At the time we haven't had that sophistication. As we sit here we still don't. It's clearly something that we need to do. And, therefore, having had this information from Mr Harris, we should not have sent him that subsequent CLI offer.

10 THE COMMISSIONER: So the systems as they presently stand would or would not catch the problem at the point of this conversation?---Yes, correct, Commissioner. You know - - -

Would or would not?---It wouldn't. It wouldn't. There's no automated way to - - -
15 No?--- - - - capture that information. You know, we need to build a flag. There's complexities around all that. But we need to find a way to make sure that if somebody -- and you will appreciate there's a lot of people out there -- has a conversation that flags a customer could be in difficulty, in the way of other flags for domestic violence, where we then trigger, you know, domestic violence support programs. We don't have something that triggers a proactive action around a self-disclosed matter like this. And it's something, you know, we want to do something about it, we've got to work out how we can do that, because it's clearly not a simple thing to execute - - -

25 MR DINELLI: No?--- - - - safely for customers either.

And, fairly, you've been given the opportunity -- you have given evidence about that at paragraph 62, about some of the steps that have been taken. But, in relation to Mr Harris, you concede that there were clearly negligent oversights on behalf of the bank in relation to his situation?---You are using words that were used by somebody else later. Are you using that deliberately?

35 I am asking you, though, whether or not you agree with - - -?---Negligent oversights. Look, I'm not going to for a second pretend that we did the right thing. I absolutely wish we had had a way to use that information or had some escalation in place to block any further CLIs. Whether that equals negligent oversight, I am not sure that's the same thing.

40 And -- but definite -- well -- but you say in your statement that CBA now admits that it should not have increased Mr Harris' credit card limit after he informed CBA of his gambling problem?---Correct, yes.

45 The reason for your change to your statement, Mr van Horen, was because, unfortunately, the Commonwealth Bank sent a letter to Mr Harris setting out the full amount owing on his credit card statement again, didn't it?---Are you referring to paragraph 59(a)?

Yes, well, maybe – the documents themselves. If I can go to CBA.0517.0012.0001. This is CVH, I think, 16, now, in your statement. When I say “now”, it didn’t appear in the first - - -?---Yes.

5 - - - statement. It wasn’t in existence, I think, at the time of this statement.

THE COMMISSIONER: Have you got access to it, Mr van Horen?---I do, yes.

Can you tell me, generally speaking, what it is?---Yes.

10

We seem not to be able to display it at the moment.

MR DINELLI: Please Mr van Horen?---So, just tell me, are you referring to the same one there, please, but, essentially, it was a letter dated 6 March - - -

15

Yes. Correct?--- - - - which was very recent, addressed to Mr Harris saying, you know, your request for help – recently you asked for our help in managing your debt to us. We asked you to provide certain information – I am shortcutting slightly – so we can assess your request and have sent you a reminder letter. We have not received the information requested and based on the current information we are declining your request for help. Then it provides details of the account and it refers to a balance of 35,000-odd dollars. I see it’s on screen now.

20

Yes?---And then what you need to do, contact us, and so on. And in the second letter – the second – the subsequent exhibit, which, if I can go to, essentially, was on 14 April to Mr Harris saying I’m contacting you to apologise for the letter sent to you last week dated 6 March which was sent to you in error. Please find attached a letter to confirm the outstanding balance of your MasterCard, which was in fact the 23,000 number. So, you know, the question is, well, what happened? This letter was sent in error. The reason it’s a subsequent amendment to my original statement is this has all come to light since the original statement was submitted, so apologies for that. We’ve done an investigation as to how this letter was sent, because it is clearly the wrong balance owing, and should not have been sent. And it was not a system-generated letter, so we’re investigating how the letter was sent, because it should not have been sent, which is why as soon as we became aware of it we followed that up with an apology – and I apologise again to Mr Harris – that it was the wrong number, and the letter should not have been sent and the correct balance owing is the \$23,000 figure.

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THE COMMISSIONER: Are you able to tell me, generally, what the problem was that led to it being sent?---Still under investigation, Commissioner.

Yes?---You know, we’ve had a significant effort since this came to light to understand how. I can – this is not a good excuse or anything, but we have very not state of the art systems in our collections environment. They’re in the process of being upgraded, a very, very significant investment project to upgrade them. It started the middle of last year and will finish in the middle of this year. And,

45

unfortunately, things like this happen, because the way in which communication is generated is not the way it should be.

5 MR DINELLI: So, I mean, the process seems to have let the Commonwealth Bank down in relation to the fact that this letter was sent and it ought not to have been sent?---Absolutely. And, you know, I apologise again.

THE COMMISSIONER: Yes. Thank you, Mr Dinelli.

10 MR DINELLI: Thank you very much, Mr van Horen.

THE COMMISSIONER: Any other parties seek leave? Very well. Mr Scerri.

15 MR SCERRI: Thank you, Commissioner.

<RE-EXAMINATION BY MR SCERRI

[4.11 pm]

20 MR SCERRI: Mr van Horen, do you remember the Commissioner was asking you about your information and you commented that you don't – you only have partial information about a customer's financial position. And you mentioned something called the comprehensive credit reporting which you said would improve the position. Could you explain what that is, sir?---Yes. So the comprehensive credit reporting legislation has been passed through Parliament, CCR for short. And what 25 that will do is move the way in which credit bureaus – so these are third parties to whom banks and other credit providers supply data and they get data back. It's going to go from what's simply in today called a negative environment to a positive environment. So today what happens is if a customer is applying for a credit, all we 30 get back from the bureau is information if they have defaulted or if they have missed payments. So in that sense negative information comes back to us. The new reporting obligations, which start on 1 July and will be rolled out over the 12 months thereafter, provide positive reporting. In other words, we get information back from the bureau on customers' good behaviour – you know, good credit behaviour, as 35 well. They have – you know, Clive van Horen has made his credit card or home loan repayments consistently for the last 12 months. And so that information, we, other credit providers, will use in credit decisioning. And it particularly helps fill the gap of the OFI liability piece, where if a customer says I've got zero liabilities somewhere else, you know, the credit bureau will be able to confirm that's the case 40 and/or what their payment record is.

Will it tell you the amount?

45 THE COMMISSIONER: Essentially, it's performance rather than default, isn't it?---Correct. Yes. It's a more holistic view of the customer's overall performance.

MR SCERRI: Will it tell you the amount of the OFI?---I believe it will tell us the repayment amount, not the liability. We would have to back solve for that.

Thank you, Commissioner.

5

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

MR DINELLI: I note the time, Commissioner. Can I update – sorry – that’s - - -

10 THE COMMISSIONER: Mr van Horen - - -

MR DINELLI: Nothing further. I’m sorry, Mr van Horen.

MR SCERRI: May he finally be excused, your Honour – Commissioner.

15

THE COMMISSIONER: Excused from further attendance, Mr van Horen, at least for this round. Never say never, Mr van Horen.

20 <THE WITNESS WITHDREW

[4.14 pm]

MR DINELLI: Thank you, Commissioner. I note the time. The next witness will be Mr William David Malcolm of Westpac. And it might be convenient for him to be called first thing tomorrow morning, if that’s convenient.

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THE COMMISSIONER: “How are we travelling for time?” becomes the question.

MR DINELLI: The position is this, Commissioner. There is another witness from CBA, Mr Gareth Russell. We will be tendering his statement.

30

THE COMMISSIONER: Yes.

MR DINELLI: That will happen tomorrow morning. Mr Malcolm will give evidence tomorrow morning. And there are two other witnesses, Commissioner. And we will give some anxious consideration to that overnight. My learned leader, Ms Orr, will close tomorrow, as you are well aware, Commissioner. And we would anticipate, subject to the Commission’s convenience, that any further evidence will be finished in the morning, and that that closing would commence immediately after lunch, if that was convenient to you.

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40

THE COMMISSIONER: I think we’ve got to at least aim for that kind of timetable to allow a reasonable laying out of issues that are seen as emerging from this round. So yes. But if I begin at 09.45 tomorrow, that should be – I won’t say comfortable – at least doable?

45

MR DINELLI: Yes, your Honour – yes, Commissioner.

THE COMMISSIONER: You may attempt to verbal Mr Sheahan, Mr Dinelli. I'm not. All right.

5 MR DINELLI: No. That's convenient, Commissioner. And then we will aim to close and provide the assistance that you've indicated from 2 pm.

THE COMMISSIONER: Right. We will adjourn till 9.45 tomorrow morning.

10 **MATTER ADJOURNED at 4.16 pm UNTIL FRIDAY, 23 MARCH 2018s**

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