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TRANSCRIPT OF PROCEEDINGS

O/N H-896299

THE HONOURABLE K. HAYNE AC QC, Commissioner

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

MELBOURNE

9.46 AM, THURSDAY, 24 MAY 2018

Continued from 23.5.18

DAY 23

**MS R. ORR QC appears with MR M. HODGE QC, MR A. DINELLI and MS E. DIAS
as Counsel Assisting with MS C. SCHNEIDER**

**MR M. DARKE SC appears with MS P. NESKOVCIN and MS A. SMITH for
Westpac**

**MR N. HUTLEY SC appears with MR B.A. McLACHLAN and MR T.M. DOWLING
for Bank of Queensland**

MR C. SCERRI QC appears with MS Z. HILLMAN and MR K. LOXLEY for CBA

THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Commissioner, the first witness this morning is Mr Snell.

5

<DOUGLAS ROBERT SNELL, AFFIRMED

[9.46 am]

10

<EXAMINATION-IN-CHIEF BY MR HUTLEY

THE COMMISSIONER: Thank you, Mr Snell. Do sit down. Yes, Mr Hutley.

MR HUTLEY: Thank you, Commissioner.

15

Could you tell the Royal Commission your full name?---Douglas Robert Snell.

And your business address?---Is level 6, 100 Skyring Terrace, Newstead, Brisbane.

20

And your occupation?---Banker, general manager of product performance and governance at BOQ.

Thank you. You have received, I think, a summons to be here to give evidence today and to produce a witness statement. Is that correct?---Yes, I do.

25

And do you have it with you?---Yes.

I tender the summons.

30

THE COMMISSIONER: Exhibit 3.33 will be the summons to Mr Snell.

EXHIBIT #3.33 SUMMONS TO MR SNELL

35

MR HUTLEY: I think, also, Mr Snell, you have signed a witness statement under – relating to the Royal Commission’s Rubric 3-8, dated 15 May 2018. Is that correct?---Yes, I have.

40

Do you have a clean copy of that witness statement with you in the witness box?---Yes.

And do you also have the exhibits to that witness statement - - -?---Yes, I have.

45

- - - to hand beside you in the witness box? Are the contents of that witness statement true and correct to the best of your belief?---Yes.

Thank you. I tender that witness statement.

THE COMMISSIONER: Exhibit 3.34, witness statement of Mr Snell concerning Rubric 3-8.

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EXHIBIT #3.34 WITNESS STATEMENT OF MR SNELL CONCERNING RUBRIC 3-8

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MR HUTLEY: And I also tender the exhibits to - - -

THE COMMISSIONER: And the exhibits will form part of the exhibit.

15 MR HUTLEY: Thank you. That's the evidence.

THE COMMISSIONER: Thank you. Yes, Mr Hodge.

20 **<CROSS-EXAMINATION BY MR HODGE** **[9.48 am]**

MR HODGE: Thank you, Commissioner.

25 Mr Snell, you're the general manager for performance, product and governance at the Bank of Queensland?---Yes.

And you've held that role since last year. Is that right?---Yes.

30 You've been at Bank of Queensland since 2012?---Yes.

And what were the other roles that you held at Bank of Queensland before this one?---General manager of corporate property and agribusiness for the majority of that time.

35

All right. And could you just explain to the Commissioner the nature of your role as head of performance, product and governance?---Yes. That's – so there's three different areas there, the first one being performance. It's looking at the – the use of capital and the – and the right – right product for the right – right time. It also looks at working closely with our finance partners and how our divisions are performing against our expected outcomes. Product is developing, remediating and ensuring our product is as good as it can be for the clients. And, lastly, governance, where I have a team that look after operational risk and compliance for the BOQ business division.

45 And who do you report to, Mr Snell?---I report to Brendan White, who is the group executive of BOQ business.

Okay. And who does Mr White report to?---To the CEO, John Sutton.

Now, I just want to understand one part of the role, which is governance, a little better. Is your role in charge of governance separate from the internal risk function of the Bank of Queensland?---Yes. My role is around the operational risk and compliance for the people within our business and the delivery of product and services to clients.

And - - -

THE COMMISSIONER: Sorry, Mr Snell. Do you mind just keeping your voice up a bit?---Yes. Sorry.

Thank you.

MR HODGE: So there's a separate internal risk function within Bank of Queensland?---Yes. There's multiple. There's credit risk, so decisioning for transactions. And there's also compliance and operational risk for the group.

Okay. And who is responsible for carrying out the audits of the branches of Bank of Queensland?---They – they report to a gentleman by the name of Mark Rhodes, but that rolls into the chief risk officer of the bank.

Okay. And that's, obviously, separate from your role?---Yes. Yes.

And who does the chief risk officer report to?---To the CEO.

Okay. Are you familiar with the audits that are carried out in relation to branches?---I'm familiar, in particular, into the credit risk review and around the commercial lending product, because, obviously, being product for commercial lending, I have some responsibility. I'm not familiar with the entire process when it comes to branch – branch responsibilities.

And when it comes to the credit risk review, what is the – what are the particular things that branches are audited for in that respect?---It would be similar to what we are audited for. So it's the delivery of product, which goes from origination through to – to completion. So the interaction with a client, the completion of their required documentation, the delivery of expected information from clients, the credit assessment, and then the – the delivery of that to credit risk for their assessment.

Now, you heard the evidence given by Ms Riches yesterday afternoon?---Yes.

And you've been put forward by Bank of Queensland as the witness for the Royal Commission to respond to Ms Riches' evidence?---Yes.

I'm going to come, in due course, to dealing with the specifics of Ms Riches' case, but what I would like to do first is to just go through some aspects of Bank of

Queensland's business lending to understand what changes have happened over the last five years, just in relation to the market. We will come to other aspects of changes in due course. If we bring up paragraph 29 of your statement, which is BOQ.0001.0087.0008?---Yes.

5

That will come up on the screen in a moment. But the proportion of gross lending by Bank of Queensland that comprises business lending has risen over the last five years from – we can see there 17.3 per cent to 20.6 per cent?---Yes.

10 And does that reflect any particular plan or intention on the part of Bank of Queensland to try to build up its business lending section, proportionally with respect to the rest of its lending?---Yes. When – when Brendan White and myself joined in 2012, the then CEO had a strategic comparative for us to diversity our exposures by both geography, industry and asset class.

15

And this reflects the implementation of that strategy?---Yes. So we employed people in other states to diversify our book.

20 And, in terms of what's covered here by business lending, this is something that Bank of Queensland breaks down into a few different tiers. Is that right?---Yes.

25 And could you just explain to the Commissioner what the tiers are by which Bank of Queensland considers business lending?---We have SME, which we – we broke into two different divisions, one being under a million and then under 5 million; then corporate, being above 5 million; property, which is both investment and development, so specific to properties; and agribusiness, which is encompassing. Within the branches who sell – sorry – who service commercial lending, they are tiered as well by – by experience and knowledge. And that – that tiering is 1 million, two and a-half and 5 million.

30

And let's just focus for a moment on SME lending. You said Bank of Queensland breaks it down in relation to SME lending into – was it under a million and between 1 million and 5 million?---Yes.

35 And does Bank of Queensland have standard form contracts that it uses for lending to those SME customers?---Yes.

40 Do those standard form contracts vary depending upon whether the lending is for under a million or between 1 million and 5 million?---Not – not unless specifically required.

45 All right. And if we then come over the page to page .0011. There's some tables here that set out the changes in business lending applications submitted and approved between 2012 and 2017. We just want to make sure we've understood this correctly. In the year ending 2012, Bank of Queensland's estimate is that there were 4242 applications for business – or business credit facilities submitted. Is that right?---Yes.

And that isn't limited to – it's not small to medium enterprise; it's just any business lending?---Yes.

And, of those, 3309 were approved. We can see that?---Yes.

5

And the average – approximate average value then was \$878,414?---Yes.

And then, by 2017, it appears that you were able to break your data down to a slightly more granular level. Is that right?---Yes.

10

And you've divided it up into BOQ business and BOQ retail. Are you able to say anything about what sort of loans would fall into each of those sections?---Yes. So the retail network, as I touched on, are able to lend up to certain tiers. And we have a commercial lending model that dictates – or directs them into what they do should it fall outside that model. So if it's over the 1 million, two and a-half or five, they will refer it to business banking, and then the business banking will obtain business over the amount, as well.

15

So – if we just focus on that for a moment, because this might give us an opportunity to understand the way in which branches are authorised. It's possible that a branch would have no authorisation to make a business loan – or to approve a business loan. Is that right?---Yes. Branches can't approve and nor can business. All of our loans are approved by our credit department for a business loan. But they can originate, ie, work with a client who may have a – an exposure of 800,000. And they can go through the process of originating that loan, yes.

20

25

I understand. I put that very badly. But the way in which it works is if a borrower comes to a Bank of Queensland branch and says, "I want to borrow a million dollars", then, if the relevant branch has authority to originate a loan of up to a million dollars, then they can be the one who handles the processing of that loan to begin with, before it goes to credit approval?---Yes.

30

But if they have no authority to originate the loan of up to a million dollars, they just refer it on to BOQ business?---Yes.

35

And so this information is really just telling us from where the loan is originated. Is that right?---Yes.

Okay. And, within the branches, the various authority levels you indicated were 1 million, 2.5 million and 5 million. Is that right?---Yes.

40

And, as I think we already agreed, it's also possible that a branch would have no authority to originate a business loan. Is that right?---Yes.

45

And, in which case, whatever business lending came in, they would have to refer off to BOQ business?---Yes, but that's very small. Sorry. I'm just going to think about this for a second. I believe we do have a million dollars origination for all branches.

However, a lot of the smaller branches that don't do business lending often will – will automatically refer it.

5 All right. And when we're referring to these levels of authority of the BOQ branches, are we only talking about the owner-manager branches or are we talking about both owner-manager and corporate branches?---At this time, corporate branches are capped at 1 million and owner-manager branches are tiered.

10 Okay. And if we then just – or if you can just explain to the Commissioner. One of the unique features of the Bank of Queensland model is that it has franchised out its branches. Is that right?---Yes.

15 And the – at present, as we understand it, a little over 60 per cent of Bank of Queensland branches are franchised. Is that right?---Yes.

To what Bank of Queensland refers to as owner-managers?---Yes.

20 And we will come, in due course, to some of the detail of how that works, but, just to focus on this lending approval – I'm sorry – lending origination authority, the owner-manager branches will have this authority of up to a million, up to two and a-half million or up to 5 million. Is that right?---Yes.

25 And that system of up to a million, up to 2.5 million or up to 5 million, how long has that been in place?---I believe 2014, when the commercial lending model was updated.

30 Okay. And, before 2014, was there a period of time when all authority to – all delegated authority in relation to business lending was withdrawn from the branches?---When I joined BOQ, I removed all delegated lending authorities for business banking and we removed them from the branches. So, prior to that, they could approve or originate and assess certain loans, but that was removed, yes.

35 And you removed that in 2012 when you joined. Is that - - -?---No. It actually was – was removed in about early '14.

Okay. And that was a decision that you made?---For the business bank, yes.

40 And did it reflect a more general decision that was made within the bank?---Yes. I – I think it reflected a view that myself and – and some of the newer credit managers at BOQ wanted to align closer to market.

Wanted to what, sorry?---Align closer to what we had seen at other institutions.

45 And what does that mean exactly?---Effectively, making sure there is a segregation in terms of who originates and who assesses.

I understand. So when you withdrew the authority to approve, it was still possible for the branches to originate the loans?---They had delegated authorities under tiering from base to level 4, and they could have – approve under that. When I spoke to some of the more senior branches at the time, they actually hadn't applied for it, because they were keen to have a second set of eyes, so go through the standard credit authority – credit assessment process. So, yes they could, though, yes.

I'm sorry. I'm not sure I've quite understood. They could have done what?---No. As you said, they could approve loans under a delegated authority.

Yes. I'm sorry, I – if we just break this down. Before you withdrew the delegated authority, they could actually approve loans up to a certain amount, if they had the delegated authority?---Yes.

And after you withdrew the authority, they could no longer approve loans. That's the first point?---They could approve a cash back guarantee for 100,000 and cars up to 150,000, but actual loans, business loans, no.

And they could still originate loans, though?---Yes.

And there was separate authority limits in relation to what levels of loan they could originate?---Yes.

Okay. And are they reflected by what we're talking about now, the 1 million, two and a half million and 5 million?---Yes.

That change all happened at the same time?---It was around the same time, yes.

And – so to come back to what we were looking at in terms of this change in data, the data seems to suggest that in the last five years, the total value of loans submitted and approved by the BOQ business has fallen. Do you agree with that?---Sorry. You're saying loans from BOQ that were business loans?

That's right?---Yes. Yes.

Has fallen?---Yes.

And, having regard to what we were looking at a moment ago, which is the percentage of lending that it comprises, business lending has increased, are you able to explain – does that just indicate that the total gross loans made by BOQ has also fallen over the last five years?---I believe so.

And does Bank of Queensland have a view as to why it is that the submitted and approved business loans have fallen over the last five years?---Yes. I probably put it down to two things, one being the – the introduction of competition. So the Fintex or other institutions, where their delivery into that smaller micro area has – has – is a lot easier. So I think we're not as competitive in that area. And I think, with the

education and some of – other things we’ve put into place in the bank, we’re – we’re looking to be more of a niche player, so we’re looking at larger and more sophisticated loans per client.

5 I see. And that, perhaps, is reflected in the fact that the average approved value has risen by more than 50 per cent?---Yes.

So Bank of Queensland is repositioning its business lending to focus on, perhaps, a slightly narrower segment than what it had previously focused on?---Yes.

10

And, in terms of what that segment – or what those segments are, are you able to explain to the Commissioner where they lie, what the focus is now?---Yes. We – we have a number of targeted sectors, which would be hospitality, including clubs and hotels; agribusiness; franchise and general property. However, we don’t preclude all other business, but that’s the niche sectors – sorry – and health and retirement.

15

And it sounds like some of those sectors, at least, would still be SME lending sectors. They would still be under 5 million lending?---Yes, there will be clients and – and lending that span the spectrum, yes.

20

But, could you comment for us, is Bank of Queensland’s focus now less on lending under 5 million or has it not changed?---No. I – I think we’ve just focused a little bit more on some of those sophisticated larger than 5 million. And – and we’ve coupled that with employing people with experience. An example is agribusiness, where we have a stated appetite to be more than 3 million, if possible.

25

All right. And, again, just to explain so the Commissioner gets some sense of what’s happening in the market, what’s the reason for having a desire to be lending over 3 million in agribusiness?---We – we’re a smaller bank, and we can’t always have the – we don’t have the resources to go head to head with a lot of the larger. And we like to have more personalised relationships. We’re not a transactional; we believe we’re a relationship banker. So those clients that are over 3 million might be multigenerational farmers and other ones we like to have relationships with.

30

And is that likely to then mean there’s a geographical focus on Queensland, or is it going to go beyond Queensland to just agribusiness in general?---No, at the moment we have offices in Queensland and New South Wales.

35

All right. Now, I want to move, then, to the particular loan that we’re concerned with in this case study, which is the loan to Sue Rich. That was a loan originated out of the – what was the Pirie Street branch in Adelaide?---Yes.

40

And that was an owner-manager branch?---Yes.

45 And that has now been closed down?---Yes.

- And you've, obviously, gone through and reviewed the information that Bank of Queensland has available about the loan?---Yes.
- 5 You, obviously, were not involved in the loan at all?---Correct.
- I should make that clear at the beginning. And you've not been able to talk to the owner-manager or the former owner-manager about what happened in relation to the loan?---Correct.
- 10 And could you explain to the Commissioner why that is?---I understand we haven't been able to get in contact.
- And, perhaps then I will just lead you through what you put in your statement. That owner-manager was terminated by Bank of Queensland?---Yes.
- 15 He was terminated in 2013, the year after the loan that was originated in this case?---Yes, he was.
- And he was terminated because he misappropriated customer funds?---Yes.
- 20 But not the – this customer's funds?---Not the customer, no.
- I'm sorry. What?---No, you are right, not this customer's funds.
- 25 And what happened was there was an internal audit carried out by Bank of Queensland, and that discovered that, I think you say in your statement, a total of \$156,000 had been misappropriated from two customer accounts. Is that right?---I would have to double-check with the statement, but I - - -
- 30 It's paragraph 144 of your statement. It's on page .0046?---Yes.
- And the point you make in paragraph 145 is, given his termination, you've not had access to him?---Yes, so we terminated him and referred him to the police.
- 35 Now, I want to ask you some questions about the internal auditing approach at the time. Bank of Queensland would carry out audits of the owner-manager branches. Is that right?---Yes.
- And I understand from your statement that what happens now is that the audits are ordinarily carried out every three years. Is that right?---Yes. They're on a rolling basis, but minimum three years.
- 40 Sorry. Minimum three years, did you say?---I believe – I believe so, yes.
- 45 I'm sorry, I misunderstood. So they're rolling audits. That's the first point?---Yes.

And is that of both the owner-manager branches and the corporate branch or just the owner-manager branches?---My understanding is all branches and all business banking portfolios are audited.

5 And the audits are carried out on a minimum three years as part of the rolling term, ordinarily?---I believe so.

10 But if there's a unsatisfactory – if there's a failure to pass, then in that case the audit is then carried out again the following year?---I believe there will be – there will be outcomes that are required to be actioned within a certain period of time, and, depending on the – the reason for the fail, it could be as – as fresh – as recent as six months afterwards.

15 I see. And there's – perhaps we should just break this down. There's three different grades that a branch can get on the audit?---Yes. In that – at that period of time, that – that was the case, yes.

20 And could you just explain to the Commissioner what those three grades are?---Unsatisfactory, needs improvement and satisfactory.

And so if there was an unsatisfactory grade, then an audit would be carried out again within a year. Is that right?---Yes.

25 And if there was a “needs improvement”, then an audit would be carried out within two years. Is that right? Or you're not sure?---I'm not a hundred per cent sure on that. I think needs improvement, because it's a very broad result, it would depend on what was required, so what was identified and what remediation or what training was required.

30 Okay. And then, otherwise, it's part of the rolling schedule?---Yes.

And Bank of Queensland had carried out one of these – or carried out an audit on the Pirie Street branch in 2012. Have you looked at that document?---Sorry is that in this witness statement?

35 It's not in your statement?---Right.

Has anybody shown that to you?---Yes. Yes. I understood there was audits conducted in 2010 and 2012, yes.

40 All right. We might just bring up the 2012 one, BOQ.0001.0033.5135. So you've seen this document before?---Yes. Yes.

45 And this was a – this was the credit risk review on 2 July 2012 for this branch?---Yes.

And is this – is this the audit report or would there be some other document that was prepared?---There would be a more detailed report - - -

Okay?--- - - - illustrating the certain classifications.

5

All right. So if we just have a look for a moment at the credit risk report. You see the current result for credit risk quality is marginal?---Yes.

10 And can you explain what that means, what it says about the process at the branch?---It would mean that they haven't followed all the policies and processes required for credit risk.

All right. And then you see the credit risk process review overall review result is a fail?---Yes.

15

And can you explain what that means?---It's – it's more holistic from the first one, and it covers a few more areas within the credit risk.

All right. I tender that document, Commissioner.

20

THE COMMISSIONER: Exhibit 3.35, 2012 Credit Risk Review, Pirie Street branch, BOQ.0001.0033.5135.

25 **EXHIBIT #3.35 2012 CREDIT RISK REVIEW, PIRIE STREET BRANCH (BOQ.0001.0033.5135)**

30 MR HODGE: Can we bring up BOQ.0001.0066.0199. Now, this is the commercial credit risk review that was done in 2013. You can see that?---Yes.

And, again, is this – just so I understand, is this the audit document or would you expect there's some separate, more detailed document that's done in addition to this?---This is the first page of multiple, which would have more detail around it.

35

All right. And there's not some separate document. There's just one document in this case?---I – I believe so.

Okay. And then you see that the previous, that is, for July 2012, the result is a fail?---Yes.

40

And is that just reflecting what we saw in that preceding document or is that reflecting a conclusion that you think would have been drawn in a different additional document from 2012? The answer may be you're not sure?---I'm not sure.

45

All right. And, in any event, the issue that was – or one of the issues that was identified, if you look over in the executive summary, is:

5 *Material weaknesses were identified in documentation and settlement, as it was not evident from the files reviewed that conditions precedent are being addressed.*

?---Yes.

10 And, at the end of the fourth paragraph:

Whilst on some files management could talk to the current state of some exposures, the consistent use of diary memos is encouraged to record material interactions and to demonstrate proactive credit risk management.

15

?---Yes.

And is it fair to say – I'm sorry – we should just go over to BOQ.0001.0066.0203. That's just – thank you. And you see the risk observation is:

20

This is the third unsatisfactory or fail result in a row and strong management of the situation by all appropriate stakeholders is required to ensure the branch returns to an effective standard of control and risk management.

25 ?---Yes.

And this being the third one – and we've seen the second one, which is 2012 – do you think that the first one, based on your review of documents, was in 2010?---Yes.

30 Okay. So there had been audits that had been carried out, as you understood it, of this branch in 2010, 2012 and 2013, all of which showed either an unsatisfactory or fail result. Is that right?---Yes. From memory, it was an unsatisfactory or fail in '10, an improved position at '11 and then a deterioration again in '12.

35 All right. And one of the issues was that there was inexperience on the part of the loans officer at the branch?---I believe so.

If it assists you, perhaps – I'm sorry – I tender that document, Commissioner.

40 THE COMMISSIONER: Exhibit 3.36, Group Assurance Commercial Credit Risk Review, Pirie Street branch, 2013, BOQ.0001.0066.0199.

45 **EXHIBIT #3.36 GROUP ASSURANCE COMMERCIAL CREDIT RISK REVIEW, PIRIE STREET BRANCH, 2013 (BOQ.0001.0066.0199)**

MR HODGE: And can we just go back to the preceding document, which is BOQ.0001.0033.5135, and go over to the second page .5136. And if we just – thank you – pop out the review observations. You will see it says:

5 *The loans officer is still very inexperienced in commercial lending and, accordingly, closer attention is needed from the owner-manager, combined with increased oversight from the regional manager.*

10 Is that – that’s an observation where you’ve noted as to the inexperience. Did you observe other observations to that effect in your review of documents?---No, but I have seen that observation.

15 All right. And, as we understand it, then, there was only one loans officer operating at the branch?---In conjunction with the owner-manager, yes.

 And that’s not unusual, to have only one loans officer at an owner=manager branch?---No. The owner-managers depending on their – their flow of business, their number of clients would determine how many – how many staff they require.

20 And the loans officer who is being referred to here is the loans officer who prepared the suitability assessments for Ms Riches?---They were involved in the process, I believe.

25 Yes. Well, it must have been either them and the owner-manager or - - -?---Yes. Yes.

 - - - them by themselves who prepared the suitability assessment. Is that right?---Yes.

30 And then that would be sent up to the credit department?---Yes.

 Now, perhaps, just before we go to the loan itself, there was a warning letter that was sent to the branch in 2012. Have you seen that?---Yes.

35 If we bring that up. It’s BOQ.0001.0033.4710. So this was the letter sent by the bank to the owner-manager of the branch. Is that right?---Yes.

40 And this is following that commercial credit risk review that we’ve already looked at for 2012?---Yes.

45 And it notes that there was an overall fail result, and then identifies some issues which are said to be serious and require attention, as outlined below. What’s the nature of this letter? Does it have some significance under the owner-manager contract, as you understand it?---Yes. It’s – it’s a – effectively, it’s calling out behaviours that aren’t meeting the requirements under the owner-manager agency agreement and, if there’s a breach and multiple breaches, they can have ramifications to the owner-manager.

Well, if we turn over the page to .4711. You will see at the end of the page it says:

5 *Failure to achieve a pass result in the agency's next commercial credit risk review and complying with the policy in future may result in a formal breach notice being issued.*

?---Yes.

10 So this is not a formal breach notice. Is that right?---No, it's a warning.

All right. And we know that there was a problem again in 2013 with the audit, but it came up as unsatisfactory, rather than as a fail?---Yes.

15 So it doesn't appear as if a formal breach notice would have been issued or was issued as a result of the auditing in 2013?---I can't recall, but it doesn't – it doesn't appear so.

20 But, in any event, in 2013, the owner-manager was terminated, because of the misappropriation?---Yes.

25 And do you know or are you able to say these types of – these issues with the owner-manager – or this owner-manager branch as at 2012, were they unusual compared to other owner-manager branches that BOQ had?---Unfortunately, I can't say. I wasn't involved in that.

You weren't what, sorry?---I wasn't involved with the branches - - -

All right?--- - - - at that time.

30 You weren't involved with looking at the overall performance of the branches?---Not at that time, no.

Okay?---Not now.

35 But you are now?---No.

Okay. Now, in this case, the – that is, in respect of Ms Rich, the loan was originated under the commercial lending origination authority?---Yes.

40 Would that be right?---Yes.

Actually – I'm sorry – I should have tendered that document, Commissioner.

45 THE COMMISSIONER: Exhibit 3.37, letter BOQ to the owner-manager Pirie Street branch 10 December '12, BOQ.0001.0033.4710, exhibit 3.37.

**EXHIBIT #3.37 LETTER BOQ TO THE OWNER-MANAGER PIRIE
STREET BRANCH DATED 10/12/2012 (BOQ.0001.0033.4710)**

5 MR HODGE: And the commercial lending originating authority is something that's set out in BOQs commercial lending referring model?---Yes.

And you've exhibited the current version of the referral model to your statement?---Yes.

10

Do you know whether it has changed materially or at all over the last five years?---It changed in 2013, I believe.

15 I've just spilt water over many pieces of electronics. Luckily I don't have to deal with that. And what's the change that happened in 2013?---We changed the levels. So prior to 2013, experienced branches – or branches that had been there a long time had larger limits than the 5 million. We put some rigour around the property development in particular. Other than that, it was just making sure that there were referrals to BOQ business where we felt it was required.

20

All right. And the branches would have, as you've explained already, some originating authority as to – in any event, in 2012 as to what they could originate?---Yes.

25 And this particular branch, as we understand it, had no – it didn't have a delegated authority to approve commercial loans?---No, I believe they had a base level, which is, exactly as you say, no authority, other than the guarantees and the cars and a few small things.

30 Yes. They couldn't approve an actual loan?---No.

But they did have the authority to be able to originate a loan?---Originate and manage. Absolutely.

35 And so in this case, when they were originating the loan and managing it, that was within their authority?---Yes.

40 And the loans officer would be required to undertake the serviceability – the initial serviceability assessment of the loan?---Yes. So between the loans officer and the branch manager, they would look to consolidate all the data, put it together with a loan application and the serviceability and send that to credit for assessment.

All right. And that's what happened in this case, it seems, whether it's the - - -?---I believe so.

45

- - - loan officer or the owner-manager of the branch. And then it's reviewed by credit?---Yes.

And you say in your statement – if we bring up paragraph 143 on page BOQ.0001.0087.0046. If we pop out paragraph 143, you say:

5 *From the outset, BOQ accepts that there was maladministration in the serviceability and capacity assessment performed by BOQ and breach of Bank of Queensland’s obligation to lend responsibly in the origination of the loan to Suerich.*

10 I want to just make sure we’ve understood the nature of the acknowledgement as it is today. Internally, there was an identification of some errors that had been made on the loan. You’re aware of that?---On the serviceability?

Yes?---Yes.

15 And there were also identification of certain errors by FOS in the course of its determination?---Yes.

20 And it appears as if those errors don’t entirely overlap. Are you aware of that?---In terms of the serviceability errors?

Yes?---Yes.

25 And, so that we can be clear, does Bank of Queensland acknowledge that all of the error – all of the errors identified internally were errors it made in relation to serviceability?---Yes.

And it acknowledges that all of the errors identified by FOS in relation to serviceability were errors that gave rise to maladministration?---It agreed, yes.

30 All right. And I think our count – but you tell us if you have a different view about it – is that Bank of Queensland had internally initially identified three errors that it had made in relation to serviceability?---Yes.

35 And FOS seems to have identified four, one of which overlaps with the Bank of Queensland errors. Would it be - - -?---I thought there were two that overlapped.

40 Perhaps if we go through it. So if we bring up paragraph 195 of Mr Snell’s statement. That’s on page .0056. So if we pop that out. These are the three errors that were identified on an initial perusal of the file in 2014. The first is:

An amount for depreciation...was included in the profit and loss figure, but no corresponding expense was included in the profit and loss statement.

?---Yes.

45

The second was:

The living allowance was calculated as if Ms Riches was single and in fact she was married.

?---Yes.

5

And the third was that her “PAYG salary tax liability” had been understated?---Yes.

And we will just bring up the FOS determination. While that’s coming up, let me ask you a question about interest rate buffers, because this does – you are aware that FOS expressed a view about what the appropriate interest rate buffer was?---Yes.

10

And it expressed the view that the appropriate interest rate buffer was three per cent?---Yes.

You’ve explained in your statement that the Bank of Queensland at the moment, I think, is using an interest rate buffer of 2.25 per cent?---Yes.

15

Does Bank of Queensland have a view as to the appropriateness of a particular interest rate buffer?---Well, as evidenced, we’ve changed our buffer to be closer aligned to what we think the market requires.

20

Sorry. Did you say to reflect what?---Well, we assess market volatility in the buffer, but we also take guidance from regulators, for example, the 7.25 at the moment for home loans.

25

Well, that’s something I’m just interested in trying to tease out to understand how relevant this is in relation to business loans. APRA publishes certain guidance in relation to home loan lending and what buffer ought to be allowed. Is that right?---Mmm.

30

Sorry. Just because it’s being - - -?---Sorry. I believe so.

And you may not be familiar with the detail of this, Mr Snell. If I ask you questions about interest rate buffers, am I taking you well outside of your comfort zone?---I probably won’t be able to answer accurately on behalf of the bank, yes.

35

That’s all right. Let’s bring up the determination, which is BOQ.0001.0023.0531. And if we go to the page .0538. So these are the four serviceability issues that had been identified in the FOS recommendation. See that starting about a third of the way down the page?---Yes.

40

So the first error was that Bank of Queensland had:

Included the add back of depreciation –

45

Which is the same error that we looked at a moment ago that had been identified internally by Bank of Queensland. Yes?---Yes.

And then the second error is this issue about interest rate buffers. Do you see that there?---Yes.

5 And the third issue is that the wrong term was used for the home loans, that a term of 30 years was used when the home loans were for 25 years?---Yes.

And the fourth issue was that Bank of Queensland did not appear to have given any consideration to make an allowance for the bank guarantee?---Yes.

10 And it may be, to be fair to you, that Bank of Queensland hasn't needed to turn its mind or talk to you about which of these particular points it accepts that FOS was right about. Is that fair?---No, I haven't had that discussion.

15 And the reason for that – and we will come to this in a moment – is the recommendation found that there was maladministration in relation to the loan?---Yes.

That's right?---Yes.

20 And Bank of Queensland did not challenge the recommendation. It accepted the recommendation?---Yes.

25 And that was because, well before the recommendation was made, Bank of Queensland had already identified that there was maladministration in the loan?---Yes.

30 So that whether the particular points that had been picked up by FOS were right or not was never something that Bank of Queensland really needed to turn its mind to?---I think we would have had a conversation if they were vastly different. So, although the topics are different, the amount changes were quite similar to what we – we identified as definitely the errors that were made.

35 Well, I think – and, again, if we just think that through – the issues that – whatever the errors are in relation to serviceability, the consequence of it is that had the serviceability calculation been done properly, then the loan would not have been made?---Yes.

40 And Bank of Queensland had figured that out well before it received the FOS recommendation?---It appeared that way.

And once it was decided that the loan should not have been made, there's – the consequences of what follows from that don't depend on what the errors were in serviceability, do they?---I don't believe so.

45 It's just that there's then consequences in terms of it shouldn't have been made, therefore, FOS has a standard way of dealing with that sort of situation?---I'm not sure if it's standard, but they certainly give recommendation and determination, yes.

All right. And then if we then – sorry, Commissioner. I should say, that document doesn't need to be tendered. It's already part of the exhibits to the statement.

5 Now, I just want to then come back to this idea that we were looking at in your statement, that Bank of Queensland identified and acknowledged its maladministration to FOS. That's what you say in your statement?---Yes.

10 And I want to be clear about what you mean by that. When do you say that Bank of Queensland acknowledged its maladministration to FOS?---I believe it was after the recommendation.

I see. After the recommendation?---I believe. I would have to check, though.

15 All right?---The – the bank was aware that the branch had made mistakes.

All right. And, in terms of the actual process by which Ms Riches ended up with her loan, as you know, there was a conditional letter of offer that was given by the owner-manager to Ms Riches?---Yes, I believe there was one on the 20th and one on 27 August, yes.

20 And the amount or indicative monthly repayment in relation to that was roughly half of what ultimately turned out to be the interest payment?---Yes, that document's stated around four – four and a-half thousand dollars, four thousand

25 And, as I understand your statement, you say Bank of Queensland's position is that the branch manager had no authority to be able to give that conditional letter of offer, in any event?---Yes. So there were two things that sort of came to – came to light in that – in the investigation – is Ms Riches alleged that she had a conversation with the branch and he committed verbally to a approved loan, which isn't documented or we don't know. And then he issued a breach – sorry – a letter of – conditional letter of offer outside of his authority, which was a breach of policy, yes.

35 All right. And, as I understand it, Bank of Queensland has – it doesn't have any ability to dispute that that conversation occurred?---No, we have no records.

You have no records. One of the points that was picked up in the internal audit of this branch was that there was a failure to keep sort of notes and memos in relation to credit?---Yes. Yes.

40 This branch manager, in any event, breached a different policy by even handing over the conditional letter of offer?---Yes.

45 All right. And the other striking thing about the conditional letter of offer is that it doesn't explain that the lease term would need to be seven years in order for this – for a loan to be made with these interest – or principal and interest repayments of only four and a half thousand dollars?---Yes, you're correct. And that's what I got identified by the risk assessor at a later time.

And so what happened is the owner-manager had given the conditional letter of offer to Ms Riches, which didn't say anything about the seven years, submitted the loan for – as the originator, submitted the loan for approval to the credit risk officer, who had to knock it back?---The credit risk officer looked at the – looked at the detail he was provided with, and – and noticed that the duration of the leases was shorter than the term of the loan. So, yes, he sent it back for further review.

And the Bank of Queensland policy was that you couldn't lend out on a business loan where it's buying a business in a leased premises for longer than the lease?---Yes, that was the guideline.

So this was just in accordance with the Bank of Queensland policy?---Yes.

And that's – I am sure you would say - - -?---Normal practice.

- - - entirely understandable. You don't want to be lending out against a business that – where the loan has to be repaid over eight years, but the business could theoretically not be able to continue to operate from the premises after three years?---Yes.

And the other part of this is if the loan – I'm sorry – if the lease had an option, then the term – the period provided for under the option could have been taken into account?---It certainly would have been taken into account, yes.

And so that could have made a difference, as well; it's just that there wasn't an option in this case?---Yes. Yes. Although the – one thing that was taken into account was that the shops had been there for some 20 years and they had been leased out continually.

And what, sorry?---The leases had been rolled for that – during that 20 year period. So that was taken into account. However, as you have alluded to, the leases were shorter than seven years.

Yes. And the response came back from the credit officer back to the owner-manager, which is, "We're not prepared to lend"?---On the basis - - -

On that basis?---Yes.

And there's nothing that would indicate that the owner-manager then told Ms Riches about this?---Not in the records I've seen.

And it then appears that the owner-manager tried to, or did, directly contact Wendy's, the franchisor?---I believe they had a conversation with the legal representative at Wendy's, yes.

And it appears as if the bank manager was trying to negotiate some sort of – was it an extra extension or option for the benefit of Ms Riches?---From reading the – the

transcript, I get a sense that he was trying to understand whether or not there would be any extension approved before the signing of the contract, yes.

5 And I'm interested in this. Is that what you would regard as normal behaviour for a branch manager?---There are times when the relationship manager will do – assist the client, whether it be contacting the external parties or not. Normal is a hard thing to say, because it's quite broad.

10 Presumably, you wouldn't expect him to be doing it without having first sought the agreement of the client?---To – to act on their behalf? Yes.

15 And it seems as if a danger of a branch manager taking this sort of approach is that the banker is taking on some role that goes beyond being merely a banker, and is starting to act as an adviser or assistant to the customer. Do you agree?---Yes. Knowing that in this case the client had told the banker that she was using advisers, as well, but yes.

20 Well, that's true, that in this case the client had advisers. What I'm interested in is an important issue for the Commission – is the personal responsibility of a borrower. If the branch manager starts becoming involved in this way in transactions, do you have a view about whether the danger that is presented by that is that it erodes the idea that the bank and the small – potential small business owner are operating at arm's length and entirely independently of each other in their own interests?---I have a view that at times the bankers may have experienced that maybe the business owner, whether that be a small business or a corporate, may have different levels of experience. So there may be an agreement to assist. And there are times in corporate banking or institutional banking where that certainly occurs.

30 And could you just explain that a little bit more. Perhaps if you break it down and start with corporate banking?---So in – in my experience with some of the clients we deal with in negotiations of transactions and the like, they will – they will ask the bank to assist in the process. But we will be an invited party. But, as you've alluded to here, the small business client had their own advisers. So arm's length transactions or an invitation to ensure that it's specific to a topic would be probably appropriate.

35 What I'm interested in is – and it's more general than this particular case – and that is, in drawing a hard line or any line between when the – or at the point when the responsibility of the banker for the interests of the customer ends, do you think that if the bank manager is becoming involved in dealing directly with a franchisor, that pushes the line so that the level of responsibility of the banker increases beyond what it ought to be or would normally be?---That's a – that's a very broad question, and I – and I think there's lots of different answers in lots of different ways. But I would say, specifically, that, as long as it's evidenced and the reason why, and the banker's experience is clearly articulated, then I would see that as being an acceptable outcome. However, segregation of duties within the bank to ensure that the right people are doing the right things and the relationship with client to ensure, as you've

alluded to, to an extent it has to be arm's length, but, otherwise, they – they are working together.

5 All right. Actually, I might just – I'm sorry – I will persist with this, Mr Snell. And what I want to try to get you to help us with is it will be said, inevitably, that a small business owner or potential owner has to take responsibility and personal responsibility for their own wellbeing, and taking responsibility for that wellbeing is not the role of the bank. You – I mean, that's a, one would think, entirely conventional and legally understandable approach to the relationship between banker and the small business owner. Do you agree?---That will be said, because our – our role is primarily to assist them in getting funding, yes.

15 That's right. And the bank is acting in its interests. It is seeking to – when it assesses credit, what it's trying to do is make sure that, ultimately, it will get repaid. And that's the approach that it takes. It's not – whatever the advertising campaigns might be, the bank is not the friend of the small business owner; it's a commercial transaction?---There's probably a line there in terms of we are a part of the relationship, we feel, because we do provide services that assist them in – in running their day-to-day business. Internet banking, for example, is a good example where 20 people use that tool to – to run their business. But you are correct in terms of there is a line where we wish – where the relationship of the banker and adviser are definitely separate.

25 And they should each be expected to be taken care of their own interests?---There is – there is a joint relationship, obviously, debt versus equity, but we are party to – to the relationship. But, yes, everybody has their responsibilities within the relationship.

30 And the banker is not the financial adviser of the small business owner?---No.

And not the lawyer of the small business owner?---No.

And not the accountant of the small business owner?---No.

35 And small business owners can go and access any of those people if they want financial advice or legal advice or accounting advice?---Yes.

40 And if they want somebody to negotiate with a franchisor on their behalf, they can use their lawyer, they can get a broker, they can get a commercial agent or they can do it themselves?---Yes.

45 And it seems, then, as if once the banker steps in and starts dealing directly with the franchisor about the franchisor's relationship with the small business owner, that the banker is taking on a new role and a new responsibility. Do you agree with that?---In this specific case, I think the banker should have asked the client to talk to them, yes.

I don't mean – let's set aside – we're talking more generally now?---Okay.

So let's set aside this particular case and what the banker should do before they decide to do that. But if they get the permission of the small business owner and if they do it, that is, talk to a franchisor about the relationship between the franchisor and the small business owner, do you agree that the banker then seems to be taking
5 on some new relationship and responsibility in relation to the small business owner?---It's a hard one, because you've said franchisor and franchisee, and our branch managers are owner-managers, ie, franchisees. So there is an expectation that they would have a level of experience in this case, maybe. But, generally, there's a line. And I don't know – it's not a hard line. And I don't think it has been
10 determined, but there is definitely a place where we have to be careful as to where we're crossing the boundaries of what's too close and – and not independent.

And it seems – and I'm sure you would say this – it's not as if you can – you can't regulate what that line is by government stepping in. That would be your
15 view?---No, I think the culture of the bank and the – and the rules within the bank, so the policies, would regulate that.

And if the bank decides to adopt, as either a formal or informal policy, that it's permissible for a banker to – with the permission of the borrower – putative borrower
20 – to speak directly to the franchisor about the nature of the relationship between the franchisor and the borrower, then that's a matter for the culture of the bank?---I suppose yes.

And one reason why the bank might decide to do that and step beyond the arm's
25 length role is because of the point you've made, which is the bankers might have a lot of experience with dealing with different types of business transactions, much more experience than that of the small business owner?---They may, yes.

And it's to the benefit of the small business owner if the banker can give the small
30 business owner the benefit of his or her experience?---It seems that way.

And, insofar as that involves some potential increased level of risk for the bank because of the possibility of – that it might be said in the future, “Well, now you had
35 a particular duty to me and you breached it”, that's, again, something for the bank to take on and manage?---I believe so.

All right. Now, let's return to the specifics of what happened here, which was the serviceability worksheet was completed initially within the branch by either the
40 inexperienced credit officer or the owner-manager?---Yes.

And it had a number of errors, as we know?---Yes.

And it was submitted up to the credit department?---Yes.

45 And the credit department didn't pick up those errors?---It appears not.

And that was notwithstanding the fact that there had already been an identification in the audit of the branch that year that there were issues with the credit assessments being carried out in that branch?---Yes.

5 And do you know whether, if a branch was audited and there were issues identified with credit assessment coming out of the branch, that there was then any instruction given to the Bank of Queensland credit department to exercise extra care or scrutiny in relation to serviceability calculations coming from such a branch?---I would believe that the credit risk department would share that information with – sorry –
10 the audit department would share that information with credit, so they would be aware.

All right. You assume that they would?---Yes, they would have a conversation about the outcomes. Yes.

15 Would the audits be distributed within the credit department or you're not sure?---I don't know, sorry.

All right. And, in any event, the consequence of it was that the serviceability issues were not picked up, but, because of the term of the lease, the only offer that could be made was, effectively, a loan on a three-year basis?---Yes.

And that was why, when Ms Riches finally came into the branch to get her final letter of offer, it had now – the payments that she had to make had now
25 doubled?---Yes. It – it appears the credit manager was more focused on the duration of the leases, rather than the servicing worksheet, and he had directed the term to be three years. So the branch manager had the term adjusted. And, as you've – as you've alluded to, yes, it increased the interest from 4000-odd to 8000-odd.

30 And, quite apart from the maladministration in actually calculating the loan, does Bank of Queensland accept that there was a failure on its part in relation to the original representation about a monthly payment of only four something thousand dollars?---I accept that we offered the client a conditional letter of offer which illustrated that. And what I can't identify through the paper – the papers that I've
35 read is whether there was any communication prior to the documentation from the seven years to three, which, obviously, increased the interest from four to three. I don't know whether that occurred. But if it hasn't, then yes.

If we just focus on that initial conditional letter of offer, that was, obviously, a failure of the branch manager to follow Bank of Queensland's processes. You agree with that?---In terms of issuing the letter of offer, yes

Yes?---Yes.

45 And do you accept that if a bank gives a conditional letter of offer to a customer which says the monthly payments will be four something thousand dollars, that it would expect the customer to then rely on and order his or her affairs in accordance

with that representation?---And this is where the original challenge lies in – in terms of the original letter of offer – or conditional letter of offer shouldn't have been issued, and, if it had have been, it should have been post-credit assessment, so we would have identified earlier that the duration would have been three years and the interest component different. And so yes, it stems back to that conditional letter of offer being issued.

Yes. But if we just focus on what I'm interested in understanding, which is it was still a conditional letter. It wasn't unconditional. That's the case?---True.

There were conditions that had to be met in terms of the provision of certain contracts?---Yes.

Presumably, those are conventional conditions. It's not ordinarily expected – I'm sorry – they're conventional conditions. Is that right?---Yes.

It wouldn't be expected that those – the provision of those contracts would somehow have some effect on the monthly payment of the loan – for the loan?---Probably the – the valuation would be taken into account. So the valuation of the business, the cash flow of the business. So I think you're aware that they asked for management figures for that year to understand how the business was performing and whether it had been consistent with 2011 and '12. But, yes, they're standard – reasonably standard documents or expectations.

But, again, let's just, if we can, focus on the detail of that. If the management accounts had been problematic, what would the consequence have been, if any, for the monthly payments?---If they were problematic, I think there would have been a discussion with the client and the accountant and it may not have gone ahead.

That's right. The loan just may not have gone ahead?---Yes.

As distinct from altering the monthly payments?---Yes.

And, similarly, when it comes to the contracts that were required, it wasn't – it was already known by the bank that the term of the lease was only three years?---Yes. Well, it was shorter than three years, but three years was the duration. And the client accepted that on the basis that, as I said, the history had shown the shop had been there for 20 years, so they were confident that they would be able to continue. So three years was the term, yes.

Sorry. We may be at cross-purposes here. When the conditional letter of offer was given, it was already known to the bank that the term of the lease would be three years?---I would have to check the time.

You're not sure - - -?---No.

- - - whether that's the case?---No.

Right. But, in any event - - -?---Yes.

- - - at some point well before the final letter of offer was issued, it was known to the bank that the term would only be three years?---Yes.

5

Because that was the basis upon which the submission for approval was refused - - -?---It was refused at seven - - -

10 - - - initially?--- - - - and the credit assessment suggested three years would be approved, yes.

15 And so my – to return, then, to this issue of providing a conditional letter of offer, does the bank accept that if it provides a conditional letter of offer that says the repayments will be four something thousand dollars, that that is a representation to the client or potential client that the repayments will be four something thousand dollars?---Absolutely. Again, I think that the challenge at the time was that conditional letter of offer was issued without the appropriate authority.

20 I understand?---So yes.

And does it accept that if it provides a conditional letter of offer to a client saying the loan repayments will be four something thousand dollars per month, that the client's entitled to rely upon that?---Yes.

25 And it doesn't matter that the loan offer is conditional, insofar as they're concerned with, "What are my repayments going to be?" They ought to have the comfort of proceeding on that basis?---Again, I will go back to the conditional letter of offer shouldn't have been issued on the basis it was. However, in normal case of business, when a conditional letter of offer has been issued, there would have been appropriate steps taken and then that would be relied upon, yes.

30 Right. And so, from your perspective looking at this file, is there some failure on the part of the bank in its duty to the client that you identify with respect to the conditional letter of offer?---Yes.

35

And what is that?---The inappropriate behaviour of the branch by issuing the conditional letter of offer without taking the appropriate steps of sending the file to credit assessment.

40 All right. Now, what happened was after the loan was taken up by Ms Rich, Suerich immediately defaulted under the loan?---Yes.

And it has never been able to make a full monthly repayment?---I believe so.

45 And at the time when Suerich defaulted there was no review of the loan assessment proves in relation to the making of the loan?---I don't believe a full assessment, no.

I'm sorry. At the time of the default, nobody went back and looked at why this loan was made in the first place, if there was immediate default?---No.

5 And various demand letters then were sent over time by Bank of Queensland to Ms Riches?---Yes.

10 And Bank of Queensland then took – or notified her that it would exercise its powers of sale under the mortgages?---I believe we made that notice on the basis of the vacant land, and we worked with Ms Riches on that.

15 And what happened was Bank of Queensland first took possession of the vacant land. Is that right?---I believe so.

20 And then, ultimately, it was - - -?---We released it. And she - - -

25 Yes. You released it back to her and she sold it?---For her to market, yes.

30 Yes?---And I think we had a window of some 90 days. And 180 days later she sold the block, yes.

35 And then, in mid-2014, Ms Riches made a complaint to FOS?---Yes.

40 And it was at that point in time that Bank of Queensland investigated the loan?---Yes.

45 And I would like to look at or understand that investigation. So can we bring up tab 112 of Mr Snell's statement, that's BOQ.0001.0023.0926. I'm sorry. I think I've given you the wrong document number. It should be BOQ.0001.0023 – no – I have given you the right one – .0926. This is the internal complaint file note from Bank of Queensland?---It appears so, yes.

50 And you've exhibited this document to your statement?---Yes.

55 And you will see it's dated 2 September 2014?---Yes.

60 And it sets out the three loans at the top of the page?---Yes.

65 And then, under the servicing section, says:

70 *Perusal of servicing completed by the branch shows the following errors.*

75 And it identifies the three errors we spoke about before?---Yes.

80 And it appears that it was then – or there was then a recalculation done by the customer relations section of the branch – I'm sorry – of the bank?---Yes.

And when the recalculation was done confirming the errors, it changed from an initial surplus of \$15,003 to a deficiency of \$11,447?---Yes.

And if we then go over to page 2, you see in the middle of the page it said:

5

Perusal of accounts show the following transactions, and this indicates that the business is still operating.

?---Yes.

10

And it then explains what the consequence would be in FOS, which was FOS would rule ignoring reimbursements at this stage that the applicant would still be required to repay the debt, but would be at zero per cent and no ongoing fees?---Yes.

15

And then you see at the bottom of the page what the applicant – that’s Ms Riches’ request was, which was:

The following compensation/reimbursement.

20

Do you see that?---Yes.

And then, if we go over the page, we see what the internal proposed resolution was, which was:

25

BOQ should not reimburse the costs associated with the business purchase.

And, instead, there was a recommendation that an offer be made to the applicant:

...in full and final settlement of the dispute.

30

Which is various things:

Reduction of the business term loan principal by \$56,323.33; reimburse an amount representing interest charged, reimburse an amount representing legal fees, the business term loan to be repaid at zero per cent with no fees, and business term loan repayments –

35

To be a certain amount per month. Do you see that? That’s the five recommendations?---Yes. Yes.

40

And, although that was the resolution proposed on 2 September 2014, Bank of Queensland didn’t make that offer to Ms Riches?---No, they didn’t.

And do you know why that was?---No, I don’t.

45

All right. Have you inquired internally as to why that was – why that decision was made?---No, I have not.

All right. Have you formed your own view, based on your review of the documents, as to why that decision was made?---The proposed resolution or the decision not to?

5 Yes, why the decision was made not to go ahead with the proposed resolution?---No, I haven't. No.

All right. Then can we bring up the second file note. We might just – can we move that to one side of the page, the document we've currently got, and then bring up on the other side of the page the next internal review note, which is tab 119 of Mr
10 Snell's documents. It's BOQ.0001.0023.0931. So this is a file note on 18 September 2014, 16 days later. See that at the top of the page, 18 September 2014?---Yes.

And you see in the comments section under Commercial Recoveries:

15 *Dispute has been forwarded to commercial recoveries for perusal. Vanessa –*

Presumably somebody from commercial recoveries –

20 *has confirmed that the debts did not service at the time of the application.*

?---Yes.

And so, as at 18 September 2014, there was no doubt at all within Bank of Queensland that, first, the loan didn't service?---Yes.

25

And, second, that the loan – therefore, the loan shouldn't have been made?---Yes.

All right. And then you will see what had happened was that – what's recorded is:

30 *The applicant has been written to requesting an update on the current business operations.*

See that?---Yes.

35 And that was written to by Bank of Queensland, presumably. Is that right?---I believe so.

And she had responded and explained what she was doing?---Yes.

40 And then, if we go over to page 3, .0933. And, again, this sets out, like the last file note, what the applicant's request was and then the proposed resolution?---Yes.

45 But, in fact, if we then blow up the recommendations on the right-hand side, numbers 1 to 5. And we just need to move that down slightly so we can see what's on the left-hand side, as well. Move it down. That's fine. So we can see 16 days later the recommendations remained the same, save that the amount to be reimbursed as

representing interest had increased from \$30,190.99 to \$35,223.01?---Yes, I can see that.

But, again, that recommendation wasn't followed?---I don't believe so, no.

5

You haven't seen any indication that that offer was made?---No.

All right. And, again, you're not sure why that was?---No.

10 And then if we bring up BOQ.0001 – we can take both those documents down – BOQ.0001.0034.0006. So this is an internal email of Bank of Queensland on 18 September 2014 by Mr Vine, the author of the two file notes, to Sabrina Dubois. Do you know who Sabrina Dubois is?---Yes.

15 Who is she?---She works within the – worked in the commercial recoveries area.

Commercial what? Recoveries?---Recoveries, yes.

20 Thank you. And he is attaching the response that had been received from Ms Riches. It was about what was going on with the franchise. And then he says:

As both Vanessa and I have confirmed to maladministration in lending, I will be discussing a resolution with Michelle next week. Once a resolution has been decided on, I will forward to you for consideration.

25

?---Yes.

30 And, again, I take it from your review and whatever discussions you've had internally, you haven't been able to identify or understand why the decision was made some time within the next few weeks not to make the offer that had been recommended?---No.

All right. I tender that document, Commissioner.

35 THE COMMISSIONER: Exhibit 3.38 will be email 18 September 2014 Vine to Dubois and others - - -

MR HODGE: I'm sorry. I apologise, Commissioner, that's actually tab 121 to - - -

40 THE COMMISSIONER: Very well. We don't need exhibit 3.38.

MR HODGE: Thank you.

THE COMMISSIONER: Yet.

45

MR HODGE: Now, can we bring up FOS.0012.0001.1939. This is the letter from FOS to Mr Beddoe at Bank of Queensland. I take it from what's set out at the top that he's the team leader of customer relations?---Yes, that's correct.

5 Would he be somebody that Mr Vine reported to?---I believe so.

All right. And so FOS is writing to Bank of Queensland to set out what FOS understands is the dispute?---Yes.

10 And then if we go to the page .1941. You will see there's issues in dispute. And the first issue is:

Did the FSP –

15 That's Bank of Queensland –

engage in irresponsible lending when it approved the business loan in October 2012?

20 ?---I see that, yes.

And then the second question is about whether Bank of Queensland's process caused the delay of the settlement. The third is about whether Ms Riches has incurred a loss. And the fourth is what is the appropriate resolution of the dispute?---Yes.

25

And you will see then at the bottom of the page it says:

What you need to do now.

30 And Bank of Queensland was asked to:

Provide the following information.

And the first one was:

35

Is my understanding of the dispute correct? If not, please provide reasons.

?---Yes.

40 And then, if we turn over the page, was then asked for – it is – various pieces of information, including number 7:

Detailed basis on which lending was approved with reference to lending guidelines and/or policy and information provided by applicant.

45

?---Yes.

All right. And then can we bring up tab 21 of Mr Snell's exhibits, which is BOQ.0001.0036.0244. And you will see the – this is the letter back on 12 December 2014 to Bank of Queensland?---Yes.

5 I'm sorry, Commissioner. I should have tendered that letter from FOS. That's not part of Mr Snell's affidavit.

THE COMMISSIONER: That will be exhibit 3.38, letter FOS to BOQ, 9 December '14, FOS.0012.0001.1939.

10

**EXHIBIT #3.38 LETTER FOS TO BOQ DATED 09/12/2014
(FOS.0012.0001.1939)**

15

MR HODGE: Thank you, Commissioner.

So this is the response of Bank of Queensland to FOSs letter of 9 December 2014?---Yes.

20

And do you see point number 1, responding to those seven questions that had been asked by FOS, was – is:

25

Bank of Queensland is of the view that FOSs understanding of the dispute is correct.

?---I see that, yes.

30

Now – I'm sorry – did you want to make a comment about that, Mr Snell?---No, I was just – I might ask later to remind myself of that understanding, but no.

35

Let's bring it up. So if we put that document on one side and bring up FOS.0012.0001.1939 on the other side. Do you want me to read it out again? FOS.0012.0001.1939. And if we go to page 3. See Issues in Dispute sets out the four issues that will need to be investigated, the first one being - - -?---Yes.

Continuing:

40

Did Bank of Queensland engage in irresponsible lending when it approved the business loan in October 2012?

And the first question that BOQ was asked to answer was:

45

Is my understanding of the dispute correct?

And the response is:

BOQ is of the view that FOSs understanding of the dispute is correct.

?---Thank you, yes.

5 Now, what I would like you to do, if you're able, is explain why Bank of Queensland was agreeing with FOSs summary of the dispute, given that FOS understood that there was a question as to whether Bank of Queensland had engaged in irresponsible lending when it approved the business loan in October 2012, but BOQ had already determined by 12 December 2014, and, in fact, had determined three months earlier,
10 that it had engaged in irresponsible lending?---Unfortunately, I can't – I can't explain that.

Have you made any internal inquiries to understand why that approach was taken?---No.

15 Do you know whether or not this is the standard approach of Bank of Queensland's customer relations department?---I do not know that.

Right. Now, if we go on the document on the left-hand side to page .0246. I'm sorry – 0245. Thank you. And you see point number 8 – so this is an additional point beyond the seven points raised by – I'm sorry – actually, before I do that, can we also on the document on the left – on the right-hand side, can we go to page 1942. And you will see the seventh question that FOS had asked Bank of Queensland was:

25 *Detail basis on which lending was approved with reference to lending guidelines and/or policy and information provided by applicant.*

And point number 7 of Bank of Queensland's response is:

30 *The applications for finance were assessed in line with the policies applicable at the time of the application.*

Is that statement in number 7, in your view, true? I'm sorry – the statement by Bank of Queensland true?---My view is they were assessed and aligned with.
35 Unfortunately, there were mistakes in it.

I see. So it's not, in your view, strictly untrue to say they were assessed in accordance with the policies; it's just it omits a relatively key fact. Do you agree?---Yes.

40 All right. And then Bank of Queensland adds an eighth point, which is:

45 *Bank of Queensland is of the understanding that the applicant has previously provided information to FOS that suggests that independent professional advice was obtained prior to the purchase of the business being completed. If the independent professional advice obtained suggested the applicant not purchase the business yet still opted to, then Bank of Queensland is of the view*

that, should FOS find that there was maladministration in lending, then the outcome should be proportioned given this information.

?---Yes.

5

And I want to ask you about a couple of elements of this statement. The first is Bank of Queensland is clearly taking the position that there is some question about whether there was maladministration in the loan. Do you agree with that?---No, I believe they have admitted that there was maladministration in the loan.

10

In this letter, they are clearly taking the position that there is some question about whether there is maladministration in the loan?---It – it doesn't say the bank doesn't accept there's maladministration; it's stating FOS finds there's maladministration. But we had said that there was maladministration - - -

15

No. You said internally - - -?---Yes.

- - - that there was maladministration?---Sorry. Yes.

20

And to FOS you agreed that one of the issues was whether or not there was maladministration. You agree with that?---Yes.

And to FOS you said, if FOS finds that there was maladministration, then that will raise another issue. You agree with that?---Yes.

25

And, in response to FOSs question about whether lending was approved with reference to lending guidelines and/or policy and information provided by the applicant, your response was:

30

The applications were assessed in line with policies.

And what wasn't said by Bank of Queensland to FOS was "but they were assessed incorrectly and there was maladministration in the loan". Do you agree with that?---Yes.

35

Do you regard it as appropriate that Bank of Queensland took this approach in its correspondence with FOS?---No.

40

Now, the second thing that I want to ask you about is this idea of the legal advice – or the professional advice. You may not know the answers to this, but were there ongoing discussions occurring at this time between Mr Vine from Bank of Queensland and the representative from FOS? Or you're not sure?---After – after this date?

45

No. No – well, around this time. So do you know how it is the Bank of Queensland had been told about the independent professional advice?---No, other than the client

had – if memory serves me right, I think the client had told us that they were talking to their accountant during the process.

Well, you see the statement is:

5

Bank of Queensland is of the understanding that the applicant has previously provided information to FOS.

You're not sure where that understanding came from?---No.

10

Presumably, the only – it could only have come from FOS?---You would presume so.

All right. Can we bring up tab 22 of Mr Vine's statement, which is
15 BOQ.0001.0023.0938. So this is a further internal file note of Bank of Queensland on 12 February 2015?---Yes. And, just to refresh my memory, we were talking about November '14 before, weren't we?

You mean the file notes or the letters?---Yes. The previous file note, yes.
20

The previous file note was 18 September 2014?---Okay.

And the previous letter that we looked at was 12 December 2014?---Thank you.

25 So this is now the file note on 12 February 2015?---Yes.

And, presumably, there has been some communication from FOS to Bank of Queensland in order to tell Bank of Queensland that FOS have completed their investigation and have advised that there is maladministration in lending?---Yes.

30

And, as is noted:

This was identified at the time of our investigation and confirmed by Vanessa.

35 ?---Yes.

And that means confirmed internally?---Yes.

But not, as we know, confirmed to FOS?---It appears that way.
40

And, instead, FOS has presumably spent three months trying to do its own assessment to figure out whether there was maladministration in the lending?---I believe so.

45 And then if we go to page 3, which is .0940. And you see there's a section which is Other Information. And – I'm sorry – can we just take that down for a moment, because a name is not redacted. You've got a copy of that, I think, Mr Snell, which

is tab 122. Commissioner, can I just indicate the name of the owner-manager of the branch was identified and that's subject to a non-publication direction by you, Commissioner.

5 THE COMMISSIONER: Thank you.

THE WITNESS: Sorry, what volume?

10 MR HODGE: It's just my junior attempting to help Mr Snell find the volumes of his exhibits.

THE COMMISSIONER: So we're short of paper.

15 MR HODGE: I believe there is – at least my version of Mr Snell's statement has six volumes to it.

Have you got tab 122?---Yes.

20 If the name has now been redacted, it can probably come back up on the screen. But I might just get one of my instructing solicitors to go around and check that. Now, what – the point that is made on that page – have you got that? It's page - - -?---Yes.

25 - - - 3 of the document. And there's a section in the middle called Other Information. Do you see that?---Yes.

And it says:

While FOS have ruled maladministration in lending, the following should be noted.

30

And it is then said – there we go:

Prior to the business purchase settlement, Ms Riches obtained professional advice from her accountant and legal representative. The advice to the applicant stated the business was not viable. While we do not hold a copy of this correspondence, FOS have confirmed that this was advised by the applicant.

35

?---Yes.

40

Can I just ask about that. Can we put that document on one side of the screen and bring up on the other side of the screen the advice document, which is FOS.0012.0001.1005. And go to the page .1249. 1249. So this is, the best we can tell, the document that's being referred to as the advice. And the relevant statement seems to be:

45

The bottom line profits already look skinny to me, especially if deemed salaries for proprietors working in the business have not been included in the salaries expense figures. I think large rent increases or large capital cost on refurb would hurt these businesses.

5

That, to be fair to Bank of Queensland, doesn't seem to be a document that was actually ever provided to Bank of Queensland, as best we can tell. Have you seen that document in your review of the records?---No, I think I saw it yesterday.

10 All right. And so, again, to be fair to Bank of Queensland, the statement:

The advice to the applicant stated the business was not viable –

15 That doesn't seem to reflect the email. Do you agree with that?---I suppose it – it depends on the termination of skinny, but, yes, it doesn't say it's unviable.

20 But – and this is the point I want to make – it's not as if Bank of Queensland had read this document and, therefore, that's why it thought that was what the advice was. The reason Bank of Queensland thought that that was what the advice was was because that was what FOS had told Bank of Queensland was the advice?---I believe that's the case, yes.

So it appears as if, for whatever reason, FOS had read:

25 *The bottom line profits already look skinny to me –*

as meaning the business was not viable. That's the first point?---Mmm.

30 And then has told that to Bank of Queensland?---It appears that way, yes.

And that's, then, the explanation of the push that Bank of Queensland makes to say that the advice was that the business was not viable?---It seems that way.

35 And then there's another point which is made, point number 2, which is it appears that the applicant may have made an offer to purchase the business not subject to finance?---Mmm.

40 And then, having observed those two points, there's then a further proposed resolution, which is now less favourable to Ms Riches than what had been proposed in September of 2014; now it's that responsibility be apportioned 60 per cent to Bank of Queensland and 40 per cent to Ms Riches?---Yes.

45 And there's then a change to the proposed resolution at the bottom of page 1. And if we go over – sorry – bottom of page 3, and if we go over to page 4?---Yes.

And, again, it doesn't appear that Bank of Queensland made that offer to Ms Riches?---No, I don't believe so in exactly those terms.

I'm sorry. Say that again?---No, I don't believe so.

5 All right. And then if we then bring up what should be tab 123 of your statement, which is BOQ.0001.0033.6267. So we now – I'm sorry – actually, before we look at that document, can we – can we bring up a different document which is BOQ.0001.0033.6266. So this is following on from that internal file note. And it appears that what has happened is that FOS has contacted Mr Vine and told Mr Vine that FOS has concluded that there's maladministration in lending. So that's before we get to the document itself – by about mid-February. And that's what's reflected in the file note we looked at. Do you agree with that?---Yes. Yes.

10 And appears to have invited Mr Vine to make an offer to the applicant, to Ms Riches, to try to resolve it?---Yes.

15 And Mr Vine has internally identified a recommended offer that might be made?---Yes.

20 But, rather than make that offer, what Bank of Queensland did was to write back to the representative of the ombudsman and say:

25 *Bank of Queensland has reviewed, considered the information available and, based on the limited information available, Bank of Queensland is not in a position to make an offer at this time. The information that Bank of Queensland is of the view that would be required includes (but is not limited to)*

25 And it then says:

30 *...family trust financials for the preceding financial year, personal tax returns for the preceding financial year, and the names of beneficiaries of family trusts.*

30 And then says:

35 *Bank of Queensland seeks FOSs assistance to obtain the above information to support the applicant's comments made in submission to FOS regarding non-receipt in income salary, and that FOS issue the recommendation in line with its current findings.*

?---Yes.

40 And do you know or understand why it is that this information was needed in order to be able to make an offer?---No, I don't know, but it appears that he is trying to understand where some distributions have gone from the business and would that have impacted on the viability of the business. That's just - - -

45 No. No. Well - - -?--- that's just me. That's only - - -

- - - that's speculation?--- - - - my view. Absolutely. So - - -

That can't be right, because this is seeking it for distributions for the financial year ending 30 June 2010 for the family – sorry – 2014 for the family trust. The loan's made in the end of 2012?---Sorry. You're right.

5 And the viability or serviceability of it was being assessed as at 2012?---Yes.

You agree with that?---Correct. Yes.

10 All right. Now, can we then go – I'm sorry, I tender that document, Commissioner.

THE COMMISSIONER: Email of – from Vine of BOQ to Gardini, FOS, 13 February '05, BOQ.0001.0033.6266 will be exhibit 3.39.

15 **EXHIBIT #3.39 EMAIL FROM VINE OF BOQ TO GARDINI, FOS DATED 13/02/2005 (BOQ.0001.0033.6266)**

MR HODGE: And then can we now bring up tab 123, which is
20 BOQ.0001.0033.6267. So this is an internal email of Bank of Queensland where Mr Vine is explaining:

FOS have rung and discussed the outcome of their investigation of the customer's complaint of maladministration in lending.

25 ?---Yes.

And so they know – or FOS thinks that it has – I'm sorry – Bank of Queensland thinks that it knows what the result is going to be at this time?---Sorry. You're
30 saying that - - -

Bank of Queensland thinks, on 13 May, that it knows what the result is going to be?---Yes.

35 And it notes that FOS have found in favour of the customer on maladministration and says:

Both myself and Vanessa have previously identified these issues when we undertook an investigation at the beginning of the FOS dispute.

40 ?---Yes.

And then you will see what's said under the heading Proportion of Liability:

45 *Throughout the investigation of the dispute by FOS, as we have known that there was maladministration in lending, I have endeavoured to minimise the restitution payable.*

See that?---Yes, I can see that.

And then Mr Vine helpfully explains how he went about doing that, which was:

5 *This has included discussing the following with FOS on numerous occasions:
customer executed contract to purchase prior to application being assessed;
customer receiving professional advice prior to signing the contract to
purchase; customer claiming no income received from the business, even while
she took time out of teaching.*

10

See that?---Yes.

And if we just pause on that, have you made any internal inquiries as to why this strategy was pursued?---No, I haven't.

15

Do you regard this strategy as appropriate?---I have very limited experience with this division, but from what I've read, and understanding the earlier determination of the maladministration, I personally believe Mr Vine's first recommendation is probably the more accurate.

20

Right. Well, we will come back to that in a moment. And so then Mr Vine in fact seems to have overachieved. He says:

25 *FOS have proportioned the responsibility 60/40. This means Bank of
Queensland is only responsible to pay restitution of 40 per cent of the total
bank charges previously debited to the business term loan.*

?---Yes, that's what it says.

30 And, of course, what had been foreshadowed some months earlier was achieving a 60/40 split against Bank of Queensland. Yes?---Yes.

35 All right. Now – and then if we then bring up tab 124 of the statement, which is BOQ.0001.0023.1750. So the recommendation is then provided on 15 May 2015?---Yes.

40 And it reflected what had already been told to Mr Vine, which was that the – which was that there would be a finding of maladministration, but the split would be – that it would be in favour of Bank of Queensland, 60/40 against the customer?---Yes.

45

Now, then, I want to then show you another document – sorry – I should just tie off on what happens, though, which is this is the recommendation. It wasn't accepted – it was accepted by Bank of Queensland, but not accepted by Ms Riches?---That's correct.

And, ultimately, then, FOS issued a determination which was different, insofar as it reversed the split, so that the split became 60/40 in favour of Ms Riches. Is that right?---I believe so.

5 But the last document I want to show you in this trail is a document that's not in your statement. It's BOQ.0001.0023.2005. So this is a chain of emails. And if we start with the email at the bottom, you will see there's an internal email from Mr Vine of Bank of Queensland on 19 May 2015, emailing Ms Mouat. Who is Ms Mouat? You are not sure?---No.

10 All right. And it's explaining – or providing an overview of FOSs investigation?---Yes.

15 And if we turn over the page to .2006, it summarises what the recommendation was. And if we come down to Customer Relations View – and can we just pop out the section under Customer Relations View. You will see it explains:

20 *As we were aware from the outset that there was maladministration in lending (confirmed by commercial recoveries), the goal has been to limit the amounts payable to the customer.*

See that?---Yes.

25 And then:

As FOS have proportioned the responsibility, the outcome of the recommendation is acceptable to customer relations, given that it could have cost Bank of Queensland anywhere from circa \$44,000.

30 ?---Yes.

Continuing:

35 *Find attached a break-up of how Bank of Queensland will have to refund the \$23,850 if the customer accepts the recommendation.*

?---Yes.

40 And then, if we go back to the first page, we see the email at the top on 9 June 2015. It's being explained:

45 *The customer has not accepted the FOS recommendation at this time. If she doesn't accept, then this could possibly take a significant amount of time for FOS to issue a determination.*

And we know what the end result was. FOS did issue a determination and reversed the split?---Yes.

Now, I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 3.40, emails between Vine, Mouat and others, May and June 2015, BOQ.0001.0023.2005.

5

EXHIBIT #3.40 EMAILS BETWEEN VINE, MOUAT AND OTHERS, MAY AND JUNE 2015 (BOQ.0001.0023.2005)

10

MR HODGE: I want to ask you, then, as the representative of Bank of Queensland some questions about this. Does Bank of Queensland regard the strategy that it adopted in relation to Ms Riches' FOS complaint as appropriate?---Although a representative of Bank of Queensland, I haven't had discussions with others. My view is, as – as stated before. Once we understood that we were – we had made issues – we made errors that had created some of the issues, then we should have accepted some of the responsibility.

15

One of the consequences of this strategy was that a recommendation wasn't even issued by FOS until nine months after Mr Vine had first identified the errors and made the recommendation to compensate Ms Riches?---It appears that way.

20

Do you agree with me that it is – this is not fair and reasonable behaviour by Bank of Queensland towards one of its customers?---When – when we are awaiting a FOS determination, we work with the client. And so that the delay didn't change the situation with us and them.

25

I'm sorry. Do you agree that the strategy that was adopted in relation to FOS, of not acknowledging maladministration upfront and, instead, working and having repeated conversations to try to limit the extent of liability – so that's the strategy that I'm concerned with - - -?---Right.

30

- - - that we've gone through – is one that was not fair or reasonable towards the customer?---My personal belief is no, the strategy wasn't fair and reasonable.

35

All right. Commissioner, would it be convenient to take a short adjournment at that point. I think I will be, perhaps, another 20 to 30 minutes with - - -

THE COMMISSIONER: If I come back at midday.

40

MR HODGE: Thank you.

THE COMMISSIONER: Yes.

45

ADJOURNED

[11.52 am]

THE COMMISSIONER: Yes, Mr Hodge.

5

MR HODGE: Thank you, Commissioner.

Mr Snell, I asked you some questions at the outset about the audit process of reference – of dealing with the branches. And I understood you to say that’s – that audit process, it doesn’t report to you?---No.

10

And it’s not something where you’re directly overseeing the audits that are undertaken?---No.

And you – what level of familiarity, then, do you have with what the audit results are?---I have relationship managers with portfolios that are audited, as well. Those audits are related to the administration of loans and – and products. And so should the – should the audit relate to those same products, then I will – I will have an awareness. I’m also – I also attend some committees where I’m – I’m aware of the general – the trend, I suppose, if you want to say that, but not the – not the detail.

20

And, then, based on the knowledge that you have, are you able to make any comment as to what level of compliance there is in owner-manager branches, based on the audits?---Based on my understanding from 2012 to where we are today, my belief is that in 2012 it was quite a low adherence to compliance. And, since that time, the bank has worked very hard to improve it,. So we’ve made a number of changes, which include new management, so a new executive officer, new chief risk officer. We’ve implemented teams. So a ROSE team, which is Retail Operational Service Experience. So it’s a training team. So, effectively, when the audits are conducted and there are outcomes, those teams will get involved in training to uplift some of the skills within the branches. And we have a consequence management plan or program that uses consequence for people that don’t try to follow – or improve with those – those trainings.

25

30

Do you – sorry – if we just take that in stages. In 2012 when you joined, you were aware that the level of compliance in owner-manager branches was quite low?---I didn’t have a detailed understanding, but I – being, as I said, at meetings, I had heard information. And from what I’ve read from the details that I put together for the Commission.

35

40

And you were aware that efforts had been made by Bank of Queensland to try to improve that situation over the last five years?---Yes, there has been a lot of activity has occurred to improve it.

And how successful have those activities been?---As I say, I’m not involved in it in detail, but my understanding is the – if we call it a trend – has moved in the right

45

direction in terms of the number of fails has – has reduced and the number of needs improvements has increased, as, I believe, the satisfactoriness increased.

5 And one of the issues, do you agree, with the owner-manager model in relation to compliance is the remuneration structure that's used?---The remuneration structure is there for a number of reasons. Whether that's a driver of compliance issues I'm not sure.

10 Well, let's – I just want to explore this. You deal with it in some detail in your statement, the nature of the various remuneration structures. And the way in which the owner-manager branches operate, if I attempt to summarise it, is the owner-manager is appointed as an agent of Bank of Queensland?---Correct.

15 And the owner-manager pays fees to Bank of Queensland?---Yes.

An initial franchising fee and other fees along the way?---That's correct. And they also run the – pay the running costs for the – for the agency.

20 And we will come to that in a moment?---Okay.

But the owner-manager doesn't receive any salary package from the bank?---No.

The owner-manager only receives income based on commission?---Yes.

25 And the – you referred to paying the running expenses of the agency. The agency refers to the branch. Is that right?---The physical location, yes.

30 And the employees, the bank tellers, everybody within that branch, they are employees of the owner-manager, rather than of Bank of Queensland?---Yes.

And the owner-manager then pays those employees, rather than Bank of Queensland?---Yes.

35 So the way in which those employees within an owner-manager branch are remunerated is a matter for the owner-manager, subject to certain programs, not a matter for the – for Bank of Queensland?---Other than through our people and culture or our payroll department – we set some minimum expectations as to paying the award in the area and the like, yes.

40 And it's not possible – or at least it's the intention of Bank of Queensland that it's not possible for a member of the public to distinguish between an owner-manager branch and a corporate-owned branch?---No, it is – it is illustrated in marketing, in terms they will say that they are the owner of the branch.

45 Can I just – just so I understand that, perhaps this is a change. Can we bring up tab 153 to your statement, BOQ.0001.0050.0329. And if we go to the page – sorry – I

should say – how are you going? Do you need to find that document or are you happy to go off the screen?---No. I'm happy with the screen, if that's okay.

5 You will see this is the accreditation process for an owner-manager. And the revision date of this one is 3 December 2010?---Yes.

If we go to page .0331. And if we blow up the sixth paragraph from the top, beginning:

10 *The public –*

It says:

15 *The public should not be able to distinguish between a Bank of Queensland corporate branch managed by a bank salaried branch manager and a Bank of Queensland owner-manager branch operated by an OMB agent.*

?---Yes, I see that.

20 Has that – is that a policy that you believe has changed, or are you referring to something else?---No, I don't know. I would say that the external physical premises wouldn't distinguish. However, the internal – so an email from an owner-manager would have an email trail that states that they are the owner.

25 They are the owner-manager?---Yes.

It might be their – in their email signature line?---Yes. As it states there, they can get approval from the bank, so they – I imagine they regularly ask for approval to do things.

30 All right. And then can we bring up the owner-manager agency agreement, which is tab 156, BOQ.0001.0059.0014. And I understand – I should check with you – is this the current OMB agreement or is this the previous OMB agreement?---I believe this is a new OMB agreement being rolled out at the time – at this time.

35 This is – in your statement you distinguish between the old OMB agreement, which was what was - - -?---2010.

40 And that was what was being used by the manager at the Pirie Street branch?---Right. Yes.

And the new owner-manager agreement, which is this one?---Mmm.

45 Is that right?---Yes.

And this is the current one, is it?---I'm going to say I don't know exactly. The only reason I say that is there is work being done to update it. And I'm not sure if it's

being rolled out at the present time. However, it would just be – the agreement itself would be the same. I just understand some of the Fit 4 Biz.

Sorry, the Fit 4 Biz, did you refer to?---Some of that has changed.

5

We will come to that in a moment. So I just want to understand precisely how an owner-manager gets paid at the moment. If we go to the page .0020. You see in the middle of the page a definition of agent's commission. So:

10 *The commission payable to the agent in accordance with the revenue structure set out in item 1 of schedule 1 of this agreement.*

?---Yes.

15 And there's a – and we will come to it, but there's a schedule to these agreements that sets out how the owner-manager is going to be paid?---Yes.

And then it's a matter for the owner-manager to then figure out how that money will then be distributed amongst the owner-manager's employees. Is that right?---Yes.

20

And if we then go to page .0021. You will see there's a definition on the bottom half of the page of a balanced scorecard. It is said to be:

A package of KPIs which are calculated by the bank for each agent –

25

Who is an owner/manager –

and branch within the bank network.

30 ?---Yes.

And I can take you to the term, perhaps, but the – if we go to page 0038. So this is the agent's commission. And it's said that the bank will pay to the agent the agent's commission. We know the agent's commission is what's going to be defined in the schedule that we will come to. You, I think, make a point about how the – how the balanced score card interacts with this. Could you just explain that to the Commissioner?---Well, I'm not involved on a day-to-day basis, but my understanding is the agent's commissions are paid as per the schedule – the schedules in the back. However there are balanced scorecards which determine – it now – today, it's on a points basis. And should they service more clients' needs in terms of placing more product, then they will receive more. And if they don't follow the compliance required by the bank, then they will have deductions.

35

40

And just let's make sure we have understood that. The 4.1 says that there's various payments to be made. 4.4 provides for deductions that may be made against the commission. And it doesn't seem – but perhaps there's something we're missing – to link into the balanced scorecards. But then 4.5 allows the bank:

45

...to withhold payment of the commission in circumstances where the bank reasonably believes that the agent may be in, or may be about to be in, agent default or material breach under this agreement.

5 ?---Yes.

And is failing to achieve a balanced scorecard – could that give rise to an agent default or material breach, or you're not sure?---I don't believe so. I believe it precludes them from additional payments under the incentive – under the KPI.

10

I see. And this is the point I wanted to get at. As we understand it, the way in which the remuneration of owner-managers works are they get commission. That's the first part of what they get?---Mmm.

15 Sorry. Just because it's being recorded you need to say - - -?---Sorry. Yes.

- - - yes or no?---Yes.

20 And then there's a scheme which involves a balanced scorecard. And is that called the Fit 4 Biz scheme?---That's a part of that, yes.

The balanced score card is part of the Fit 4 Biz scheme. And the Fit 4 Biz scheme would entitle an owner-manager to receive extra amounts of money on top of commission?---Yes.

25

And if there – and I think I may have been confused. When you referred to deductions before, those are points deductions. Is that right?---Yes, which translates to remuneration. Yes.

30 Well, translates – in the case of owner-managers, would translate to extra amounts not being paid under the Fit 4 Biz. Is that right?---I believe so.

Rather than deductions being made against the commission?---Yes.

35 And so, if you don't hit certain gateways or requirements under the Fit 4 Biz scheme as an owner-manager, then you might be precluded for a period of time from getting cash payments or prizes, or things like that under the Fit 4 Biz?---That's correct.

40 All right. And you seem to make a point in your statement about clause 4.5 of the agreement about withholding commission. Are you able to explain to the Commissioner what that point is?---My actual understanding is not deep enough to be able to explain, other than, I believe, that should an owner-manager fail required compliance activities, then – then commissions may be withheld. And there's also a list of products that are non-commission, that if they enter into a transaction with
45 those products, then they will not receive the commission on.

Right. And it appears, but you may not have a deep enough understanding to explain this, is if under 4.5(b), the premise of the withholding is that there's some default or material breach and that the bank may suffer loss, damages or costs. But perhaps that's not the right construction of the term. You may just not know?---I wouldn't like to speculate, other than I understand that, should a owner-manager step outside of their agreement, then they are liable.

They breach the agreement?---Yes.

But failing to achieve a balanced scorecard isn't a breach of the agreement, is it?---I don't believe so.

All right. And then – I would then like to just get some understanding of the Fit 4 Biz scheme. So this is the additional incentive that might be paid to an owner-manager. Is that right?---Yes.

Sorry. We should, just to be – so that I can, perhaps, highlight the other part of the point I think you were attempting to make in your statement, can we go to BOQ.0001.0041.0296, which is tab 44. So this is the previous version of the owner-manager branch agency agreement.

You can see it was amended on 3 August 2011?---It appears so, yes.

If we go to the page .0313. So this is that previous version of clause 4. And I think what you tried to call out in your statement is that, at least under the new agreement, there's the contractual right to withhold a commission, whereas under the old agreement there wasn't the right to withhold a commission. It may be you're not sure. This may have been drafted by somebody who wants to make this point for you?---Yes. I just – I – the 5.3 and 7.6. And I don't know those off heart.

Sorry. Say that again?---It refers to clauses 5.3 and 7.6. So I don't know what they state for me to be able to comment.

Well, if you go over to 0314. 5.3 is the monthly licence fee. Sorry. You're talking about what the deductions are?---Yes. Yes, under deductions.

Yes. So there is a deductions clause in the new contract, but there is also a withholding clause?---Right.

That's all right. You know that you make a point about this in your statement, Mr Snell?---I've read my statement, but I don't know the detail of – of those transactions.

All right. And then what is – what happens is that Bank of Queensland in 2011 decides to implement this extra remuneration scheme to reward owner-managers?---And to encourage owner-managers to obtain new clients to the bank, yes.

Yes. And if we bring up BOQ.0001.0033.4453, which is tab 46 to Mr Snell's statement. So this is the first star rating scheme. And if we go to the page .4456. And if we pop out the first four paragraphs under 1.1, it explains:

5 *The bank has launched the Star Rating Scheme, which is –*

As it says –

10 *in essence, a sales incentive scheme providing rewards in return for strong all-round performance by owner-managers. There are benefits for both the bank and owner-managers which will be outlined in this information pack.*

And it goes on to say:

15 *The key focus of the Star Rating Scheme is to increase revenue, create shareholder value and drive behaviours that are consistent with the bank's core values.*

20 Your – I think your summary of it was it was about trying to – I think you said bring in more customers. Was that how you put it? But, in fact, it's a sales incentive scheme, isn't it?---It is, yes.

25 And so the situation, then, was, as at 2011, owner-managers could receive two types of remuneration. The first was commission. The second was under the sales incentive scheme, then called the Star Rating Scheme. Is that right?---Yes.

30 And if we go to page .4459, the – there's key performance indicators. And there's – there are two gateways. So, as we understand it, the initial gate openers are compliance and quality. The compliance, you can see over the page, is not having failed the audit. And the credit – and not having various problems with credit risk review. And the quality is not having arrears outside of one to 29 days and not having outstanding annual reviews. Can you just explain to the Commissioner what's the annual review that's being referred to?---So when we originate a new commercial loan on an annual basis we ask the client to update us with their
35 financials, their business performance, sometimes business plan, should there be changes. And the – the staff member will look at the year financials. And they will undertake a updated risk rating to ensure that there has been either no deterioration or, otherwise, some improvement. And then that is sent to credit risk assessment to confirm.

40 And, assuming you get through the gates, then you get paid something that is judged against lending, growth and deposits, cross selling, selling of insurance and some sort of customer growth incentive. Is that right?---That's how it was measured, yes.

45 And if we go to page .4461. Then a series of rewards of things that could be won on an annual or quarterly basis, depending on how you scored under the scheme?---Yes.

- So the top annual prize was a BMW and travel vouchers, and it descends down into waiving the IT fee on a quarterly basis?---Yes.
- 5 All right. And then that was replaced by the Fit 4 Biz scheme. And the Fit 4 Biz scheme introduced the balanced scorecard?---Mmm.
- Is that right?---Yes.
- 10 And if we go to tab 51, BOQ.0001.0033.6869. So this seems to be the initial program in 2013?---Yes.
- And if we go to .6873. So the network of branches was to be tiered up based on recurring income?---Yes.
- 15 And then if we go to .6876. There's then an explanation of how the balanced scorecard would be derived. And 41 per cent would be based on lending – that's lending growth. Is that right?---Yes.
- 20 22 per cent against deposits?---Yes.
- 20 per cent against cross sell?---Yes.
- And then 17 per cent for compliance. And the compliance issues, we can see, if we go over to .6877, are based on percentages in – percentage of arrears and whether or not those annual reviews you talked about were outstanding?---Yes.
- 25 And, depending on how the branch performed across those various categories, there would then be points that would be earned. Is that right?---That's correct.
- 30 And there were no gate openers for the Fit 4 Biz program?---I am assuming – and, I'm sorry, I don't know the exact answer, but there's still a requirement to pass audit.
- Well, I think, perhaps, what you're talking about is there was – there were what's referred to as gate closers, which are perhaps the equivalent?---Right.
- 35 So if we go to .6879. If you were subject to consequence management, then that might be a gate closer?---Yes.
- 40 And if you engaged in things outside of franchise integrity, which would include gaming the Fit 4 Biz scorecard, that might be a gate closer?---Yes.
- And – so if you were subject to consequence management because of a poor audit result, then you might be shut out of this additional incentive program?---Yes.
- 45 All right. And then if we go to tab 54, which is the 2017 program. That's BOQ.0001.0033.3841. There was revision of the scorecards in 2017?---That's correct.

And if we go to page .3847, it explains the key changes, which are sales:

KPI points were increased to 850 points, quality measures now 150 points, increase of cross sale points to deepen customer relationships.

5

And there's something which is:

TRACKS quality measure to change to completion of monitoring and supervision activities.

10

Can you just explain to the Commissioner what TRACKS is?---Sorry. I am not sure what the term TRACKS is, but we run a smart attestation program, which is where the branches and regional managers attest to activities around monitoring and supervision. So I believe that is where that data is captured and is then checked for completion.

15

All right. And then if we go to tab 55, which is BOQ.0001.0041.0535. So this is the 2018 update. And if we go to page .0541. This explains the – it's quite small, but this explains the key changes for 2018. And if we go to .0545 – actually, if we go to .0546, something seems to have gone awry with the printing of the heading, but the – this explains how the balanced scorecard is made up now. And you will see 30 per cent to the MFI objective, which is – appears to be key indicators for the bank, but they're – mostly appear to be financial metrics. Do you agree?---Yes, we have a measure that's called main financial institution. And what it's trying to understand is whether or not the client sees BOQ as their – as their main bank. So there's quite a few clients out there that have multiple financial institutions. And we would like to service all the needs of our clients, where possible, so hence that measure.

20

25

Then 25 per cent for funding, which means – it's, basically, a growth metric, “are you growing the amount of business”?---Yes.

30

And then 15 per cent for what's referred to as protection. That, I understand, means selling St Andrews and Vero Insurance products?---Yes.

35

And then 15 per cent for transactional, which means, presumably, cross selling credit cards and other facilities?---Yes.

And then there's 15 per cent for compliance, which is:

40

Benchmarks set around key quality metrics.

?---Yes.

And then there's a wildcard?---It appears so.

45

And can I ask – your counsel would like you taken to the next page. Can we go to .0547. And this is the – rather than using the term “gate opener” or “gate closer”, now Bank of Queensland is using “game changer”. Is that right?---Yes.

5 And so if there’s either a breach notice or disciplinary action in the case of – disciplinary action is only in the case of corporate. Is that right?---Yes.

And the consequence of one of those game changers is that a certain number of points will be deducted for the month?---Yes.

10

And then other points for the quarter, and a decreasing number of points for the year?---Yes. So the goal of the balanced scorecard is to ensure a balance ledger, ie, deposits are very important for a bank, not just lending, and compliance. And, although there’s humans, we measure it. And this is to ensure that they’re aware of what the bank’s expectations are.

15

And in a – in a quarter, if we go to .0545. So this is – this seems to be showing the number of points you could get for a quarter, that if you manage to hit all the of the various financial indicators, you could get 850 points. Is that right? If we exclude quality?---Yes.

20

And if you had come unstuck on one of those game changers, then for the quarter you would lose 350 points. Is that right?---It appears so. Sorry.

25 Or you’re not sure?---I think it’s 150 points. Are you talking about quality or - - -

I’m sorry. You’re saying – if you – you would lose 150 points if you fail to satisfy any of the quality requirements?---Yes.

30 Is that right?---Yes.

But you would also lose 350 points if you had been issued with a breach notice?---Yes.

35 That may be – we’re just reading here. You’re, I’m assuming, not in charge of administering this scheme, although you’ve given evidence about it. Is that right?---Yes.

40 And can I ask this then. One of the things you talk about is that there’s an ongoing effort within Bank of Queensland to figure out how to bring the owner-manager remuneration model in line with Sedgwick?---That – that has been raised and looked at, yes.

45 And, are you able to explain to the Commissioner, does Bank of Queensland have some idea of how that is even possible, given that all remuneration for the owner-managers starts with commission?---To be frank, no. The bank has put a retail

working group together to work through this matter, with the intention to be compliant by June '19. But I'm not sure where we're at at the moment.

Commissioner, I don't have any further questions of this witness.

5

THE COMMISSIONER: Before I call on you, Mr Hutley, just some matters I want to take up with Mr Snell. The questions I want to ask you, Mr Snell, have two faces. There's one, a face about what happened in this particular case that we looked at. But the other face is much more general issues about lending to SMEs. You were asked a number of questions by counsel assisting about the respective roles of the bank and the would-be borrower. Do you recall being asked those questions?---Yes, Commissioner.

10

And a couple of expressions you used in the course of your answer, as I noted them, were "our role is primarily to assist". Do you recall saying that, or something close to that?---I believe so.

15

And you spoke of – or you said, "We are part of the relationship"?---Yes.

20

Now, I'm not to be understood as making any criticism of you or that particular phrasing. Don't misunderstand the questions that now follow. But I put those against other statements that I find other banks have made from time to time where they speak, for example, of securing and enhancing the financial wellbeing of the customer. Have you seen that sort of expression used?---I believe I've heard it, yes.

25

I've seen reference to "focus on the customer"?---Yes.

I've seen reference to "putting our customers first"?---Yes.

30

Is that an expression which BOQ would use from time to time?---Yes, we would – we would tend to refer to the client as the central point of the relationship and put them first.

35

I've seen reference to "acting in the best interests of the customer"?---Yes.

40

I just want to ask your opinion about whether there's any disconformity between, on the one hand, that kind of statement, and on the other, firstly, Bank of Queensland's dealings with FOS in connection with this particular case?---So in – in terms of the statement generally, I believe that people that work in the banking industry feel that, and understand that without clients we don't have a job or institution. So the goal is to ensure that we look after our clients. When it comes to being a part of the relationship or being close to our clients, in – in my part of the world where the clients are larger, we have lesser – less client portfolios, we do actually have quite a regular interaction. In the SME part, ie, the micro, in particular, when you look at the Fintex today, they don't talk to the client at all. The delivery of product is – or the provision of services is – is online. So there is definitely a disconformity in –

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depending on the client. My belief, from reading the detail within this case study, I don't believe we acted in the best interest.

5 Come away from this case study and let's leave on one side what happened or didn't happen in this case. When trying to understand what is, what could be, what should be the relationship between bank and small to medium enterprise customer, is there at least a possible misunderstanding by the customer of the role of the bank arising out of comments of the kind – or statements of the kind I've referred to?---I think there's challenges within the banks to deliver what they would like to deliver, whether that be restraints of technology, numbers of people to fulfil. So I think the – I think the goal and the intention is there, but if I'm – if I'm answering your question, yes, there's definitely a deviation in terms of what the client expects and gets at times.

15 In particular, is there any room for misunderstanding, on the one hand, by the customer, and on the other hand, by the bank about who's looking after whose interests when customer is sitting down with the banker, talking about a transaction to which, in many cases, the customer is deeply committed and firmly persuaded that this is something that (a) the customer wants to do and (b) if the customer does it, it will succeed. Now, first, is there a disconformity? The second question, so you can see where it's going is, well, if there were to be such a disconformity, what, if anything, do I do about it? Simply observe it and move by? Do you see - - -?---Yes.

25 - - - where the questioning is leading?---Yes, Commissioner.

Step 1, is there a disconformity?---My personal belief is, in the general administration and delivery of banking products, no, I don't think there is. I do believe there is outliers which emphasise activities that could definitely be done better. I think generally clients that come to - - -

30 It's a human endeavour?---Yes.

Of course there will always be things that can be done better. Of course there will always be mistakes. Accept all that?---But if I'm just sitting on the other side of the desk with one of my clients today, my expectation is I will do what they ask of me, if I can, so within the realms of what I can deliver. So I think – I think – so, I suppose, if you – if you took my situation there, which said I try to endeavour to do it every time, then your next step is from – from what you're evidencing, that doesn't always occur. How do we fix that? I – I don't have an answer for that.

40 All right. Do you have anything out of that, Mr Hodge?

MR HODGE: No, thank you, Commissioner.

45 THE COMMISSIONER: Mr Hutley.

MR HUTLEY: I have no re-examination.

THE COMMISSIONER: Nothing arising out of that or at all?

MR HUTLEY: At all.

5 THE COMMISSIONER: Yes. Thank you very much. Thank you, Mr Snell. You may step down. You are excused?---Thank you.

10 <THE WITNESS WITHDREW [12.44 pm]

THE COMMISSIONER: Well, Mr Hodge, where to now?

15 MR HODGE: Commissioner, we could adjourn for three minutes to switch the counsel around and move on to the next witness, who will be Mr van Horen from CBA. There is a consumer witness that we have for the following case study that we need to get to this afternoon. So I just flag that as a timing issue. I don't – my point – I just don't want to lose any time. That's all.

20 THE COMMISSIONER: No. Well, if I come back at shortly before 10 to 1.

MR HODGE: Thank you, Commissioner.

25 **ADJOURNED** [12.45 pm]

RESUMED [12.50 pm]

30 THE COMMISSIONER: Yes, Mr Dinelli.

35 MR DINELLI: Thank you, Commissioner. The next witness will be Mr Clive Richard van Horen. And I might invite my learned friend Mr Scerri to deal with his evidence-in-chief.

THE COMMISSIONER: Yes.

40 MR SCERRI: Thank you, Commissioner.

<CLIVE RICHARD VAN HOREN, ON FORMER OATH [12.51 pm]

45 <EXAMINATION-IN-CHIEF BY MR SCERRI

THE COMMISSIONER: Thank you. Yes, Mr Scerri.

MR SCERRI: Mr van Horen what is your full name?---Clive Richard van Horen.

5 And your business address?---Is 1 Harbour Street, Sydney.

And have you made a statement in relation to Rubric 3-15?---Yes, I have.

10 And, Commissioner, it's CBA.9000.0042.0001. And it's dated 15 May. Mr van Horen, do you have a copy there?---I do.

I understand that you – could you look at exhibit 6A, first of all, please?---Sure.

15 That's a letter to ASIC?---That's right.

And there's a reference towards the foot of the page to something – some topic?---Yes.

20 What's the topic?---You said at the foot of the page. Do you mean the head of the page?

25 Isn't it the second-last paragraph?---On page 3, yes. So there's a reference at the bottom of page 3. It says CBA will also review the remediation programs across SBOs holistically to determine whether it remains satisfied that the remediation undertaken has been adequate.

And could you look, sir, at paragraph 75 of this statement?---Yes.

30 And that deals with a customer remediation program?---That's right.

Is that the one that's referred to in the letter to ASIC?---Yes, that is.

35 And what do you wish to say about that remediation program?---Simply that, since preparing the statement, we've made the decision to align the way we did the two remediations. I am sure we will come to the detail of that later. So we will apply the same approach that we used in the BODS remediation to the SBO remediation. And there is one matter of fees that were not covered that we will cover. So that decision has been made to adapt the remediation, to extend the remediation.

40 With that additional evidence, are the contents of this statement true and correct?---They are.

We tender the – you also received a summons, didn't you, Mr van Horen?---I did.

45 Commissioner, we tender both documents, the summons and the statement.

THE COMMISSIONER: Exhibit 3.41 will be the summons to Mr van Horen.

EXHIBIT #3.41 SUMMONS TO MR VAN HOREN

5 THE COMMISSIONER: Exhibit 3.42 will be the statement of 15 May '18 concerning Rubric 3-15.

EXHIBIT #3.42 STATEMENT CONCERNING RUBRIC 3-15 DATED 15/05/2018

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MR SCERRI: Mr van Horen, did you also make a statement in relation to Rubric 3-16?---Yes, I did.

15 And was that dated 14 May?---Yes.

And does that have the ID CBA.9000.0040.0001?---That's right.

20 And that comprises 28 pages?---Correct.

And are the contents of that statement true and correct, sir?---They are.

Commissioner, we tender that statement.

25 THE COMMISSIONER: Exhibit 3.43, statement of Mr van Horen, 14 May '18, relating to Rubric 3-16.

EXHIBIT #3.43 STATEMENT OF MR VAN HOREN RELATING TO RUBRIC 3-16 DATED 14/05/2018

30

MR SCERRI: Thank you, sir.

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

<CROSS-EXAMINATION BY MR DINELLI

[12.54 pm]

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MR DINELLI: Thank you, Commissioner.

45 Good afternoon, Mr van Horen. You've given evidence before to this Commission that your present role at CBA is Executive General Manager Retail Products. Is that right?---That's still right, yes.

And you've held this role since May 2016?---Correct.

And you were in that role during the period described as the overdraft account misconduct?---Yes, there were two phases to that. The second phase - - -

Yes. The latter one?---Yes. Yes.

5

Thank you. Now, I am going to ask you some questions relating to business overdraft products offered by CBA. And I understand that there are two different business overdraft products. Can you explain to the Commissioner, please, the nature of those two products?---Sure. So, simply, an overdraft is a facility which allows a customer to – for their balance to go into debit, meaning spend more money than they have available of their own, so a very traditional feature in the banking world. We have two products. And, if convenient, we can use the acronyms. So the business overdraft or BOD is what you think as your traditional overdraft product. That applies to small and all the way up to very large companies or institutions with higher credit limits, typically, and a more significant process of originating or creating that overdraft. The second type of product you refer to, Mr Dinelli, is a simple business overdraft or SBO. And that is a product that was developed from 2013 onwards, targeting very much the smaller end of the small business area, and to try and meet those short-term cash flow volatility needs of small businesses.

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15

20

I see. And the SBO, is that part of your responsibility within the bank?---Yes.

25

And you've explained the business overdrafts and that they can be higher, the amount of the business overdrafts. And that's part of the Institutional Banking and Markets division. Is that right?---Yes, Institutional Banking and Markets division.

But you're in a position today to answer some questions about what I will call the double charging of interest to both of those types - - -?---Yes.

30

- - - of accounts?---Overcharging of interest, yes.

Thank you. Returning to the SBO, you said that it was a smaller form of overdraft. What is the maximum limit or the – generally, the maximum limit for an SBO?---The maximum permissible limit is \$50,000 for the SBO.

35

Yes. Although, in exceptional circumstances, I understand it can be up to \$100,000. Is that right?---Yes. And I've checked that. And currently we don't have any SBOs above 50,000. There could be very rare circumstances where it could be manually assessed by a credit assessor. But to all intents and purposes the maximum is 50.

40

Thank you. And is there a minimum for the SBO?---Yes, \$2000.

45

And it's your evidence that CBA commenced developing the SBO to meet customer needs in March 2012. Is that right?---Yes, that's right. We started with a pilot. It was officially launched in 2013.

I see. And I will ask you some questions about - - -?---Sure.

5 - - - the changes over time in a moment. When you – or when the bank developed the SBO, you said that it was to meet customer needs. How did you know what those business needs were?---We talked to customers, we hear from customers, there’s demand from customers for this. It’s – certainly one of the biggest needs of small businesses is to manage cash flow. You know, revenue is quite volatile. Typically, expenses can be lumpy. And overdraft facility is a very, very convenient way to manage short-term cash flow needs.

10 Or you would accept, though, that it depends upon the – the relevant business customer whether or not they would desire a SBO?---Yes, of course.

And you would accept, also, that, as a reasonable and prudent banker, that you would have regard, of course, to what a business person actually wants - - -?---Yes.

15 - - - before giving them an SBO. You explained two pricing components. Can I – can you explain for the Commissioner the way in which – and I understand they’re the same across both the products. But can you explain how the pricing of the BOD, as you call it, the business overdraft; and the SBO, the simple business overdraft, how does the pricing work?---Yes. There are two main elements to the pricing of an overdraft. The first is paying interest on the drawn-down balance - - -

20 Yes?--- - - - at a given interest rate. And the second component is a limit fee, or think of it as a line fee, which is payable on the limit approved. So I can expand on that if it’s helpful. You know, just assume the limit is approved at \$20,000. The customer’s balance will fluctuate a lot. It could be \$5000 one day \$10,000 the next day, zero the next day. Interest is applied to whatever the balance is. The line fee is applied to the limit. And that’s because you hold capital against their full limit.

30 Thank you. And the interest rate that applies to the drawn-down amount, what is that interest rate?---For the SBO during the relevant period, it was 16 per cent. Today – or for a year or more it has been 14.55.

35 Thank you?---For BODs, it varies depending on the customer. It’s a little less simple in terms of

I see. That is a relatively high interest rate. Why is it higher interest rate than other products that are offered by CBA?---Well, relative. You know, firstly it’s unsecured.

40 Yes?---So it’s not relatively high relative to other unsecured products. It’s pretty similar. And it’s in the middle of the range of typical credit card interest rates, which are also unsecured. It’s certainly higher than it would be if it was a secured product. And so the BOD can be a secured or unsecured product. And if it’s secured, typically the interest rate would be lower. And that’s a function of risk more than anything else.

45

In relation to the line fee or the limit fee, can I just ask you one further question about that before we pause for lunch. It's described as a fixed quarterly fee of 1.75 per cent of the overdraft limit?---Yes.

5 Is that still the way it is charged?---Yes.

And is it referred to in some of the documents as a quarterly fee? Is that because the statements are sent quarterly?---It's debited to the customer's account quarterly.

10 Yes?---So, unlike interest, which would – it's calculated every single day based on the daily balance. And then interest would be debited once a month. The quarterly line fee is debited quarterly to the customer's account.

15 Are the statements sent quarterly, as well, Mr van Horen?---It depends on the underlying product. To my knowledge, the BTA statement is sent six monthly. So BTA is the business transaction account. That's the underlying transaction account on which the overdraft applies – is sent six-monthly. And I would need to check this, but I think in some instances quarterly, as well.

20 Thank you. Is that an appropriate time?

THE COMMISSIONER: Yes. We will come back at 2 o'clock, Mr van Horen - - -

MR DINELLI: Thank you.

25

THE COMMISSIONER: - - - if we may.

30

ADJOURNED

[1.02 pm]

RESUMED

[2.01 pm]

35 THE COMMISSIONER: Mr Dinelli.

MR DINELLI: Thank you, Commissioner.

40 Mr van Horen, the SBO has – or the profitability of the SBO for the bank has grown considerably since 2012, has it not?---Yes, obviously, from a zero base but yes, it has grown.

45 That's right. In fact, the average balances at the end of the 2013 financial year was only \$1.6 million?---Million, yes.

1.6 million?---Yes.

That's correct?---Yes.

The average – or the balances now set out in your evidence are \$124.8 million. Is that right?---Yes. Yes.

5

And there was – as at 2014, there was approximately 78.3 million in terms of the size limits?---Yes, would you mind just referring me to the relevant – which statement, which paragraph?

10 Yes. If you go to your – what I will call your first statement?---3-15.

3-16?---Okay.

I think it was first in time. It's exhibit 3.43 at paragraph 65?---You said exhibit 3?

15

No, paragraph 65?---That's it, yes.

And the figure that I asked you was – you will see in average balance - - -?---Yes, got it.

20

- - - 1.6. And then I asked FY18, 124.8 million. Do you see that?---That's right, yes.

I asked you – and it's not in this material, but it's in other documents – that the portfolio size was 78.3 million in financial year '14? Is that a figure that - - -?---No. Are you talking about balances or limits?

25

I'm talking – perhaps I will take you to CBA.0001.0174.0424. Can you explain, please, to the Commissioner what this document is, Mr van Horen?---Sure. So the executive risk committee, which is the body – the forum that received this document is the – as the name suggests, the committee – subcommittee of the group executive committee focused on risk. So it's the highest risk forum.

30

And you're a member of - - -?---No. The group executives typically are a member of that forum. I would sometimes present to that forum around parts of my portfolio.

35

And, in fact, if you go to the third page, so .0426. This is a paper that you presented?---Yes.

And if I could take you specifically, if I may, to .0424 – so back to the first page – and, in 1.1, if I could enlarge that, it says the SBO portfolio size in limits was 78.3 million in October 2014 and is anticipated to grow to approximately 400 million by end of financial year '17?---Yes, I think that would be right. So there is a difference between a limit and a balance.

40

45 Yes. That's right. And, in fact, let's explore that limit. The limit is the amount – here, it's the cumulative amount of all of the SBOs that someone is capable of

drawing down on?---That's right. So a customer may be approved for a limit of \$20,000.

5 Correct?---But, as I said earlier, the actual draw-down would fluctuate at a lower number.

10 Now, at the time that this document was – that you wrote this document, it said that it was anticipated to grow to approximately 400 million by the end of financial year '17. Do you know what the figure is now? It's not in your statement. I'm asking you do you know what the figure is?---From memory, our current limits are of the order of \$370 million. And I say current. It's around about now.

Thank you?---So it's lower why than whatever that number was.

15 And it's the limits – and you identified there's a difference between the limits and balances. It's the limit by which the 1.75 per cent - - -?---That's right.

20 - - - is calculated. Thank you. So the more limits – or the more accounts that exist so as to increase the limits, the more the bank receives in terms of the line – what you described as the line fee?---In terms of gross revenue, yes.

Okay?---There are, obviously, costs against that, but yes.

25 Thank you. Commissioner, may I tender that document, please.

THE COMMISSIONER: Exhibit 3.44 will be executive risk committee memorandum, December '14, CBA.0001.0174.0424.

30 **EXHIBIT #3.44 EXECUTIVE RISK COMMITTEE MEMORANDUM,
DECEMBER '14 (CBA.0001.0174.0424)**

35 MR DINELLI: Thank you, Commissioner.

Can I take you now to the time – that document can come down. Can I take you now to the time when the SBO was introduced. You've given evidence already that there was a pilot program in March 2012. Is that right?---That's right, yes.

40 And a pre-assessed overdraft facility was offered to approximately 10,000 customers through a mass mail-out in March – in 2012. Is that right?---I believe so.

45 And, prior to that time, no automated processes had been used for business lending?---Maybe not quite correct. You know, there were elements of the business overdraft process that were automated, but I think the key point would be the way in which decisioning was done – as in, is the limit approved and at what level – was a much more manual process for a BOD than it subsequently became for an SBO.

That's correct. And you say in your evidence, if I understand it correctly, that the way in which the methodology was determined was that CBA asked itself a series of questions before it determined that someone was eligible for – to receive
- - -?---That's right.

5

- - - an offer. One of those questions – and I will go through each of the criteria that applied – this is dealt with at paragraph 34 of your statement. One was if the person was aged 18 or above?---Yes.

10 If they were a citizen or a permanent resident of Australia or New Zealand?---That's right.

Now, was it the case in March 2012 that the person did not currently have a business overdraft? Was that a - - -?---Yes.

15

- - - question. Yes?---Yes, to be eligible. Yes.

20 What about if they were a CBA customer for a minimum of 12 months?---Yes. So in – I'm not exactly sure I understand your question. Yes, paragraph (f) says one of the eligibility criteria was they had to be a CBA customer for a minimum of 12 months.

At a later point in time, there was a paper, which I can take you to, which suggests that that was included in March 2013. Do you recall, sitting there now, when the requirement was – or when the criteria that - - -?---No, I can't recall that.

25

Okay. And they must not have had aggregated commercial credit facilities with an exposure exceeding \$1 million. Is that right?---That's right.

Nor be in collection or arrears on any CBA product. Is that right?---Yes.

30

And then the credit risk score was to meet a certain threshold. Is that right?---That's right.

35 So if they satisfied those criteria, they were eligible to be – to be sent an offer, weren't they?---An offer would be made available to them, yes. And some customers may proactively come into a branch and apply for an overdraft, in which case they were in that pre-assessed eligible population. They still had to take further steps, which we will get to, or there could have been direct contact with a customer saying they were eligible.

40

Can I deal at this point with just the mail outs that were done?---Sure.

45 So if you go to CBA.0517.0090.0006. This is actually CVH-1 to your statement. And this was sent by your colleague – or the now CEO, Mr Comyn, to various customers. Is that the letter that was sent out?---Yes, this was in the pilot phase.

And you didn't ask the person if they wanted an overdraft before making – before sending this letter, did you?---The nature of this is an offer. The customer would still have to take action if they wanted to take up the offer.

5 And based on the criteria we've gone through - - -

THE COMMISSIONER: Just a moment. Just a moment. You wanted to add something?---Sorry. Can I just add to that. You said did we ask them if they wanted this offer? You know, in the negative, if a customer had already said they did not
10 want to receive any offers, as in marketing opt-outs, then they would not have received this.

MR DINELLI: Thank you for that clarification. And as at – during this pilot
15 period, there was no verification of the income or the expenses, was there?---Correct.
So if, for example, they had significant liabilities with other banks, for example, you wouldn't know that?---Correct.

Now, one of the issues that we're exploring in this part of the hearings of the Royal
20 Commission, Mr van Horen, as you know, are the different obligations and the different regulatory framework for consumer lending, business – as compared to business lending. Now, am I right to say that there was a representation made in this letter that a person was entitled to an SBO?---It says we would like to offer you.

25 Correct?---I don't think it follows that the customer is entitled to it.

Well - - -?---Because there was still – there was still steps to be taken to take up that offer.

30 Well, that's right, but your – but the step that was required by virtue of this letter, as distinct from some of the later - - -?---Yes.

- - - criteria, was that, if they wanted it, all they had to do was:

35 *Complete the enclosed slip and return it to us in the reply paid envelope.*

Do you see that, at the end of the letter?---Yes, I see that. Yes.

Now, you would agree with me that you didn't inquire – you've agreed with me that
40 you didn't inquire beforehand as to the person's requirements or objectives before sending this letter?---My interpretation of requirements and objectives, I think, includes what overdraft limit would you like.

Well - - -?---And that is one of the key requirements that a customer needs to specify.
45 And that was something that was still done, to the best of my knowledge – if they had been approved for 30 it didn't mean they wanted 30 or would get 30.

Precisely. But if they – but there was no – there was no question asked of these people before they received this letter whether or not they wanted an overdraft or not, was there?---Correct.

5 And you would be expected to ask that of a consumer under the National Credit Act that we've dealt with beforehand?---Correct.

And you would accept that this, too, was a – what's described in the National Consumer Act as an unconditional representation that the person is entitled to enter
10 into a credit contract?---I couldn't give you a – sort of a legal answer to that question.

I'm just asking you to look at the document?---Yes. Say that statement again, please.

You would accept that – you would accept that this document is a representation that
15 the person is entitled to enter into a credit contract, if they so wish, with CBA.

MR SCERRI: Commissioner, the document speaks for itself. What's the point of asking the witness what his legal opinion is about what it constitutes or doesn't
20 constitute?

THE COMMISSIONER: Well, I assumed it to be preliminarily to something. But go on for a moment, Mr Dinelli. You've heard what Mr Scerri says, which I would have thought is difficult to answer. The document either does speak for itself or it doesn't. But I had assumed it to be preliminarily to something else. Go on.
25

MR DINELLI: Yes. Thank you, Commissioner.

You will recall when we discussed the National Consumer Act on the last occasion that – that under that Act, an unconditional representation the person is entitled to
30 enter into a credit contract can't be made?---Yes, I think you're right. Yes.

And my question to you is do you accept that the bank here took an approach that it could not take if the businesses were consumers?---Absolutely. So I think it's clear that the – the legal framework – I think that's pretty well established; the legal
35 framework that applies to small businesses is different to consumers.

And can I take you, then, to CVH-10, to help the Commission understand why the SBO was introduced?---Yes.

40 That is CBA.0517.0092.0007. Bear with me for a moment. Can you identify this document for the Commission?---Yes.

And what is it, Mr van Horen?---It's a paper, as the title says, addressed to the business and private bank leadership team, which was the business unit within the
45 Commonwealth Bank that was looking after small and medium enterprises. And the paper was proposing this approach trying to get endorsement to support to create a

new way of lending to small businesses that the SBO was ultimately the product that did it.

And, at paragraph 1.2, it says that it's – that:

5

Simplifying business lending for under \$50,000 is a key strategic initiative in the CBA small business strategy.

?---That's right.

10

And the product to which it refers is over the page, which, as you have already said, is the product we're talking about, the SBO at 4.2?---Yes.

And that is:

15

The product will be a business overdraft with a simplified risk adjusted fee structure, the interest rate, 16 per cent –

As it was at the time –

20

and a line fee of 1.75 per cent.

That's consistent with what you've said before?---Correct.

25

5.1 goes on to explain the requirements of responsible lending. Now, you would accept, of course, that, irrespective of the application of the National Consumer Act, the bank must act as a reasonable and prudent banker?---That's right.

And you've said there:

30

The prudent lending requires an understanding of a customer's ability to meet repayments.

?---That's right.

35

And:

Traditionally, this is done through the verification of income by means of the customer supplying supporting documentation such as payslips and tax returns.

40

Do you see that?---Yes.

Continuing:

45

The proposed solution does not include traditional income verification, for the following reasons.

And then some of those reasons are set out. And it concludes at 5.2.3:

The proposed solution will price for increased risk from not verifying income, and the risk adjusted margin is reflected in the business case.

5

Do you see that?---Yes.

So, if I understand correctly, the process is that this proposal eliminates the requirement for frontline staff to capture, verify and assess income and serviceability. Is that right?---It did, yes.

10

And eligibility was to be determined by relying, instead, on behavioural scores, rather than on the verification of amounts. Is that right?---Correct. And I can explain what behavioural scores are, if you like.

15

We will come to that. We will come to that. The – but, in proposing the product, a decision has been – or it’s put to the – to this group, to the business and private bank leadership team, that there will be a price for increased risk from not verifying income, and the risk adjusted margin will be reflected in the business case. Is that right?---That’s right. And I can expand on that, if it’s helpful.

20

Can I - - -?---Sure.

- - - ask you to answer a couple more questions, which may give you that opportunity in a moment. Now, this was approved, was it not, as an exception to the normal group credit policy, this particular process?---Yes, that’s right.

25

So, if I can summarise a series of – or where I’ve got to, the process did not ask, first, whether or not the recipient of the letter wanted an overdraft before it was sent?---As I said earlier, they were open by virtue of not having opted out. Those customers were open to receiving offers.

30

And there was no verification of any figures, because that was said to be time consuming and expensive?---Carry on.

35

And the price was reflected in the higher risk – sorry – you will have to answer yes or no?---Yes.

THE COMMISSIONER: I think higher risk was reflected in the price might be - - -?---Yes, I think the point I want to make, though, is this is relative to what the traditional way is of doing business overdrafts. So the traditional way would have been a much lower price, but with much higher verification. So, you know, submitting financial statements, business activity statements, BAS statements, and the like. This was, by design, meant to be a much simpler process, relying on certain bank information which I think does meet the test of, you know, prudent banker and all of those requirements, because it did look at customers’ actual behaviour. And we covered this in one of the previous rounds where there’s – the debate is what is

40

45

more reliable, actual behaviour or a customer's papers that give some indication of the future. And so that's why I sort of hesitate to say there was no verification at all.

5 MR DINELLI: Taking you back to that point, though, but you would accept, would you not, that any of the behavioural scores were only by reference to any material that CBA had at the time?---That's right. Sorry. That's right, plus a bureau check. So it did actually look for default data at bureau.

10 And you also accept that by 2016 the process had been – if I can put it in these terms, had been fine-tuned - - -?---It had.

- - - such that you did require - - -?---Correct.

15 - - - some of that further information?---That's right.

But at this time none of that information was required?---That's right.

20 And part of that higher risk was because there would be a higher risk that people would suffer hardship, because – or perhaps they didn't really want the product, but, having been offered it, accepted it, or, having accepted it, could not comply with any repayment obligations?---I don't agree with that, because if you look at the actual experience – and you use the word hardship, which has a very defined meaning. But if you look at the actual experience of customers who struggle to pay and service their overdrafts, this overdraft was not out of line with other products which had different origination processes. So I don't think it's correct to say that we willingly stepped into a product where we knew that a whole lot of customers were going to default. You know, that's the nature of banking, is you take risk – if you knew which customer was going to default, you would never lend to that customer, of course.

30 But am I right to say that when CBA approved the roll out of the product after the pilot program – so I am now referring you to the start of 2013 – to all CBA branches, there were some additional criteria that were applied on and from that time?---Are you talking about the 2015 long form roll out? So I'm not 100 per cent clear which – are you talking about still 2013 or have you moved forward?

I am coming to that. But in 2013, on your evidence - - -?---Yes. Yes.

40 - - - one of the changes that came into existence – and I will take you to paragraph 34 of your statement?---Yes.

And if you go to point K?---Yes.

45 It says there that, from that time, one of the criteria was that the person not have more than 70,000 in unsecured consumer lending exposure. Do you see that?---That's right, yes.

Whereas that wasn't considered as part of the pilot program, was it?---No. And, as you said earlier, you know, the nature of this thing is you launch a new product. As you build experience you try and fine-tune it and improve it. So this table sets out a number of the changes that we made to improve the product.

5

You also – after that time, your correspondence offering these facilities also changed, such that you offered a conditional approval of an overdraft didn't you
-- -?---Correct.

10 -- - rather than -- -?---Yes. And -- -

-- - what you had done during the pilot program?---Exactly. And that was a change we made right across CBA. And I'm guessing our competitors did the same. And this was something that was the subject of discussion with ASIC with consumer
15 groups. And we were more, shall I say, we – we repositioned the way that those offers were made, so that it was clearer to the customer that it was conditional on a whole bunch of things happening.

20 And that was after the pilot program, however?---Correct.

Now, from when it was – when it was rolled out – and I am now in the period after the pilot program, that is, from the start of 2013 – your evidence is that what was required was that a person who did a short form application, which was required to be done at this time, was required to confirm four things. One is that he or she was
25 not an undischarged bankrupt?---Yes.

Australian permanent resident?---Yes.

30 Aged over 18?---Yes.

And, where they were being assisted by someone, that is, in a branch, they were asked whether the borrowing was for business purposes. Is that right?---I believe so, yes. It was only available in assisted channels in the early days.

35 And – but before February 2016, it wasn't a part of CBAs processes to ask about the purposes, apart from those circumstances, was it?---You said purpose – or eligibility, did you mean?

40 No. I am asking the – at what point did CBA ask the person what the purpose of the SBO was?---I don't think we've ever – I might be wrong, but I don't think we've ever asked what's the purpose, as in are you – do you want this overdraft to buy a new oven or a motor vehicle or a fridge or whatever. The purpose we've always asked – we certainly asked around what is the limit that you want? And I think it's
45 very difficult in an overdraft product to say that the purpose of an overdraft is because I will need an overdraft in six months time for a specific need. Are you with me? It's very much a fluctuating kind of facility.

5 But customers may have – may have wanted the SBO, for example, to service other debts, that is, non-business debts?---It's possible, but very unlikely, I would say, because there would be other ways to refinance debt. And, for that matter, one of our requirements, if I recall correctly, from the very beginning, was that if it was for the purposes of refinancing debt, then an SBO was not appropriate.

10 But if – it wasn't until February 2016 that people were actually asked about the purposes. How was it that CBA was able to ascertain whether or not this was the right product for that person?---Yes. I think in the early days – I'm talking about the 2013 period – it was a – it certainly was a simpler origination process. And that was because we were trying to learn as to how we could meet the customer needs. And, as we refreshed the product – and, as you know, there's multiple documents going through many, many changes we made to the product. That did include getting more information from customers, as well, which from a customer point of view is often a negative, clearly.

15 But from a – but you would accept, would you not, that from a responsible lending perspective, that would increase the likelihood that the person is receiving the appropriate product for their needs?---It's a complex area. You know, I could make the counterargument, which is that the harder you make it for somebody to get access to credit, the – we call it negative selection or adverse selection – it will only be the customers who are in a more difficult position who would go through that really onerous, difficult process to get the credit. If you're a good quality borrower, why would you choose a difficult path to originate a loan? So this is one of the dilemmas you face. I don't think that it follows from what you just said.

20 Well, in terms of the application itself, the short form didn't ask applicants to provide personal employment information or business or income or expenses, personal assets, none of that material, certainly during the pilot program?---Correct.

25 And then, later, it was done in the long form, wasn't it?---Yes.

30 And, in fact, the changes that I referred to over time that occurred, one of them was that there was a requirement, from 2015, in terms of applications on the internet and from February 2016 to include a requirement that the business customer declare business revenue and expenses, wasn't there?---Yes.

35 And you would accept that, by asking that – those further questions, there's a higher likelihood that the relevant considerations that the bank ought have regard to in determining whether or not a person should get a small business overdraft is more likely to be answered correctly, isn't it?---You know, I think the true test of that would be if you had a sufficiently long time period of running the product in the earlier iteration, and you could compare that with the new iteration and you could see what the actual performance and behaviour of those customers were, as in default rates, in particular, that would be the best way to answer that question. I can't answer that question definitively, because, you know, in the early days we were stepping into the product quite carefully and cautiously, fairly low scale. As you

know, the volumes were quite small. There's nothing we've seen in the default rates that say that it was a materially worse outcome for customers than it was after the changes that we did in 2015/16.

5 Well, one of the changes that you made, actually, as early as August 2013 was that you asked whether or not a customer was a recipient of a Centrelink benefit?--- Yes.

10 So, before that, they could have been offered a business overdraft even if they were on a Centrelink benefit, couldn't they?---Yes, and the same happens in the personal sphere, as you may know. If, you know, Centrelink is – caters for a number of different needs for customers, many of which are fairly secure forms of income.

15 And you can't say sitting here now whether or not more people that were offered the SBO during the pilot program have encountered difficulties with repayments than those who were subjected to a stricter criteria later on?---No. And I did include default data by year in the statements. I forget which one it was, because there were two that overlapped.

20 Yes. And I will come to that. You deal with that towards the end of your first statement. I mean, the number of defaults, obviously, increase over time, but that's, obviously, a product, you would say, and rightly, of the fact that there are more -- -?---Yes.

25 -- - SBOs in existence?---Absolutely. Yes.

But there has been no analysis to determine whether or not the people suffering hardship – and you deal with hardship in your statement – are those that were offered the SBO during the period when, if I could put it this way, the more lax eligibility criteria were applied than the ones in the stricter criteria.

30 MR SCERRI: Commissioner, some of the questions have talked about hardship and some have talked about default rates. And the witness had said earlier you need to be careful talking about hardship. There needs to be clarity as to exactly what our friend is asking.

35 THE COMMISSIONER: No doubt Mr van Horen, who is not unused to this process, will tell me if he does not understand the question.

40 THE WITNESS: So I think it will be helpful to – hardship is a word that in banking means a customer has applied for hardship, which is a defined legal process. And when a customer is in hardship, typically, they have lost their job or in financial difficulty or maybe a health issue. And then we would try and work with them to put in place a payment arrangement. Sometimes a debt gets reduced or written off or partially written off. So I would suggest leaving hardship aside, because that's a very specific case. If we talk more about a portfolio like this, you worry about your delinquency rate or your default rate, in other words, what proportion of customers fall behind in their payments. Many customers will fall behind in their payments, but

then make it up, because their business tax return for the better or it grows or something like that happens. And I think the big picture answer to the questions, Mr Dinelli, is that our view – and it remains my view – is that the – the overall credit performance of the SBO product, whether it's the early days of the pilot through to today, with the iterations of our changes to the process, has been very sound. And there's nothing in what we've seen in terms of the defaults or the delinquency or the customers experiencing difficulty making their payments that suggest to us any major gap in the way that we originally offered, or the customers took up, the overdrafts.

10

MR DINELLI: You – I understand it to be the case that during this – during this period in terms of the criteria, you did a – what was described as a deep dive analysis of the relevant criteria. Does that – do you recall that being done - - -?---Yes.

15 - - - in March 2016?---Yes. Perhaps you could refer me to the document. As I said earlier, we do - - -

Yes. If I can call up?--- - - - multiple deep dives all the time, yes.

20 If I could call up CBA.0001.0174.1189. And, specifically, if I can take you to a document within this, and that is at .1213. This is the – what's described as a deep dive review findings in relation to the full form?---Yes.

25 And if one goes to .1216, which is the purpose for going to this particular document, you will see that there is a reference to:

CBA business liabilities were not being passed through for decisions. This, again, falsely inflated servicing positions for applications.

30 I'm sorry - - -?---Could you just call up the page.

It hasn't been called up - - -?---Yes.

35 - - - Mr van Horen. But it's .1216. So it's the second row. Can you see that?---Yes.

Now, if I understand that correctly, at this time it was discovered that liabilities weren't properly being passed through the process, leading to an inflated servicing position for applications. That is, it appeared that the person could pay more than they actually could. Is that right?---Yes, I think so.

40

And does CBA know in relation to that how many applications this issue affected?---I honestly couldn't tell you off the top of my head.

45 And do you know – presumably, then, you can't assist as to whether or not that particular issue increased or decreased or in fact had no effect on the amount of defaults that subsequently occurred?---Well, my reading of the documents – and I have to say I don't know the specifics in a huge amount of detail – is that in each

case the deep dive identified a problem. And, unfortunately, that's the nature of – of any kind of business like this. There are always problems that you then need to fix. And the resolution that's referred to here is that there was a referral control implemented which would mean that the – a decision would be referred to a credit
5 assessor, who would then make a manual decision. And then a permanent fix was done in March. I am not sure what the timing was relative to that paper. I think it was October.

10 My question to you – my question to you, though, just focused on the fact was there any analysis done as to whether or not that issue resulted in increased defaults for people who have been approved for an SBO during that period?---I couldn't tell you off the top of my head.

15 Can I – Commissioner, if I could tender that document.

THE COMMISSIONER: Small business risk subcommittee agenda and accompanying documents, 26 May '16, CBA.0001.0174.1189, exhibit 3.45.

20 **EXHIBIT #3.45 SMALL BUSINESS RISK SUBCOMMITTEE AGENDA AND ACCOMPANYING DOCUMENTS DATED 26/05/2016 (CBA.0001.0174.1189)**

25 MR DINELLI: Thank you, Commissioner.

If I can take you, Mr van Horen, to CBA.0001.0332.1047. Now, you're not party to these emails, but do you know who Christopher Essex is?---I do.

30 And what is his role?---He is in the credit risk team, one of the credit specialists who looks after this portfolio.

I see. And if you go down the page, there's an email from a Megan Eldridge. Is she also part of that team?---No, it looks like, from the signature, she's a frontline staff member.

35 I see. And she has there said:

40 *Please see attached the two screenshots from the calculator. The first is prior to inputting the expenses and the second after the personal living expenses are added. The net monthly surplus does not change.*

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

45 And does that demonstrate that – or is that an error in relation to the serviceability which was the subject of this email?---No. I don't think it was an error. What I think the frontline staff member is saying, well, I put in a number and nothing changed for the net surplus. You would recall from the consumer round of hearings

that we spoke about HEM, income based HEM. I believe what the response at the top of the email is saying that HEM is used in both calculations, because whatever the declared expense was below that HEM benchmark and, therefore, HEM continued to be used in both scenarios.

5

I see. And that that – and so you hadn't had any discussions in relation to that particular issue with those - - -?---No. I think it's entirely sound. You know, using – so bear in mind SBO looks at both the business and the person, director, or directors, and looks at both of them in terms of the servicing of the loan. And this here would be referring to the person, the director, let's say. And if they declared an expense number that was too low, we used the income-based HEM, which – that's the subject of a much broader discussion, but I think in the context of this it was appropriate.

10

In relation to the defaults that you've identified in your – in your statement, is it your evidence that you can't assist by informing how many were due, or possibly due, to the way in which the – the checks were done at the time of setting up the accounts?---You say the checks. Verification and the like?

15

Yes, the criteria that was applied?---No. And I don't think we had cause to go to that level of analysis, given that the performance of this portfolio, you know, notwithstanding the system errors we will talk about, the credit performance of this product has actually been good.

20

Mr van Horen, can I go to another topic, please. You've given evidence about the interest rate. And at the relevant time it was 16 per cent. Is that – is that right?---Yes, for SBO. Yes.

25

And that is in relation to the SBO?---Yes.

And you've explained – and this is your – what I will call your second statement, even though I think it – it's later in time, but it relates to Rubric 3.15. And you've explained what – you've explained in your statement the misconduct in connection with business overdrafts facilities. Can you explain to the Commission what the issue was that arose, first in 2013, and then again in 2015/16?---Yes. It's – I will try and – it's quite a technically complicated thing, but I will try and summarise it as best I can. And I can say that the issue that arose on – on BODs and SBOs was, essentially, the same underlying issue, so we don't need to differentiate too much. And it's an issue – it's one issue that has persisted through time, as opposed to two different issues arising in the 2013 and '16 periods. And the – the summary of it would be that an overdraft is attached to a transaction account. So if I use the acronym a BTA, business transaction account, is one such transaction account. So think of that as your day-to-day bank account. Your overdraft is applied on top of that. We have things called price options, which is bank jargon for, essentially, saying that every product construct has its own set of pricing features, which could be interest rates or fees. So BTA will have its own price options, so will an SBO and so will a BOD, because the pricing is different on those products. Now, the core problem we had here was a whole series of migrations, as I've summarised in my

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statement. What happened was the – the account that had, let’s just say, SBO in this case was sourcing the interest rate to be charged from two different systems.

5 And what – by sourcing it from two different systems, what happened to the interest charge that was charged to the - - -?---What that meant was - - -

- - - customer?--- - - - it sourced the interest rate – I can go into more detail if you like, but sourced from two systems and charged both of those interest rates to the account, which meant that the customer was being over charged. It’s not technically
10 double, but near enough.

No. In fact, it was slightly more than double - - -?---Yes.

- - - because there was internal price – or, instead of the 16 per cent, there was an
15 internal price and I think you describe it as an external price, the outcome of which was 33.94 per cent was applied?---Correct. It was – it’s not so much driven by internal/external. It’s driven by – the correct interest rate should have been 16 per cent. And it applied – the system applied that rate. It also applied another interest
20 rate, which was not actually the normal interest rate. It was a thing called the excess debit interest rate, which is normally when a customer is over the limit. So that was an error. And then applied both of those, which is why it added up to the 33.9 per cent.

I see. And in your evidence you say in August 2016 – I understand you weren’t in
25 your current position then – but CBA identified a problem with this pricing in relation to the SBOs. Is that right?---Yes.

And then, in November of the same year, identified the problem for business
30 overdrafts?---Yes.

And the problem was – I mean, if you will forgive me, I will call it the double
interest, because it was – it was almost double. It was 33.94 - - -?---Yes.

- - - per cent instead of 16 per cent?---Correct.
35

And, in fact, internally you called it the double interest?---Yes. I think, you know, correctly we’re calling it overcharging, because it’s technically not double but yes, more or less.

40 And can you explain how the issue was dealt with in 2013 so as to remedy this defect?---Yes. So there was the first problem. So in 2013 there was a branch – a customer complained at a branch. It was identified. It was then – an incident was created, which was managed at a fairly sort of low level in the organisation amongst the technology teams. It was not fully understood as to the scale of the problem.

45 And so that was – that was the first sort of major incident, as we call it. What was done was a manual process was put in place to try and identify where this was occurring. And manual control reports were run and they were then – customers

were corrected. So to – to the best of our knowledge, collectively, we thought that there was a manual process in place that was preventing customers being overcharged. And that was from 2013 – late 2013 to 2015, when a system fix was put in place. And I will pause there.

5

That system fix was put in place in May 2015?---That's right.

That was almost two years later. Why did it take so long?---Well, (1) to the best of our knowledge, we didn't realise that it was still an ongoing problem. So we thought that the manual process was fixing it and putting all customers in the position they should have been. And (2) it was – you know, getting a system change in the pipeline requires testing. It has to get into this various scheduled releases. And it was scheduled for the May 2015 – it was actually scheduled for February 2015 and then got pushed back to May, because the testing showed there were some issues.

15

And, if I understand correctly, what happened then was, because of the two figures feeding in, on a statement a customer would get a debit interest charge, which was one figure, without any interest rate referred to. And it would appear as their interest rate for the relevant period?---Yes. From memory, I think what you would see on the customer's bank statement, whether it was paper or online, would be – let's just say \$100 of interest charged for that period. And it – the narration didn't have the interest rate in that line, if I remember correctly. But it certainly did have it further down in the statement saying that you should be paying 16 per cent interest rate. So that was the disconnect. If it was \$100, it should have been, for argument sake, 50

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Correct?--- - - - or 45 or something. So it didn't tie up with what the interest rate should have been.

30 Were you aware of that overcharging issue when it happened in 2013?---No.

And did you approve the CBA management team's implementation of the fix in 2013?---No, I wasn't in that business at all.

35 And it's now acknowledged, is it not, that the two – that the fix that was applied at the time was – was not sufficient to stop the problem happening?---Yes, it – it – it did stop the problem for 95 plus per cent of cases. And, again, it gets quite technical here and I don't want to bore the Commissioner, but - - -

40 THE COMMISSIONER: You're not going to bore me with detail on this, Mr van Horen. Don't hold back on the detail, because if you do I will be asking you about it. So go into the detail?---Okay. So the May 2015 fix was the system-based fix that ensured that for, as I say, 95 plus per cent of customers that overcharging stopped occurring. What it didn't do was – a fairly unusual set of customer circumstances where customer was on a certain underlying transaction account. And let's just say –
45 I will call it a premium business account. That's another type of business account. Call it a PBA. And then they switched from a PBA to a BTA, a business transaction

account, which is a different kind of transaction account, slight differences for customers, and then got an SBO on top of that. And so what – we call that multiple switches. So there were multiple switches of the price options from this product to the second product and then to the third product. And, when we did the system fix in
5 May 2015, we did not cater properly for that type of scenario. So it was amiss, clearly – it’s a fairly technical error, though.

MR DINELLI: Yes, although a technical error that, you will concede, affected quite a number of customers?---Yes. Just to be clear, so when we come to the – the
10 remediation we then did in 2016/17, that went right back to 2013. So it – it dealt with the five per cent who weren’t fixed after May ’15, but it also dealt with, you know, near 100 per cent that weren’t fixed prior to May ’15.

THE COMMISSIONER: Can I just understand better than I do why you say this is
15 a technical – particularly technical matter?---I mean, technical in the sense of – you know, I sort of hesitate to use the word coding error or system error, but it, essentially, was in that category where did not – and I take accountability for that as a business. We did not specify requirements which would cater for all of these
20 multiple kind of customer use cases or scenarios. And that was a scenario or set of customer circumstances that was not spelt out - - -

See, Mr van Horen?--- - - - and, therefore, built.

- - - the complexity of which you speak is something you need to explain to me much
25 better. At the moment, it seems to me in 2013 CBA knew that at least some SBO customers were being charged double interest – or more than double interest. Is that right?---That’s right.

Well, that problem is stated in one sentence. The solution, surely, is to check
30 whether every SBO is being charged the right interest?---Yes.

Yes. Now, no doubt, coders, programmers, many other people have got to do a lot of things behind the scene. But is the problem more complex and the solution more
35 complex than that which I have described?---I think that’s a fair summary, Commissioner. It’s - - -

Well, let’s hear no more about how technical it is, Mr van Horen. It seems to me to be a – a nasty, difficult, small problem that may require quite a deal of work to solve
40 it, but the problem apparent to the bank in ’13 was SBO customers have been charged double?---Yes.

And what did the bank do about it?---Do you want me to answer that question?

Yes?---What we did about it in 2013 was put in place a manual process, whilst we
45 were developing the system-based fix, which then happened in May ’15. So that was a manual process which did run, I have to say, intermittently – or we can’t confirm, going back to find records, that it was run every single month, but it was a monthly

manual process to identify the known cases. The problem – our failing was it was not comprehensive and it missed a very substantial part of the cases that we subsequently found.

5 How many did it miss? How many people are we talking about?---Well, ultimately, there were – it's in my statement. I think there was about two and a half thousand SBO cases and about 300 BOD cases, which, to put it in context, was approximately 12 per cent of SBOs and approximately two per cent of BODs. So it wasn't the whole base; it was a fairly small proportion of the whole customer base.

10

MR DINELLI: Now, you mention in your statement that there was a FOS complaint?---Yes.

15 And when were you made aware of the fact that there had been a FOS complaint in relation to this issue?---In July 2016.

And you're aware, however, that the customer raised a complaint with the bank a little over a year earlier on 25 June 2015?---Yes, I am now aware.

20 Now, I won't use the name of the customer, but you are aware that a customer contacted CBA about the overcharging issue in June 2015?---Yes.

25 And, if I could take you to CBA.0001.0281.0238. The customer, whose name is redacted and I will just simply call the customer – and I will take you to the second paragraph. This person was a small – says:

It all started with a bank. I owned a small business...and have been trading for five years. I had taken out a business loan with this banking institution and was given access to an overdraft loan of \$5000.

30

Do you see that?---Yes.

And then, the next paragraph, this person explains that:

35 *Since November 2014, my business had some quiet weeks, due to school holidays, Easter weekends, public holidays and a few days of flooding, which all contributed to my business not sustaining my outgoings and everyday living expenses. I then used the overdraft to stay afloat to feed my family, myself and pay bills and run my business. However, it was running out fast.*

40

?---Yes.

If I could skip down, if I may, to not the next paragraph, but that after:

45 *Going over my statements, I noticed that the interest rate on the overdraft was being calculated and charged at a daily rate, as well as repaying the overdraft amount at high interest. My business account was being drained completely. I*

had to borrow money from a family member to put into the account. That money was also taken out as soon as it hit my account and my balance became non-existent.

5 ?---Yes.

And then the person goes on to say:

10 *I arranged a meeting with my accountant, who advised me that if I could not borrow more money to pay the overdraft back plus the interest that I should be prepared to close down my business and probably lose my home, as well, if I could not afford to repay my mortgage.*

15 ?---Yes.

Then, on the next page, the customer goes on to say:

20 *I was sitting in my salon one afternoon in dire depression and financial despair, thinking I had no other options left but to take the advice of my accountant when I came across an interest fact on a Facebook article about this particular bank releasing their annual profits of 30 billion profit for overdraft interest earnings for the last financial year.*

25 The person goes on to explain:

30 *This prompted me to return to my bank and ask the question why was my interest charges extremely high and even higher than a day-to-day credit card from another banking institution that I have. I was told I agreed and signed the overdraft loan agreement at 16 per cent interest rate and quite directly and abruptly told that a bank is a business and that is the price you pay for borrowing money. They also told me they withdrew interest fees quarterly. However, my account statement showed that interest charges were being taken out on monthly basis. I queried this in tears, not the first time. On three separate occasions, I had broken down in the bank asking them to help me understand why it didn't matter much I was trying to pay back my overdraft and high interest charges I could not get ahead.*

And then the person goes on to say:

40 *They finally agreed to look further into my account and see why I was being charged and paying high interest on a monthly statement, rather than quarterly. Within one hour of my final plea in tears, they checked into my overdraft situation. That just did not seem right in my calculations. And I was informed I was being charged double interest at 32 per cent, instead of 16 per cent on a monthly, not quarterly, basis, due to a computer glitch in their system and that I had been paying this since the first direct withdrawal payment since November 2014.*

Do you see that?---Yes.

5 You would – in the end, the overpayment was a matter of hundreds of dollars for this person. But you would accept that it – she claimed it had a significant effect on her life?---Yes.

And when the customer approached CBA in June 2015, do you accept that CBA did not investigate the overcharging issue more broadly?---I think that's right.

10 And that was despite what had happened in 2013?---Yes, I think the two were not connected at the right time early enough, yes.

15 No, but it also was the case that this person wasn't the only customer complaint that CBA had received concerning this issue in 2015, was it?---To my knowledge, from all the records I've looked at, I think there were about six or seven complaints of similar – or broadly similar in nature in roughly the same time period.

I see. If I could pause there, if I could tender that document, Commissioner.

20 THE COMMISSIONER: What's the date of the letter?

MR DINELLI: 5 November 2015.

25 THE COMMISSIONER: Letter to CBA, 5 November '15, CBA.0001.0281.0238, exhibit 3.46.

30 **EXHIBIT #3.46 LETTER TO WHOM IT MAY CONCERN CONCERNING INTEREST OVERCHARGING DATED 05/11/2015 (CBA.0001.0281.0238)**

MR DINELLI: Thank you, Commissioner.

35 You state that – in your statement, that is, in your second statement – that between July and September, and as a result of this FOS complaint, CBA became aware that there were gaps in the solutions that it had implemented. Is that right?---Yes.

40 And this issue was elevated, because this person had gone to FOS to the executive committee. Is that right?---The – once we had identified the overcharging issue, yes, we – we escalated that to the executive committee. We didn't talk about the specific customer, though. That was - - -

45 Well, it was because this person – it was because this person had gone to FOS that it was elevated to the executive committee, wasn't it?---It was elevated to me. So one of our standard processes if you've got a longstanding, or more than 90 days, FOS complaint, then there's various reports that happen. And I received a report in July 2016 which – and in reading the detail, it didn't look right. And so I asked the

question could this be happening to more customers, which then triggered the investigation to say was it systemic issue? And that then resulted in reports to ESCO and so on.

5 Yes. That's right. But you didn't do anything until it was – nothing was done until it was escalated. And it was only escalated because of the FOS complaint, wasn't it?---Well, certainly from my point of view, the first time I heard about it was when the FOS complaint was escalated.

10 Well, do you accept there weren't proper systems in place - - -?---Yes.

- - - during 2015 to ensure that the issue was dealt with properly?---I think that's a fair statement. And – and having looked at a number of the emails and various correspondence that occurred in that 2015 to '16 period, I think we didn't do what –
15 what we expect to have – should be expected to have done.

Are you aware that FOS is obliged to identify, resolve and report on systemic issues and serious misconduct to ASIC?---I'm not aware that they report to ASIC, but they certainly alert us to issues they think could be systemic and we then typically look at those in more details.
20

And a systemic issue is defined as one that's an issue that can have an effect on people beyond the parties to the dispute, so beyond this particular customer?---Yes. I don't know if there's a legal definition, but that's the common sense definition, yes.
25

Now, when this issue – when this issue was first being dealt with before it came to you, there was an email which I would like to take you to, CBA.0001.0281.0179. Excuse me just for a moment, Mr van Horen. My learned friend Mr Scerri has rightly pointed out the letter which has just been tendered ought be tendered, perhaps
30 not as being addressed to the bank, Commissioner. It's to whom it may concern. It does - - -

THE COMMISSIONER: The description of the exhibit 3.46 should be letter directed to whom it may concern, 5 November '15, concerning interest overcharging.
35

MR DINELLI: Mr van Horen, you did see that letter, though, didn't you, at the time that the FOS complaint was made?---No. I saw that letter now in the lead-up to the Royal Commission. I saw – so the way we – we get reporting from the group customer relations team, which is coincidentally where the next email comes from.
40 That reporting summarises – you know, as you can imagine there's lots of - - -

Yes?--- - - - feedback we get all the time. It summarises complaints. I didn't see that individual customer letter at the time, no.

45 You didn't personally, but it was within the bank's records?---I would have to check that. I couldn't say if it was or wasn't.

Okay. Thank you. I was – if I can take you to – return to the email. This was on 14 July 2015. So about a month – or not even, perhaps – three or four weeks after the complaint had been made - - -?---Yes.

5 - - - by the customer. And do you see that there's a discussion there – or a summary of the issue. I will let you have a look at it. Do you agree that this is the – what became the FOS complaint?---Yes.

And it summarises:

10

Due to some system error, we have been charging customer 32 per cent interest on a BTA, instead of 16 per cent.

?---Yes.

15

Do you see that? Down a couple dot points:

20 *Customer recently applied for PL to clear this OD, the overdraft, which was declined due to servicing. The customer has refused to provide documents, because she provided this recently at the branch when she applied for PL.*

And then you see the recommendation is:

25 *To resolve the matter, I recommend to early charge off and approve a payment arrangement of \$50 a week.*

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

Then it says:

30

If not, the matter will escalate and might be raised a systemic, because it could be happening with more customers, too.

See that?---I see that.

35

Does that – do I understand that email to be a suggestion that it be settled so that the issue isn't raised and thus becomes a systemic issue?---Yes. So I've, obviously, made inquiries around that email when I saw it. My initial reaction was surprise, because this is the part of the bank that typically tries to resolve complaints. I think
40 the person was clearly trying to resolve the complaint for the customer. But it's also the part of the bank that normally escalates issues when there are concerns. So - - -

And that didn't – didn't happen in this case, did it?---It certainly didn't look like it happened yet.

45

And – now, the customer wasn't satisfied with that settlement. Is that the case?---Yes. My understanding, having looked at the case, the customer initially

asked for \$100,000. She then revised that request to \$10,000. We then put in place this proposal. It then moved around a few times. And, without pre-empting where are you going to go, I think we offered, from memory, \$2750 to recognise, I think, the hardship and the – well, I have now used that word – to recognise the unique
5 circumstances of the customer and the stress and – you know, she referenced that in her letter. But it was clear she was in a difficult position, so we proposed to, obviously, fix the problem and make a goodwill payment, which I think was appropriate. She didn't accept that. FOS ruled on it. I believe they suggested we pay her \$1500, which was less than what we had offered. And she didn't accept that
10 either.

And Commissioner, perhaps if I could tender that email.

15 THE COMMISSIONER: Email 14 July '15 to C & CS escalations, CBA.0001.0281.0179, exhibit 3.47.

20 **EXHIBIT #3.47 EMAIL TO C & CS ESCALATIONS DATED 14/07/2015 (CBA.0001.0281.0179)**

MR DINELLI: Well, this person, not being satisfied with that response, then went to FOS?---Yes.

25 And it was because of that FOS – sorry – perhaps I can put it this way. Had the customer not taken the complaint to FOS, the CBA would not have realised that this overcharging issue was a high priority so as to warrant further investigation?---I can't predict what would have happened, but that was certainly the trigger for the issue being escalated and brought to my attention.

30 Can I take you to – you referred previously to the nature in which some negotiation occurred with this particular customer. If I can take you to CBA.0001.0281.0182. And you will see in the bottom part of the email there's a reference to the same person who was the subject of the earlier email. And there was a proposal there:

35 *Approved to early charge off the account and accept \$50 per week as life arrangement to clear the debt.*

40 Do you see that?---Yes.

Then the response was given at the top:

45 *The customer has declined to enter into a payment arrangement for the BTA and has threatened to take it to the media.*

See that?---Yes.

Continuing:

Please review for waiver of the whole debt.

5 ?---Yes.

And in fact – perhaps I can tender that email before I go - - -

10 THE COMMISSIONER: Email 28 July '15 to C & CS escalation,
CBA.0001.0281.0182, exhibit 3.48.

**EXHIBIT #3.48 EMAIL TO C & CS ESCALATION DATED 28/07/2015
(CBA.0001.0281.0182)**

15

MR DINELLI: Then – thank you, Commissioner.

20 The next document is CBA.0001.0281.0194. Do you see that? Sorry, Mr van
Horen?---Yes, got it.

And it says, in the middle of the page – and this is approximately a week later:

25 *As discussed, please place your approval to waive the debt of \$3494 as a
commercial decision to resolve the matter.*

Do you see that?---I do.

30 So it was when the person threatened to go to the media, then CBA increased its
offer there. Do you see that?---I do.

And there was two reasons for CBA wishing to have this dealt with speedily. One
was the bad PR?---Fair to say.

35 One was also the fear of it being identified as a systemic issue?---I wouldn't – yes, I
wouldn't extrapolate from – I don't think that's a fair extrapolation from that one
person's email, because certainly from my point of view – and I think this is a widely
held view – if there is a systemic issue, we want to know about it so we can fix it.

40 But the process - - -?---I wouldn't be comfortable saying that that was a CBA view.

No. Perhaps I can put it this way?---That was very much against policy, what you
saw there, as well. I have checked that.

45 So the process failed in this case?---It did.

Now, ultimately, there was a remediation program, wasn't there?---Yes.

And CBA discovered, after this customer had raised the issue for FOS and processes were put in place, that remediation had to occur in respect of 338 business overdrafts. Is that correct. Accounts?---Yes, the BODs. Yes.

5 And there were 2354 SBO customers affected?---That's right.

And, of those, 1490 of them were remediated. Is that right?---Yes.

10 And am I right that the remediation was nearly \$3 million in total?---Correct. If you add the two together.

And over – and you've given evidence that there was over two and a half thousand customers affected?---Correct.

15 Now, it's your evidence that – if I understand it correctly – that the average time between when the person was overcharged – or charged the double interest and when they were remediated took – it took 960 days. Is that right?---Need to be a little careful. So that was from – it was 240 days from when we identified it. It was 960 days from when it first started happening - - -

20 Yes?--- - - - to when the remediation was completed, on average.

Well, that is from the time that they paid the amount?---First time, yes.

25 It was 960 days, approximately two and a half years?---Correct.

And that was – and you say in your evidence that a customer remediation program was instigated and letters were sent out about four months later, in March 2017. Is that right?---For SBOs, yes. I think for BODs it was May/June.

30 I see. So you accept, don't you, that the time that was taken was too long?---It was certainly too long to identify the issue in the first place. I think the time we took – once we had identified the issue – was – was not inappropriate, because there's quite a lot of work you've got to do once you identify an issue to understand how
35 widespread it is, fix the problem, figure out who you're going to remediate, get letters, etcetera, sorted out. So it was reasonable.

40 Perhaps I can tender – excuse me for a moment. I forgot to tender that document, I'm sorry.

THE COMMISSIONER: Email 6 August '15 to GCR, first point correspondence, CBA.0001.0281.0194, exhibit 3.49.

45 **EXHIBIT #3.49 EMAIL TO GCR, FIRST POINT CORRESPONDENCE
DATED 06/08/2015 (CBA.0001.0281.0194)**

MR DINELLI: You have just said your evidence was that from the time of identification of reasonable amount – you think it was a reasonable amount of time. Is that right?---Yes, I think, give or take, it was a reasonable time.

5 Your evidence would be that – sorry – you would say that that ought be done as quickly as possible?---I think it needs to be done properly is the – is the primary goal. And yes, we – we do try and expedite it.

10 And you did everything in your power to expedite it, did you?---Well, I think you're coming into something in February – February 2017, where I requested a delay of 10 days. So, subject to that, yes.

15 Okay. And is it right that you requested a delay of 10 days. You asked for all this to happen after the House of Representatives hearing on 7 March so as to eliminate the chance of this being brought up in the hearings. Is that right?---Yes, that's right. Happy to explain context. And when you say all this, this was specifically around the – not fixing the problem. At was around the letters to customers and the – the refunds.

20 I don't wish to mislead you for a moment. If I can take you to CBA.0001.0292.5963. And if you go – if I could ask you to go to the next page, so that you have the context. So Mr Leo had sent you an email:

Hi Clive. Emailing you a quick update re SBO DDI progress.

25 See that:

Letters and refunds will be distributed end of March. Permanent fits will be implemented –

30 Etcetera. And then the next – if I can go back to the first page. And I think I was faithful to what you said?---Pretty accurate, yes.

35 Continuing:

Can we make all this happen, letters and actual refunds, after House of Reps hearing on 7 March. Eliminates the chance of this being brought up in the hearings and a delay of 10 days is immaterial.

40 Is that right?---Yes.

You would accept that the customers who were affected wouldn't be too happy to be aware of the basis for the further delay, wouldn't you?---Yes, I agree with that.

45 That would be below what the community would expect of CBA, wouldn't you?---Yes, I think it was a - - -

And - - -

5 THE COMMISSIONER: Finish your answer?---I think it was a poor judgment on my part. So I will definitely take that on myself. Happy to explain why I made that, call but I agree, it was a poor call.

10 Why did you make the call?---So, firstly, at the time, we did not believe there was any reportable breach. We probably will come to that, as well, Mr Dinelli. But we did not think this was a breach and, in good faith, that was a view we had at the time. Secondly, you know, in terms of materiality – and I appreciate if you're, you know, one of those customers affected and you're waiting for your refund, it's very material to you. However, it was less than 1500 customers out of 10 million. It was, you know, I think, .002 per cent of our total earning. So it was a very small issue in the scheme of things. And weighing quite heavily on my mind was a fairly recent
15 experience we had had with customer letters going out which were – caused major distress to – whether internally, externally, around paper statement fees. And, personally, I was quite bruised by that. And I thought the risk of putting out letters right into a House of Reps hearing with these letters would potentially get picked up and reported in a way which was – if the previous experience was anything to go by,
20 it was factually 100 per cent wrong. Judgment call I made in the moment. And, you know, you get hundreds of emails a day and you make a pretty quick judgment decision. And I accept it was the wrong decision, but that was the decision I made.

25 MR DINELLI: You know that one of the issues that this Commission, of course, investigating is whether any misconduct is attributable to a particular culture or governance practice of an entity. You know that?---Yes.

30 And it might be open to say CBA here was more affected by media and PR than ensuring the right thing by its customers?---Yes. I don't think it's quite as cut and dry as that, because, if I go to the other example, customers were – I think in short answer, yes. But, as I said, weighing on my mind was a scenario where customers were certainly very confused by the way the matter had been reported.

35 Now, this issue – this issue, either in 2013 or 2015/16, was not elevated to the board, was it?---No. And I don't think it would be appropriate, given the material go to the board.

40 The CEO, though, in the last week has met with ASIC, hasn't he?---Our CEO, yes, he has.

45 And one of the issues discussed was this very issue?---I believe so. So I think the context for that meeting, as I understand, was our CEO – new CEO was meeting with new chair of ASIC trying to – I think the purpose of the meeting was this is how we want to work together going forward. And, as part of that, this issue was mentioned by our CEO to the chair of ASIC.

Is it right that CBA didn't report this overcharging issue to ASIC in 2013?---Yes. I don't think there was any way we knew nearly enough about its report in 2013.

And in 2015 it wasn't – 2016 it wasn't reported to ASIC either, was it?---Correct.

5

It was considered – you're aware under section 912D that there's a requirement to inform – sorry – section 912D of the Corporations Act, a requirement to inform ASIC as soon as practicable of breaches of financial services law, and within 10 days?---Yes. I - - -

10

And two group – sorry, Mr van Horen?---Yes. So, you know, if you want to know what we thought about at the time – I should wait for you to ask question.

Well, at the time, if I can – two groups within CBA considered this issue, didn't they?---They did.

15

And those groups were both your team, if I can put it that way, that is - - -?---Yes.

- - - the SBO team, and also – and also the team responsible for the business overdrafts?---That's right.

20

And both determined that there was no need to notify ASIC under section 912D, didn't they?---That's right.

And it was – your group – was it – was that what's described in the documents as the DDI scrum, the double digit interest scrum, meeting?---Yes.

25

And were you part of that group?---Yes. So I had moved to a different role. However, because I had history with the SBO, I carried on sponsoring the resolution, rather than ask a new person to try and get across an issue that I had more history on.

30

I see. And during that - - -?---It didn't mean I was there at every meeting, but I was the sponsor of that, yes.

Okay. Well, there was a meeting on 24 November. Perhaps – I didn't tender the previous document. I'm sorry, your Honour. I think that's the third time I've – perhaps I can tender the previous document, CBA.0001.0292.5963.

35

THE COMMISSIONER: Emails between Leo and van Horen with that doc ID becomes exhibit 3.50.

40

**EXHIBIT #3.50 EMAILS BETWEEN LEO AND VAN HOREN
(CBA.0001.0292.5963)**

45

MR DINELLI: Thank you.

Perhaps if I can take you to CBA.0002.1674.1040. This is – I think I described it before – double digit interest, DDI, scrum minutes.

THE COMMISSIONER: Double debit - - -?---Yes.

5

THE COMMISSIONER: I think, yes.

MR DINELLI: Debit, I'm sorry. Thank you, Commissioner.

10 And the various members of that team are set out at the top. What's called the scrum master is Mr Leo, who you sent that email to?---Yes.

And then various other members – you're an apology to this meeting?---Yes.

15 I think I asked you previously are you the most senior person there?---Yes. I think I would be the most senior on the distribution list, yes.

And at number 4 it says:

20 *Will we inform ASIC as best practice?*

?---Correct.

25 See that? And there was no notification made to ASIC at that time, was there?---No, there wasn't, as – as you said, we gave it active consideration, though.

And, during that time, FOS also wrote to you and indicated that it considered that the issue was systemic?---They did.

30 And asked you why you hadn't reported it to ASIC, didn't they?---They did.

And it wasn't until the eve of your evidence, that is, on 15 May, that a disclosure was made to ASIC, wasn't it?---That's right.

35 And I think Mr Scerri took – or referred to it briefly previously. If I can take you to – sorry – if I could tender that scrum meeting document, CBA.0002.1674.1040.

THE COMMISSIONER: Those DDI Scrum Minutes become exhibit 3.51.

40

EXHIBIT #3.51 DDI SCRUM MINUTES (CBA.0002.1674.1040)

45 MR DINELLI: And if I can take you to exhibit 6A. So it's CBA.0517.0096.6000?---I have got it, if you want to carry on.

Thank you. And CBA now concedes that the conduct was misleading or deceptive. Is that right?---Yes.

5 That is, it was a breach of section 12DA?--- - - - That's right.

- - - of the ASIC act?---Yes. I believe so.

10 That's because a false or misleading statement was made to each of the statements sent to the people who were affected. Is that right?---Yes, correct. You can see the summary says – it summarises the basis on which we did not originally report it. And that's because BODs and SBOs are not financial products.

15 That's right?---And, therefore, not regulated by Corporations Act and AFSL, etcetera, etcetera.

20 But you concede now - - -?---And then, coming to prepare for the Royal Commission, clearly we gave this matter a whole lot more thought, considered different views. And it's now clear that there was a reportable breach, specifically around the statements misrepresenting what the interest rate - - -

I see?--- - - - was or should have been.

25 Now, your evidence is that there were approximately 2500 customers who had been affected by – had been affected by the overcharge?---Yes.

And your evidence is that the average lifespan from commencement of the issue to completion of the remediation was 960 days. Is that right?---Yes, from the commencement of the overcharging. Yes.

30 And, during that time, those people would have received a statement – is it your evidence they received statements six-monthly, if I recall correctly?---From memory, six-monthly applies to personal account statements. These would have been business account statements, which are three-monthly.

35 That's right. So, therefore - - -?---And it's available 24/7 online, of course.

So – well, in fact – that means, over these two and a half years, there would have been 10 statement cycles. Is that right?---Approximately.

40 And then, if that's right, there are likely to have been 10 statements for each affected customer, on average?---Yes. I would need to check the maths, but it would have been something of that order.

45 Yes. And then, if there were 2500 customers affected, you would concede there's 25,000 instances of those false or misleading representations. Is that right?---Look, I think this feels to me like a very legal interpretation of the legislation. I absolutely couldn't agree – you know, I don't know enough about that to say yes.

Well, your letter did say, if I can go to the third page, there may have been – so it's .6002. If you go just above Further Action:

The issue may also give rise to other breaches of financial services law.

5

?---Yes.

10 Given what you've said is a misleading or deceptive statement in relation to the amount of interest, if that's considered part of the price of the facility, you would also accept that there may have been a breach insofar as section 12DB – or another section of the ASIC Act insofar as there are false and misleading statements made in relation to the price of the facility. That would also be a breach?---I – I don't understand that. So you're asking me quite a legal question. I'm not going to be able to give you an answer to that.

15

That's fine. I can move on. There's just two final issues. You mentioned the scrum meetings?---Yes.

20 And they were held, if I'm right, between September 2016 when the issue was elevated to you and – sorry – to the executive committee until about January 2017. Is that right?---Sounds about right, yes.

25 And that was the forum where you raised issues about the double interest issue?---It was about – that was the forum that was trying to fix the issue.

25

I see. And deal with remediation?---Correct.

Deal with whether or not to inform ASIC?---Correct.

30 And I won't – in the interests of time, I won't take you to them, but there were meetings – I think it's your evidence those meetings were held on a bi-weekly basis. Some may have been cancelled, I think, but on a bi-weekly basis you had two different meetings. Is that right?---Well, once we identified the issue, I certainly felt a sense of concern. And so we initially started that meeting twice a week, just to get the momentum up and the focus up. And then it became once a week and then, I think, it stretched out, as there was sufficient progress happening.

35

40 Okay. And that was an important forum for resolving the issues?---It was a simple forum where issues were tabled and, if they weren't solved in the forum, then other people outside the forum would be able to help.

40

And did you contribute to the relevant discussions?---Just from my review of the – the scrum minutes, I was in some of the scrums – probably not in all – certainly wasn't in all of them.

45

Well, did you attend any of the meetings?---I think I did attend several, certainly at the beginning.

Well, can I take you to CBA.0001.0281.0500. This is the scrum minutes for 15 September 2016?---I might remember it, if you want to just ask me what's - - -

5 That was, I think – that was a meeting after the executive committee had been informed. Is that right?---What was the date of that?

15 September 2016?---From memory, the flash report to EXCO was at the end of September. So that might have just been before the EXCO report

10 Do you recall you were an apology to that meeting?---I don't recall that off the top of my head, no.

15 The next minutes that have been produced by CBA is for a meeting of 29 September. And we're having some difficulty with getting up these documents, but, of course, I can show you each of those. But that meeting that occurred on 29 September, you were also an apology to that one?---I could well have been.

20 Well, in fact – in fact, we have minutes of six different meetings. And they're the only – the only minutes that were provided by CBA. And you're an apology to every single one of those, Mr van Horen?---Yes, it's possible. As I said, I was doing a different job. There was a very capable person leading that scrum and I had full confidence in their ability to lead that.

25 Was the issue taken seriously enough, because the most senior person didn't even attend one of those meetings, Mr van Horen?---No, that's not correct. I absolutely did attend those meetings in the beginning.

Well - - -?---Perhaps you don't have those minutes, but I recall clearly attending.

30 Well, that's a matter – we have received six minutes and, in relation to each of those six, you were an apology?---I can give you diary notes if that helps, but I absolutely attended the first – the first meetings of that scrum.

35 The last issue I would like to deal with is this. Commissioner, if I could tender that document, that is, the 15 September 2016 minutes – for the meeting on 15 September 2016.

40 THE COMMISSIONER: Exhibit 3.52, DDI scrum minutes, 15 September '16, CBA.0001.0281.0500.

**EXHIBIT #3.52 DDI SCRUM MINUTES DATED 15/09/2016
(CBA.0001.0281.0500)**

45 MR DINELLI: I'm conscious of time, Commissioner, and the fact that my learned leader Ms Orr needs to deal with the lay witness. There are the other minutes that I

would also like to tender, but perhaps that can be arranged on the papers, if that is convenient to the Commission and to CBA.

THE COMMISSIONER: Are there any difficulty doing it that way, Mr Scerri?

5

MR SCERRI: No, sir.

THE COMMISSIONER: Very well.

10 MR DINELLI: All right. Can I deal - - -

THE COMMISSIONER: Well, they can form part of the bundle which will be exhibit 3.52, bundle of DDI scrum minutes.

15 MR SCERRI: Thank you, sir.

THE COMMISSIONER: Yes.

MR DINELLI: The final issue I want to deal with is that that you raised in your evidence. It is the position, is it not, that for the SBOs if there was a refund of less than \$5, that wasn't refunded. Is that correct?---That's right.

But for the business overdrafts it was - - -?---It was.

25 - - - refunded. And can I – am I right to say – or can I ask you why that money wasn't refunded to those under \$5?---The total dollar value we're talking about was \$800 in respect of those roughly 860 customers that were not refunded under \$5. And part of the reason is, I think, from memory, 320 of those customers were due a refund between one and 99 cents. We've had a lot of feedback from customers in the past when there's a closed account and they get a cheque in the mail for, call it, 37
30 cents that actually causes more annoyance than anything else. So we apply – we applied what we felt was a reasonable cut-off, certainly not about keeping the \$800. It's not going to – that's not the point. There's more administrative hassle for many customers to receive that level of refund.

35

And it's also that you wanted to reduce the exposure to negative PR, again, isn't it?---No not at all.

40 Okay. Can I take you, please, to CBA.0001.0281.0806. And if I could take you to 0808. It's an email – sorry – it might be my fault. CBA.0001.0281.0806?---Do you want to just describe it, if it

Yes. Mr Leo wrote an email to Mr Walker. You weren't party to that initially, but he said there:

45

Hi, James. The rationale for \$5 below –

And he deals with a number of issues, one of which is:

Reduce exposure to negative PR, ie, removing 840 customers from the 2300 with low refund amounts.

5

?---There may be an email. I don't buy that at all.

Well - - -?---Personally, it wouldn't motivate me in the slightest. I think if we're going to be writing to customers, we're writing to customers. There's not a big difference between whatever – 1500 and 2300.

10

You say:

Hi. I'm fine with \$5, as long as not inconsistent with the overall remediation framework team has developed. Cheers, C

15

?---That's right.

You?---Yes. That's right.

20

And it was - - -?---So we had - - -

It was inconsistent with the other ones, because they had been refunded, those amounts, by way of a refund into their account?---It was inconsistent with the BODs one, but it was not inconsistent with the retail approach. So the retail approach had previously used, in fact, higher cut-offs than \$5. And I wanted to make sure that we were being consistent with that, which was the one I had sight of.

25

No further questions, Commissioner.

30

THE COMMISSIONER: Mr van Horen, can I just – before Mr Scerri has his chance, can I ask you a general question about computer-generated errors about fees or interest?---Yes.

Computer systems depend on what goes into them and the way they're structured. Of course, there will be errors. And from time to time those errors will surface, I take it, at some level in the bank, whether it's at the branch counter or elsewhere. Now, I just want to understand the approach of CBA, if it becomes aware that there is what appears to be a computer-generated error in connection, either with fees charged or interest charged to an account. And I wanted to ask you whether it was practical, sensible, useful to impose a system that said, in effect, "Unless and until you demonstrate that this error is unique, it will be treated as systemic." Is that possible? Sensible? Useful? Pie in the sky?---Difficult one, Commissioner. You know, you are quite right that, unfortunately – and, of course, none of us want this, but, you know, system errors arise.

40

45

They happen?---So if we had to say that every time there was any kind of error – and errors arise not just in relation to interest and fees; unfortunately; they can be in any number of issues. We’ve previously had the responsible lending case for the personal overdrafts. You know, I think the appropriate thing we try and do is we try
5 and get to the bottom of how systemic it is. I think it would be quite impractical to say that assume that everything is systemic. You know I don’t think regulators would – I don’t presume to speak for ASIC, but I don’t think they would want us to report issues as systemic issues every time there’s an issue.

10 I’m not talking about reporting. I’m talking about the bank’s reaction?---Yes.

That is, should the bank itself treat this as potentially a serious issue - - -?---Yes.

- - - until it is demonstrated to be a unique or - - -?---Yes.

15

- - - close to unique case where garbage in, garbage out - - -?---Sure.

- - - is the explanation?---Look, you know, I 100 per cent acknowledge we haven’t handled this one well. There’s no doubt about that. But I think it would be quite
20 challenging to assume that every issue is systemic before you know a little bit more about it. Inevitably, you have got to go and understand the issue, and is it a one off? Is it something that could be repeated? And, you know, for better or worse, we have dozens of these every week. And the large majority of them turn out to be very small and isolated. Sometimes they’re not. So I suppose the short answer would be it
25 would be, you know, challenging – practically, it would be challenging to assume as a default everything is systemic until disproven.

I’m struck by the fact that this was observed, found, thought to be solved, but not?---Yes.

30

And it’s the “but not” - - -?---Yes.

- - - that is what is troubling me?---Yes, I agree. And, you know, I could talk to you at length – there’s no time for that now – about, you know, how we try and identify
35 these issues and what controls we put in place in the last while to try and identify them before they become issues. Clearly, it’s a massive focus area for us, trying to do a whole lot more around complaints and to try and find the needle in the haystack that could be a systemic issue. You know, when you get many, many customer complaints, sometimes I stood too long in the queue. You know, that’s not a
40 systemic issue, but it’s still in the complaints data. So we’re doing a huge amount of work to try and find those problems before they become any worse.

Yes. Thank you. Mr Scerri.

45

<RE-EXAMINATION BY MR SCERRI

[3.40 pm]

MR SCERRI: Mr van Horen, if you were to make the assumption the Commissioner is talking about, that is, assume it's systemic unless proven otherwise, what would you do differently to what you do now?---We would probably have armies of people, you know, investigating multiple issues on a very broad front all the time. And I'm not sure what – you know, we couldn't report it to the regulator. You wouldn't suddenly take action to, you know, close products for sale, which we've done in the past when we're not comfortable with the product. You couldn't do that until you had a confidence that there was in fact an issue.

10 Thank you, sir?---It would be very difficult to – but it's something I will think about, Commissioner, to see if there's anything in that.

THE COMMISSIONER: Thank you. Yes.

15 MR SCERRI: Thank you, Commissioner.

THE COMMISSIONER: Yes. Anything arising out of that, Mr Dinelli?

MR DINELLI: No.

20 THE COMMISSIONER: No. Mr van Horen can be excused?

MR DINELLI: Can be excused.

25 THE COMMISSIONER: Thank you, Mr van Horen.

<THE WITNESS WITHDREW [3.41 pm]

30 MR DINELLI: Your Honour, if we could have a couple of minutes, and perhaps no more.

THE COMMISSIONER: If I come back at quarter to 4.

35 MR DINELLI: Just to enable us to - - -

THE COMMISSIONER: Yes.

40 MR DINELLI: Thank you.

ADJOURNED [3.41 pm]

45 **RESUMED [3.44 pm]**

THE COMMISSIONER: Ms Orr.

MS ORR: Commissioner, we turn to a case study involving Westpac. The first witness in this case study is Mr Bradley Wallis, W-a-l-l-i-s.

5

<BRADLEY PAUL WALLIS, AFFIRMED

[3.45 pm]

10 <EXAMINATION-IN-CHIEF BY MS ORR

THE COMMISSIONER: Thank you very much, Mr Wallis. Do sit down. Yes, Ms Orr.

15

MS ORR: Mr Wallis, could you please state your full name?---Bradley Paul Wallis.

Mr Wallis you reside at an address known to the Commission?---I do.

20 What is your occupation, Mr Wallis?---Centre manager.

Thank you. And, Mr Wallis, have you made a statement to the Royal Commission dated 22 May 2018?---I have.

25 I understand that there is an amendment that you wish to make to paragraph 10 of that statement?---Correct.

So that the first sentence of paragraph 10 would read:

30 *At the time, Tara and I had recently sold –*

?---That's correct.

Continuing –

35

our own home in Melbourne.

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

40 Could I ask you to make and initial that amendment to your statement, please?---Yes, sure.

And, having made that amendment - - -?---I have.

45 - - - Mr Wallis, are the contents of your statement true and correct?---They are.

I tender that statement, Commissioner.

THE COMMISSIONER: And should we have his summons, as well?

MS ORR: Yes, I was going to - - -

5 THE COMMISSIONER: Yes.

MS ORR: - - - proceed to the summons, thank you, Commissioner.

10 THE COMMISSIONER: Yes. Exhibit 3.54 will be the statement of Mr Wallis.

EXHIBIT #3.54 STATEMENT OF MR WALLIS

15 MS ORR: Mr Wallis, you've received a summons to attend and give evidence today?---I did.

Do you have that summons there with you?---I've just handed it over.

20 I see. I tender that summons, Commissioner.

THE COMMISSIONER: Exhibit 3.55 will be the summons.

25 **EXHIBIT #3.55 SUMMONS**

MS ORR: Now, Mr Wallis, your statement deals with events commencing in late
20 2015 when you say you and your wife began looking for opportunities to run your
own business. Could you, please, explain what your work history was prior to that
time?---When I left school, I travelled for a little while and then I joined the New
South Wales Police Service. I worked in various stations for approximately eight
35 years with the police, at which point I then resigned and joined the Royal Military
College. That – I didn't like that as a career, and so after four months I resigned
from there and went back and worked in civilian life as an operations manager for a
scaffolding company. In 2000, I re-joined the New South Wales police, and then
9/11 occurred, at which point I resigned and joined the – the federal air marshal
40 program. I was a federal air marshal for approximately four years. Following that, I
resigned late 2004. And January 2005 took up a role in Iraq intended to be a
weapons instructor for police academies over there. I did four tours in Iraq
undertaking various roles over the period of 18 months. And when I returned, I
applied for a role with Westfield, now Centre Group, as a facilities manager and was
successful in that application. I then worked for Westfield for a period of 10 years,
45 performing various roles, facilities manager, state facilities manager, then moved
across to retail manager, and, finally, centre manager.

And do you have any qualifications, Mr Wallis?---Yes. During that period with Westfield, I undertook various studies, the first being a retail Diploma, followed by a graduate certificate, and then took a year off, '14 to '15, and did a Masters in Business Administration.

5 Thank you. And what is your wife's work background, Mr Wallis?---She's marketing specialist and PR.

And you have four children, Mr Wallis?---Correct.

10 How old are they?---Eight, six, five and three.

Okay. And you and your wife are sole directors and shareholders of a corporate entity, which is Thir, T-h-i-r, Proprietary Limited?---Correct.

15 And why did you set that corporate entity up?---As a vehicle to manage our investments.

And you and your wife also have a trust, which is the Wallis Family Trust?---Correct.

20 Why did you set that up?---Again, the same reason.

And Thir, your corporate entity, is the trustee of the trust?---That's correct.

25 Now, in late 2015, you tell us in your statement you and your wife started looking for opportunities to run your own business. Why did you do that?---Well, we'd thought about owning our own business for a while. We thought it would give us a bit of freedom and allow something for us to both work on together. And so we started to

30 look at various opportunities. We felt we were reasonably experienced and qualified to – to have a crack at small business, something – and that the age of our children, they weren't too old. So potential relocation wasn't going to be an issue.

And where were you living at this time when you started looking for a business opportunity?---We were living in Melbourne.

35 And what was your job at that time?---Centre manager.

And where did you want the business to be located?---Well, we were hoping for somewhere closer to my parents.

40 And where were your parents?---Port Macquarie.

Thank you. And in April 2016 did you find a business opportunity?---Yes, we did.

45 And what was that business opportunity?---It was a café and B and B on 20 acres about 40 minutes west of Port Macquarie.

Now, you refer to this in your statement as the Byabarra business and property?---That's correct.

5 That's where it was located, in Byabarra?---That's correct.

Did you and your wife decide you wanted to purchase the Byabarra business and property?---Yes.

10 Did you plan to live at Byabarra?---Yes.

And did you plan to operate the business, the café and bed and breakfast business, on the property?---We did.

15 Did you need a loan to purchase the Byabarra business and property?---We did.

And, at this time, you say in your statement, you and your wife had sold your family home in Melbourne. Is that right?---Correct.

20 And, through your corporate entity, you owned an investment property?---Correct.

And what sort of property was that?---That was a five-bedroom home.

And where was that located?---Port Macquarie.

25 And was there a mortgage on that property?---There was.

With which bank?---ANZ.

30 And was this investment property tenanted?---Yes.

Okay. Now, having decided that you needed a loan to purchase Byabarra, did you make a loan application, firstly, to ANZ?---We did.

35 And was that loan approved?---No.

Why not?---They decided the fact that I was going to be working in Melbourne and owning the business in Port Macquarie, that distance issue was going to have implications.

40 Were you planning to remain working in Melbourne or to move to work on the property?---It was dependent on the logistics, I guess, of us owning that property. So there are a number – a couple of scenarios that we were playing with.

45 After dealing with ANZ with the first loan application, did you make two further business loan applications, one to NAB and one to the Bank of Melbourne?---We did.

- And I want to ask you some questions about the Bank of Melbourne loan application?---Sure.
- 5 Did you make that application through a broker?---Yes, we did.
- And did the broker say anything to you about what you would have to do with the loan for your Port Macquarie investment property?---Yes. He said it would have to come across to the Bank of Melbourne.
- 10 Okay. And did you proceed with an application to the Bank of Melbourne, both for the business loan for the Byabarra property and for the refinancing of the Port Macquarie investment property loan?---I believe so. I do recall filling out the application initially for the Byabarra, yes.
- 15 And do you recall also filling out an application to refinance the Port Macquarie investment property through the Bank of Melbourne?---Maybe not at that same time, but later on.
- 20 Yes. Now, in relation to the Byabarra loan application, did you and your wife complete a Bank of Melbourne commercial finance application form - - -?---Yes.
- - - on behalf of your corporate entity Thir Proprietary Limited?---Yes.
- 25 And you've annexed a copy of that form to your statement as exhibit 1, WBC.403.001.0989?---Yes.
- 30 Perhaps I will continue with the questions and hopefully the document by which I wanted to ask you the questions by reference to will come up on the screen while I'm doing so, Mr Wallis. Do you recall that in that commercial finance application form you and your wife recorded that you were wanting a loan for \$560,000?---Correct.
- 35 And you indicated in that commercial finance application form that the purpose of the loan was to purchase a 20 hectare property that had a going concern restaurant, a five star B and B, a two bedroom house, a two room studio, an 11 metre heated pool, a ride-on lawn mower and an 18 gicalitre irrigation licence. Do you recall explaining all of that as the purpose of the loan?---Yes, 20 acre property.
- 20 acre, thank you?---Yes.
- 40 And we don't have the document on the screen yet, but the document indicates that you and your wife completed it and dated it on 30 April 2016?---Correct.
- 45 Now, you and your wife, also on behalf of Thir, completed a business finance consent form, which you've annexed to your statement as exhibit 2?---Yes.

And you can see from the version of that document you have, the doc ID is WBC.403.001.1550. You can see that that was another document that you and your wife signed and dated on 30 April 2016?---Yes.

5 And these forms were submitted to the Bank of Melbourne by your broker?---Yes.

We have that. Now, could we just go – if we're able to go back to the first document, that is the one that I would like to display on the screen. But if that's not possible, I will move on. The first document was WBC.403.001.0989. Now, this is
10 your commercial finance application form. And could I just ask that the second page of that document, 0990, so that the Commissioner can see this – we see that you have ticked commercial loan at the top of the page, an amount of \$560,000. And we see the reference at the bottom of the page to the purpose of the loan, which I read to you
15 earlier. So if we could have that taken off the screen. And you see the reference to the purpose there at the bottom of the page. So this is the commercial finance application form that your broker submitted on your behalf. Is that right?---Correct.

Now, after these forms were submitted, did the Bank of Melbourne assign you a dedicated business banker?---They did.

20 And who was that?---Arthur Athanasopolos

Thank you. Did you ever meet Mr Athanasopolos?---No, not in person.

25 And how did you communicate with him?---Mostly via email and the odd phone call.

And did Mr Athanasopolos ever visit the Byaburra property?---No.

30 Did he ask you questions about the business you were planning to run from the Byabarra property?---No.

Did you provide Mr Athanasopolos and the broker with copies of the land and business sale agreements for the property?---Yes.

35 And what was the price for the land under the contract of sale?---645,000.

And what was the price for the business under the business sale agreement?---30,000.

40 And the loan amount that you sought was \$560,000. How did you intend to fund the remainder of the price of the property and the business?---From savings and borrowings from my parents.

45 Thank you. Could I ask that you be shown WBC.403.001.1494. That document is not in your statement, Mr Wallis, but hopefully it will be able to be brought up on the screen relatively quickly. Do you recognise this document which is an Excel spreadsheet, Mr Wallis?---Yes.

Now, is this a document that went to the bank as part of your loan application process?---Yes.

And does it contain a projected profit and loss for the business?---Yes, it does.

5

And who created this document?---I did.

Thank you. I tender that document, Commissioner.

10 THE COMMISSIONER: It will be exhibit 3.56, Excel spreadsheet profit and loss WBC.403.001.1494.

15 **EXHIBIT #3.56 EXCEL SPREADSHEET PROFIT AND LOSS
(WBC.403.001.1494)**

MS ORR: Now, Mr Wallis, having signed the documentation on 30 April 2016, at the start of June did you get an email from Mr Athanasopolos telling you that the Byabarra loan application and the application to refinance the Port Macquarie investment property had been approved?---Yes.

20

And you've exhibited that email as exhibit 3 to your statement, which is RCD.0024.0004.1828?---Yes.

25

You have that document in front of you as exhibit 3, Mr Wallis?---Yes, I do.

You can see on the second page Mr Athanasopolos communicates to you that your facility for your refinance and purchase has been unconditionally approved and docs have been ordered, expected in the next 24 hours?---Yes.

30

After you got this email, did you receive documents from the Bank of Melbourne that you had to sign to finalise the loans?---Yes, we did.

35 And were they loan agreements, guarantees, indemnities and mortgage documents?---They were.

Did you read through those documents?---Yes.

40 Now, you've annexed the loan agreement for Byabarra as exhibit 4 to your statement. That's WBC.403.002.0069. Now, we see there, Mr Wallis, that although you had submitted a commercial finance application and been dealing with a business banker, the loan offer that went to you was a residential loan agreement offer. Is that right?---That's correct.

45

And if we turn to 0073, we see that the offer that was made to you was an offer to lend your corporate entity \$516,000?---Correct.

So this was less than the 560 that you had sought?---Yes.

And were you able to make up the shortfall?---Yes.

5 How did you make up the shortfall?---We borrowed from my parents.

Okay. And we also see on this page that the loan was secured by the Byabarra property. Is that right?---That's correct.

10 And further down the page, we see that both you and your wife provided guarantees and indemnities?---That's correct.

And if we go back to 0070, we see towards the top of the page that this was an interest only loan for the first three years of the 30 year term. Is that right?---Correct.

15

Now, by the time that you had the Byabarra loan approved by the Bank of Melbourne, you had also received conditional approval from NAB under your other business loan application. Is that correct?---That's correct.

20 But the NAB approval was for a lower amount?---That's correct.

Do you recall what that amount was?---Four hundred and ninety-two and a-half thousand.

25 And you say in your statement at paragraph 20 that you were:

A little surprised that the Bank of Melbourne was going to provide us with a residential loan for the Byabarra property in the amount of \$516,000 as we had recently obtained conditional approval through a different –

30

I'm sorry, I may be misreading that. Let me just make sure I get that right. You had recently obtained – you had recently received conditional approval through a different broker from the National Australia Bank for a maximum loan amount of \$492,000?---Correct.

35

So you had noticed that the loan the Bank of Melbourne was providing you was a residential loan rather than a business loan?---I did.

40 And you say in your statement that you thought this must be the best loan product that the Bank of Melbourne could offer you to secure finance to purchase the Byabarra property?---Correct.

You and your wife signed the loan documentation from the Bank of Melbourne?---We did.

45

And you proceeded to draw down the loan and purchase the Byabarra business and property?---Correct.

- Did you and your family relocate to the Byabarra property in the following months?---Yes.
- 5 And did you do some renovations on the property?---Yes.
- To the café and the bed and breakfast?---Yes.
- How long did they take?---Three months, in the end.
- 10 And did you then reopen the business in around September 2016?---Yes.
- And when you reopened, did you reopen both the café and the bed and breakfast?---Yes.
- 15 And what role did your wife play in the business?---She was general manager.
- And what role did you play in the business?---Various roles, from dishwasher to maintenance man to accountant to house husband.
- 20 And how did the business perform initially?---Initially, it started off well.
- And did the business then start to struggle financially?---Yes, it did.
- And how long after you reopened did the business start to struggle?---Probably five to six weeks.
- 25 And could you explain what happened?---So we opened in the school holidays. And we had good visitation throughout that period. Obviously, we were the new establishment in the area, and so there was a novelty factor. There always is when a new business opens. We peaked and then – and then stabilised, and that stabilisation we soon realised probably wasn't enough to sustain profitability in the current model that we opened with.
- 30
- Did you need to reduce the hours of your operations?---Yes, we did.
- 35 Okay. And did you continue to service the Byabarra loan with the Bank of Melbourne through the financial difficulties?---Yes, we did.
- And how did you do that?---Well, we had some capital reserves. We financed payments from income generated from the restaurant in that initial period.
- 40
- Did you need to borrow any money from - - -?---Eventually, yes.
- 45 Yes. And who did you borrow that money from?---Both of our parents.

- Yes. Now, around this time did you work out that the Bank of Melbourne had not applied a discount to the interest rate on the Byabarra loan that your broker had negotiated when the loan was approved?---Yes.
- 5 And how much excess interest had you paid?---About \$5200, I think it was.
- And did you ask the bank to refund the excess interest payments?---Yes.
- 10 And did the bank agree to do that?---Initially, no. Initially, they said you need to provide evidence that we committed the one per cent discount, to which I couldn't find, so I went back to our broker and asked him to – to find that evidence. He's the one who negotiated the deal. It took some time but he – he managed to extract the email from archives and forwarded that to the bank.
- 15 And after this did the bank agree to refund the excess interest?---Yes. And backdate it.
- And you asked for the excess interest to be paid into your cash account to assist with cash flow for the business?---Well, we saw it reasonable that we had made cash payments, surplus cash payments. We wanted that money back, yes.
- 20 But - - -?---Cash flow was very important to us at the time.
- And did the bank instead reverse the funds into payment of principal off the loan?---That's right.
- 25 Which at that time was an interest only loan?---That's right.
- And that meant you couldn't access that money?---That's correct. So initially they said "Fill out some redraw forms," and then they said, "Oh, actually, no, because it has gone onto the principal, you can't redraw that."
- 30 Did you complain to the bank about that?---Yes.
- 35 And did you then complain to FOS about that?---That's correct.
- And after you complained to FOS, did the bank agree to transfer the excess interest across into your cash account?---They did.
- 40 Okay. Now, after that occurred, did the business continue to struggle?---Yes.
- And was there a point at which you decided that it was no longer viable for you and your wife to operate the business?---Yes.
- 45 When did you reach that view?---Sort of March/April, from memory.
- March/April - - -?---2017.

- - - last year?---Yes.

5 And why did you reach that view?---Well, a number of other things had happened with the business. We had lost a couple of chefs. We were a destination. We were remote. We were in the hinterland. So finding a replacement chef that wanted to travel was difficult. We still had to open the doors. And due to that inability to find a chef, my wife had to go into the kitchen. She's not a trained commercial cook or chef in any way. And that had huge implications to us.

10 Did you decide to try and sell the business?---Yes.

And in April that year, last year, approximately eight months after you reopened the business, did you enter into a contract to sell the business?---We did.

15 And did the sale proceed?---Yes.

And in May last year, did you lease the property for a term of two years?---We did.

20 And where did you and your family go at that time?---During that time, I applied for a role, the role I'm currently in, and was successful, and that was on the Gold Coast, and so we relocated to the Gold Coast.

25 And where did you live on the Gold Coast?---Initially, we lived in various locations. We had to – we found it quite difficult to find a rental. It was a very competitive market, especially rental for a family of six. And so we had to Airbnb.

Now, in June last year, did you ask the bank to revalue both of your properties?---We did.

30 And was that because at that time you had not sold the Byabarra property or the Port Macquarie investment property?---No, we hadn't.

35 And you've annexed an email containing your request to the bank to revalue both of those properties as exhibit 6, WBC.403.007.1206?---Yes.

You have that document in front of you and you can see that you sent that email to Mr Miller, a Bank of Melbourne business banking manager?---Correct.

40 And had he taken over from Mr Athanasopolos?---Yes.

And we see there that he told you that he would arrange the valuations of the two properties?---Correct.

45 Why did you want the two properties revalued?---Well, the difficulties we – difficulties we were facing finding a rental, we thought we will just buy. And so we wanted to know what equity we had in the properties. We would borrow on that equity and purchase a place.

To purchase a home on the Gold Coast?---That's correct.

5 Is that right? And did the bank subsequently inform you that because the Byabarra property was both a residential and a commercial property, and the bank only paid for residential valuations, you would need to engage a commercial valuer at your own cost?---Correct.

10 You've annexed some emails that you exchanged with the bank about this as exhibits 7 and 8 to your statement. The bank told you in those emails that the price range for a commercial valuation was \$1000 plus?---That's right.

And did you proceed with the valuation of the Byabarra property?---No, we didn't.

15 Why not?---It was a lot of money.

Yes. And later that month, did you decide, with your wife, to sell the investment property at Port Macquarie?---Yes, we did.

20 Why did you decide to sell that property?---To free up some capital.

Yes. And you signed a contract of sale in September last year?---That's correct.

And how much did you agree to sell the Port Macquarie property for?---760,000.

25 And would that amount have fully discharged the mortgage that the Bank of Melbourne had over that property?---More so, yes.

So it would have resulted in surplus proceeds of sale - - -?---Correct.

30 - - - after the mortgage was discharged?---Correct.

And you sent a request to the bank to discharge the mortgage on the investment property?---Yes.

35 And what happened after you sent that request?---They came back to us and essentially said, "We will arrange the discharge. However, we will also need to change the loan facility of your remaining asset, the Byabarra."

40 Did they explain why they needed to change the loan facility for Byabarra?---Because they deemed it to be a commercial operation.

45 You say in your statement that you had a telephone call with Mr Damien Brander of the bank, and you deal with this in paragraph 34 of your statement. You say that during this call Mr Brander told you that the Bank of Melbourne would only agree to discharge the mortgage over the investment property – this is the Port Macquarie property – on the condition that the Bank of Melbourne hold an additional \$100,000

of the sale proceeds in a term deposit pending the restructure of the Byabarra loan from a residential loan to a commercial facility. Is that right?---Correct.

5 So did you understand that it was a condition imposed by the bank of its release of its mortgage over your investment property that you and your wife agree to set up a term deposit into which \$100,000 of the surplus proceeds of sale would be held?---Correct.

10 And did you understand that you would be permitted to access the \$100,000 held in that term deposit?---No, we could not.

15 And did you also understand that it was a condition imposed by the bank of the release of the mortgage over the investment property that you and your wife agree to restructure the loan over Byabarra to a commercial facility?---Correct.

20 And what did you think about the bank imposing these conditions on the discharge of the mortgage over the Port Macquarie property?---It was unjust. We felt that we were being held for ransom, essentially, to agree to that, to have that discharge of our investment property mortgage.

25 Did you exchange a series of emails with Mr Brander and Mr Miller at the bank about their condition that they would only discharge the mortgage on this basis?---Yes.

30 And you've exhibited those emails as exhibit 9 to your statement. If we could go to that, WBC.403.006.4064. And if we could start with the email at 4067. We see – and I'm sorry, the printing is very small. I want to go to the email at the bottom of the page to you from Damien Brander on 28 September 2017. We see there a reference by Mr Brander in the third paragraph down to your telephone conversation:

35 *To confirm what we discussed yesterday for you, I have commitment from our state credit officer to approve the sale discharge request, which we will look to complete next Friday, 6 October, on the condition that we hold 100,000 of the sale proceeds in a term deposit. We will release the term deposit when the new business loans are in place to correctly secure the bank's post-settlement position. As advised on the phone with you yesterday afternoon, this will occur when the valuation has been completed and returned, and you have fully signed and executed the new business loan contracts.*

40 *The \$100,000 term deposit is required as at the current value of the commercial property we hold, being the purchase price from 2016, there is a \$100,000 shortfall in security held for the bank. When the new valuation comes back, we anticipate that the bank will be/have a fully secured position and release the money back to you.*

45 That was the email you received from Mr Brander on this date?---Correct.

You responded in an email higher up on the page on 19 October, and in the second paragraph of your response, you said to Mr Brander:

Additionally, you said to me in our phone call that BOM –

5

Bank of Melbourne:

...has a legal right to undertake this process based on a clause in the loan contract. Can you please advise which clause this is and also forward a copy of the executed contract so we can validate this?

10

Now, if we turn to 4066, we see that at the bottom of that page, later that day, Mr Brander said that he would provide you with a copy of the contract, the terms and conditions of the loan - - -?---That's right.

15

- - - the memorandum of credit and a copy of the mortgage:

...hopefully tomorrow, but it may be Monday, given the length of time it takes me to retrieve them.

20

And further up that page, we see that a week later you had not received these documents - - -?---That's right.

- - - from Mr Brander. You emailed him on 26 October, pointing out that you were:

25

...yet to receive the loan documents referencing the relevant clause as to how Bank of Melbourne has a legal right to withhold \$100,000 in proceeds from the settlement of the Oxley Highway –

30

that's the Port Macquarie property:

...as security for our other mortgage in Byabarra. Although you have pressured us into completing documents providing authority to take this action, we felt we must do this otherwise Bank of Melbourne would not process the settlement of the Port Macquarie property. We have reviewed some of the loan documents we have on hand and cannot find any reference giving Bank of Melbourne authority to do this. Additionally, neither property is referenced as security for the other in said loan docs, and as such, we fail to see how they are linked allowing you the authority to quarantine our money. We formally request that Bank of Melbourne release our \$100,000 immediately or provide the legal documentation that gives you authority to withhold it. I require an answer to this on this date or we will be taking the matter to the Ombudsman.

35

40

And if we turn to 4065, we see that later that day Mr Brander provided you with loan documentation in the email that appears on the second half of that page – provided you with six loan documents, and said to you that the particular document that relates to the bank's ability to control the flow of any settlement funds in relation to the

45

5 discharging or partial discharging of securities is the Bank of Melbourne Memorandum of Provisions. And he pointed out particular pages and clauses, but said it was not limited – there might be other relevant sections of the agreement terms. And you emailed Mr Brander back later that day at the top of this page and you told him that you had read the documents and it didn't make any reference to any other mortgage or debt, other than that for the given property. You said you:

10 *...failed to see where this applies to another independent mortgage and feel you are still withholding moneys without legal authority. We have completely discharged the loan associated with this property. The only property referenced as security against this loan was the Port Macquarie property, no other reference to our other property.*

15 And you repeat your request for the \$100,000 to be released?---Correct.

And, finally, if we turn to 4064, we see in the second email on that page that Mr Brander emailed you back on 26 October. I 'm not sure why we've enlarged that bit. The email is just above it. And Mr Brander said to you:

20 *As previously advised in my phone conversations and via email, the bank will not be in a position to release the \$100,000 term deposit until the existing residual loan is restructured as a business loan, due to it now solely being secured by a commercial property and that there is a shortfall of security based on the existing valuation figure.*

25 Now, just pausing there, the property was secured at this time by the same property that had always secured it. Is that right?---That's correct, yes.

30 All right. And you responded to this email in the email at the top of the page. You thanked Mr Brander for explaining the position. And you said:

35 *Two points I reiterate that make us disagree with the legal grounds of such a decision, which we feel has been determined by your interpretation: (1) the property usage has not changed since we purchased it. It was always a residence, and still is, with an adjoining business. Bank of Melbourne agreed to residential loan. And we don't see why that has changed. (2) the two loans are completely independent of each other and make no reference to each other in any loan documentation. On these grounds, we will continue to proceed with a submission to the ombudsman seeking release of all moneys you have forcefully quarantined.*

40 That's the email that you sent in that exchange with Mr Brander?---Correct.

45 And in October 2017, later this same month, did you lodge a complaint about the bank's conduct with FOS?---Yes, I did.

And in January this year, before FOS had made any recommendation or determination, did you enter into a contract to sell the Byabarra property and business?---Yes, we did.

5 You said earlier that you had entered into a contract earlier, but that contract fell over?---It did.

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

10 And, following the sale of Byabarra, did the Bank of Melbourne agree to release your term deposit?---They did.

And did that occur in February of this year?---That's correct.

15 And, after that time, did FOS make a recommendation in relation to your complaint?---They did.

And, in this recommendation, did FOS find that the bank had incorrectly advanced the loan over the Byabarra property as a residential loan, instead of a commercial loan?---Correct.

20 And did FOS find that, although the Bank of Melbourne was entitled under the terms of the loan documents to retain part of the sale proceeds of your investment property, it was not fair for the bank to act in that way?---Correct.

25 And did FOS require the Bank of Melbourne to compensate you for non-financial loss?---They did.

In the amount of \$2000?---They did.

30 And did you accept that recommendation?---Yes.

And did the Bank of Melbourne accept that recommendation?---Yes, they did.

35 No further questions, Commissioner.

THE COMMISSIONER: Yes. Mr Darke.

40 <CROSS-EXAMINATION BY MR DARKE [4.26 pm]

MR DARKE: Thank you, Commissioner.

45 Mr Wallis, my name is Matthew Darke. I am a barrister for Westpac. I just want to ask you a few short questions?---Sure.

Commissioner, could I ask that document WBC.403.002.0006 be brought up on the screen. I have two paper copies, if that would assist.

5 THE COMMISSIONER: It has gone awry somewhere, Mr Darke. I thought that notice was ordinarily given to the solicitors for the Commission of what documents you wanted access to.

MR DARKE: Yes. This is in the - - -

10 THE COMMISSIONER: Has it not been done this time?

MR DARKE: No. As I understand it, this is a document counsel assisting has identified to be tendered in relation to this case study.

15 THE COMMISSIONER: Yes.

MR DARKE: So we understood it had been uploaded.

20 THE COMMISSIONER: Yes.

MR DARKE: It's up on the screen now.

THE COMMISSIONER: Yes. Thank you.

25 MR DARKE: Mr Wallis, do you see this is a document headed Home Loan?---Yes.

And could I ask that we go through to page 0008. And do you see there a section of the document filling out certain personal details concerning yourself?---Yes.

30 Is that your handwriting on that page?---Yes, it is.

And, just to give you a little more context, over the page, 0009, another section, this one dealing with some details concerning your wife. Do you see that?---That's correct.

35 And then, if we go through to the last page, which is 0023, you will see that signatures are blanked out, but your name and your wife's name appear at the end. Do you recall, just having been taken to those pages, that this is another document that you prepared and provided to the Bank of Melbourne in connection with your application for a loan in relation to the purchase of the Byabarra property?---Yes.

40

Thank you. Your Honour – Commissioner, I tender that document.

45 THE COMMISSIONER: What should I describe it as?

MR DARKE: It should be described as home loan application document, dated 6 June 2016.

THE COMMISSIONER: Home loan application document, 6 June '16, WBC.403.002.0006, will be exhibit 3.57.

5 **EXHIBIT #3.57 HOME LOAN APPLICATION DOCUMENT DATED
06/06/2016 (WBC.403.002.0006)**

10 MR DARKE: May it please the Commission. There are no further questions.

THE COMMISSIONER: Yes. Thank you.

15 **<RE-EXAMINATION BY MS ORR [4.30 pm]**

MS ORR: Commissioner, I do have some questions arising from that document. I can be very brief.

20 THE COMMISSIONER: Yes, please.

MS ORR: While that document is still on the screen, Mr Wallis, can I ask that you be shown 0006 of that document. We see there, Mr Wallis, that you have ticked as the loan purpose "buy business"?---Correct.

25 Is that correct? And could I also take you to 0014. And can I take you to what is written in handwriting, your handwriting, as I understand it, towards the bottom of the page next to expenses. Have you written there:

30 *Captured in business operations. Refer P & L provided.*

?---Yes.

35 And was that a reference to the profit and loss – the prospective profit and loss statement that I took you to earlier?---That's correct.

In relation to the business that you were planning to operate from this property?---Yes.

40 Thank you. I have no further questions, Commissioner.

THE COMMISSIONER: Thank you very much, Mr Wallis. Thank you very much for your evidence. You may step down and you are excused.

45 **<THE WITNESS WITHDREW [4.31 pm]**

THE COMMISSIONER: Where do we go to tomorrow, Ms Orr?

MS ORR: We will continue with this case study. And the first witness tomorrow will be Mr Alastair Welsh, again, from Westpac.

5

THE COMMISSIONER: So 9.45 tomorrow.

MS ORR: Yes. Thank you, Commissioner.

10

MATTER ADJOURNED at 4.31 pm UNTIL FRIDAY, 25 MAY 2018

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