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TRANSCRIPT OF PROCEEDINGS

O/N H-909727

THE HONOURABLE K. HAYNE AC QC, Commissioner

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

BRISBANE

10.02 AM, MONDAY, 25 JUNE 2018

Continued from 1.6.18

DAY 30

MS R. ORR QC appears with MR M. COSTELLO as Counsel Assisting with MR M. HOSKING and MS S. ZELEZNIKOW
MR P. COLLINSON QC appears for ASIC
MR J. ALLEN QC appears for LAQ
DR M. COLLINS QC appears for ANZ

THE COMMISSIONER: Just before I call on Counsel Assisting to open this next round of hearings, I want to make some comments in order to address what appear to be some misconceptions about the Commission's procedures. These misconceptions have emerged in a number of communications which have been addressed to the Commission since the last round of hearings by persons seeking to agitate for the Commission to devote more attention to the investigation of the CBA takeover of Bankwest, either generally or in relation to particular cases. And, unsurprisingly, some wider currency is being given to these ideas in reports of what is being said about the Commission's work in connection with CBAs takeover of Bankwest and the work of the Commission more generally.

It has been said that consumers whose cases have been the subject of case studies heard by the Commission have not been given the opportunity to cross-examine bank witnesses, whereas banks have been allowed to cross-examine consumers. This is not correct. Practice Guideline 3 sets down the Commission's processes for the granting of leave to appear. Practice guidelines make clear that leave will generally be granted when a person has been summoned to give evidence or is the subject of an inquiry to be undertaken. Not every consumer who has been summoned to give evidence has sought leave, but in each instance where they have, leave has been granted. Similarly, in each instance where a consumer who is the subject of a case study has sought leave, that leave has been granted.

The practice guideline makes clear that where a person has been granted leave, they may be represented by a legal representative at a hearing without the need for that legal representative to obtain separate authorisation under the Act, and also makes clear that a person who has been granted leave or their legal representative may, among other things, apply for leave to cross-examine. In most cases, consumers who have sought leave have not sought to cross-examine. I might surmise that this is because they felt that there's nothing further to be asked of a particular witness having regard to the examination undertaken by Counsel Assisting.

There may be other reasons. That's only speculation. The point is this: the opportunity for cross-examination has been available. As I've said, it has not been taken up, but the opportunity was given. It may also be observed that entities have not always sought to cross-examine every witness who has given testimony which is adverse to that entity. A related misconception is that, because the Commission is only issuing summonses to consumer witnesses a short time before each round of evidence, there is not enough time for the witness to brief lawyers to represent them at the hearings. This assumes, wrongly, that there has been no interaction between the Commission and the witness in advance of the hearings.

Each consumer witness has been aware well in advance of the hearings that they may be called. And in the context of this Commission, the issuing of summonses has been to ensure that various protections under the Act are extended to the particular witness, rather than, in some others, to compel reluctant witnesses to appear. And I've already noted each consumer witness has the opportunity to seek leave, and to be represented, and to seek to cross-examine entity witnesses. It's also important to observe that Commission staff provide each witness with information about claiming expenses, including expenses for legal representation.

The Attorney-General's Department administers a scheme for the provision of legal financial assistance for Royal Commissions and inquiries. The Commonwealth guidelines for Legal Financial Assistance 2012, Addendum for the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry states that entities, apart from financial services entities, and individuals, may be eligible for assistance to cover reasonable legal representation and disbursement costs if they're called to appear at a hearing of, or attend an interview with, the Royal Commission, or are issued with a notice to produce by the Commission. There is therefore a process available for consumer witnesses to obtain financial assistance for legal representation at a hearing if they wish. The Commission is not aware of any instances where a consumer witness has not been able to cross-examine due to lack of financial assistance.

Moving beyond those matters, I want to say something about the issues relating to CBAs conduct after its takeover of Bankwest in 2008. Since the conclusion of the third round of hearings, a number of persons have written to the Commission about that aspect of the hearings. Some of these have suggested that insufficient time was devoted to that matter; that more case studies should have been examined. It was explained by Counsel Assisting, both in the opening and the closing of that round, the work of the Commission regarding the CBA takeover of Bankwest to that date had been intensive and was not limited to consideration of the circumstances of the four witnesses who gave evidence.

Some of these further communications have also proceeded from the premise that it is the Commission's role to advance the interests of those who describe themselves as Bankwest's victims. That, of course, misunderstands the role and the duty of a Royal Commissioner, which is to inquire, without fear or favour, into matters falling within the terms of reference. Neither I, nor Counsel Assisting, or the solicitors assisting the Commission, carry any brief for those who assert a grievance arising from the takeover of Bankwest or, indeed, any other issue. We are here to inquire.

Another misconception which has appeared in many of these further communications is that findings have already been made by me. They have not. Counsel Assisting has made submissions as to the findings that they submit are open on the basis of the evidence heard during the course of the third round of hearings, but I have not yet made any findings. My findings about these matters and my reasons as to why those decisions are ultimately made are matters to be dealt with when I report in accordance with my terms of reference, a task that remains some time away, and in the meantime, the Commission continues to consider, and will keep under constant review, how best it should execute the tasks committed to it by the Letters Patent.

Now, with that in mind, additional information which is received by the Commission will be carefully considered. To facilitate that process, we have indicated to those who have written to the Commission in recent weeks about the Bankwest matter that, if there are additional matters that they wish to raise with the Commission, they should do so. However, we have made clear that we will derive most assistance if those who take up this invitation focus on identifying matters which have not already been raised with us and identifying evidence, not mere assertions and conjecture, that is said to be relevant to the consideration of these matters. Of course, I will bear well in mind that any additional material raised by this process may, in turn, trigger procedural fairness obligations in favour of other persons.

As a final comment on this aspect of the matter, I must emphasise that a very considerable amount of research and analysis has already been devoted to the Bankwest takeover by those assisting. Now, it's also important that I say something about the grant of leave to appear at this round of hearings which we are about to begin. Those who have been granted leave to appear have been notified and those parties have indicated who will be appearing for them. There is, therefore, no occasion to take or announce appearances. For this round of hearings, there were many applications for leave to appear which I did not allow. The solicitors assisting the Commission will have written to each of those persons to explain why I got to that answer.

Almost everyone whose application for leave to appear was refused wants to say that they have been affected by conduct of a kind that falls within the terms of reference. They want to have what happened to them publicly examined and publicly acknowledged. I understand that. Almost all of those whose applications for leave to appear have been refused have made online submissions to the Commission. I read those submissions before deciding whether to grant leave. I looked at them very carefully, as did members of the Commission staff. Counsel and solicitors assisting the Commission looked at those and at all of the other submissions about issues of the kind that will be examined in this round of hearings before deciding what case studies would be examined publicly. And I expect that Counsel Assisting may have something more to say about that in her opening.

I remain of the view that proceeding by case study is the best way I have of finding out what has happened, finding out what was done or not done in response to what happened, identifying what could have been done and what should have been done in response, and then thinking about what follows from those conclusions. And proceeding in that way means, inevitably, that some who want their cases dealt with publicly do not have their cases chosen. As will be apparent, however, from what I have said: serious consideration has been given to what case studies would be examined in the course of the public hearings, and which people and entities would be given leave to appear. Ms Orr.

MS ORR: Commissioner, this is the fourth round of public hearings for this Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. This round of hearings will inquire into issues arising from interactions between Australians living in regional and remote communities and financial services entities. As at 30 June 2017, around 6.9 million people, or 28 per cent of

Australia's population, lived in regional or remote areas. The term "regional and remote" or "rural and remote" generally encompasses all areas outside Australia's major cities. The Australian Statistical Geography Standard defines remoteness areas into five classes: major cities, inner regional, outer regional, remote and very remote.

These classes of remoteness are calculating using the Accessibility/Remoteness Index of Australia or ARIA. ARIA is a geographic area of remoteness measuring the distance people have to travel to obtain services from five service centres which are identified by population size. Service centres are localities with populations greater than 1000 persons which are considered to contain at least some basic level of services such as health, education, or retail services. The further away from one or more service centres, the more remote the location is considered to be.

The number of Australians living in regional or remote communities has remained relatively constant since 2007. The Northern Territory has the highest percentages of people living in outer regional, remote, or very remote areas. 60 per cent live in outer regional areas, 20 per cent live in remote areas, and 21 per cent live in very remote areas. People who live in regional or remote areas are more likely to have a lower level of access to products and services, including financial products and services. APRA collects information on the number of branches of authorised deposit-taking institutions, or ADIs, and other face-to-face service providers in regional and remote areas, as well as the number of ATMs.

Access to a bank branch, other face-to-face service or ATM decreases as remoteness increases. As at June 2017 data from APRA shows that, of the 5814 branches of ADIs, 2484, around 43 per cent, were in regional or remote areas, with only four per cent of those being in remote or very remote areas. Of the 4674 other face-to-face services provided by ADIs, around 54 per cent were in regional or remote areas with only 7 per cent in remote or very remote areas. Of the 13,814 ATMs in Australia, around 27 per cent were in regional or remote areas, of which only 2 per cent were in remote or very remote areas.

Because of the greater distances involved to access products and services, Australians living in regional and remote areas may access financial services in different ways to those in metropolitan areas. This may include greater use of services such as agricultural banking services, which provide products tailored to people engaged in farming or farming related activities, such as seasonal finance or farm management deposits; community banks, being locally owned and operated banks which function as a franchise of a financial services entity; mobile lenders, and Australia Post banking services.

This round of hearings will inquire into three topics. It is important to note that the topics to be explored about issues affecting people in regional and remote communities have not been selected because they are issues which only affect consumers living in those areas. Some of the issues that we will canvass can, and do, also significantly affect consumers living in major cities and metropolitan areas.

Rather, the topics have been selected because they are considered to be significant issues within regional and remote communities with the potential to affect the financial wellbeing of Australians who live in those communities.

The Commission has consulted widely with bodies which provide assistance to consumers living in regional and remote areas about their dealings with financial services entities. It has done so in order to identify and understand these significant issues. We will provide further detail about the consultation process throughout these hearings. During the hearings, the Commission will also hear directly from representatives of a number of bodies with whom the Commission consulted.

The first topic we will explore in these hearings is issues in relation to finance provided to agricultural businesses. The agricultural industry is an important contributor to the Australian economy and a primary source of jobs in many rural and regional areas. In 2017, approximately 260,000 Australians were employed in the agriculture industry. As at 2016, there were 84,515 farming businesses in Australia with an estimated value of agricultural operations of $40,000 or more. Businesses operating in this industry face particular challenges which affect their financial position, including exposure to significant and sometimes prolonged weather events, to pests, and to commodity price fluctuations.

The Commission will examine five case studies on the topic of agricultural business lending. Those case studies will examine the conduct of five financial services entities and explore the particular circumstances of multiple farming families. The second topic we will explore in this round of hearings is issues in respect of home and contents insurance policies arising from loss incurred as a result of natural disaster events. Natural disaster events have long lasting financial and social effects on affected individuals and communities. It is estimated that insurance losses from these events over the past two decades total approximately $25 billion.

It has also been estimated that non-tangible impacts, which include health and well-being and employment, may be equal to or greater than the financial impacts caused by these events. When a natural disaster event occurs in a regional or remote area of Australia, issues arise as a result of the physical location of the affected communities, including issues around the availability of temporary accommodation. The conduct of financial services entities when handling claims following a natural disaster is an important issue for Australians living in those areas. The Commission will examine four case studies which address the topic of natural disaster insurance.

The third topic which we will explore in this round of hearings is issues which can arise in interactions between Aboriginal and Torres Strait Islander people living in regional or remote communities and financial services entities. As at 2016, 649,171 people identified as being of Aboriginal and/or Torres Strait Islander origin, comprising 2.8 per cent of the total Australian population. Just under two-thirds of Aboriginal and Torres Strait Islander people live outside of capital city areas. Almost one in five Aboriginal and Torres Strait Islander people live in very remote areas. Of people living in remote areas, the proportion who are indigenous is relatively high. In 2011, 45 per cent of people living in very remote areas, and 16 per cent of people living in remote areas, were Aboriginal and Torres Strait Islander people.

Customers living in remote areas encounter issues that arise from the physical lack of access to banking and financial services due to the distance between where they live and the required services. The Commission will examine four case studies regarding interactions between Aboriginal and Torres Strait Islander people in regional or remote communities and financial services entities. For most of this first week of this two week block of hearings, we will explore issues relevant to the first topic, the topic of finance provided to agricultural businesses. The remainder of this opening statement will address that topic. Further opening statements will be delivered in the course of the hearings in relation to each of the second and third topics.

Before turning to our first topic, finance provided to agricultural businesses, we wish to say something about why these hearings are being conducted in Brisbane. Over the last few months, we have consulted broadly with a number of industry participants, regulators, and affected consumers in relation to each of the three topics considered in this hearing block. Those consultations revealed that Queensland had a high concentration of consumers affected by conduct in the first two topics: agricultural finance and natural disaster insurance.

While farmers across the country have been affected by a variety of factors, the Queensland cattle industry in particular has confronted a number of difficult circumstances that placed many farmers under financial pressure and have led to disputes with banks. In relation to natural disaster insurance, while a number of regions of Australia have faced disasters of various kinds, four of which will be considered in case studies this week and next week, Tropical Cyclone Debbie was a major event and affected a very large number of consumers in Northern Queensland.

Commissioner, you have expressed the view to those of us assisting you that, particularly for this block of hearings, you considered it important for the Commission to conduct hearings in locations near those affected by the conduct being examined. The capital of Queensland was the logical location for the first week of these hearings, given the focus in this week's hearings on events affecting farmers from various locations around Queensland, and on Queenslanders affected by Tropical Cyclone Debbie, as well as the need for the Commission to sit in the location with the facilities required by the Commission to discharge its work.

Turning to finance provided to agricultural businesses, we begin by providing an overview of the agricultural, forestry and fishing industry and its significance to the Australian economy. Second, we will explore the key challenges faced by agricultural businesses in Australia. Third, we will identify the main types of agricultural finance in Australia. Fourth, we will examine some of the key features of the legal framework governing the operation of loans to agricultural businesses. Agricultural businesses vary in size from small businesses to very large institutional businesses. This hearing will focus on small and medium agricultural business customers.

Fifth, we will identify the forms of dispute resolution accessible to agricultural businesses. Sixth, we will summarise what consumers have told the Commission about their experiences with agricultural finance, primarily through public submissions submitted via the Commission's online portal. Seventh, we will summarise what financial services entities have acknowledged to the Commission as their own misconduct and conduct that has fallen below community standards and expectations. We will also summarise information provided by the financial services entities about the nature of their agricultural finance operations.

Finally, we will briefly address the nature of the evidence that will be given this week in relation to agricultural lending, providing an overview of the case studies that the Commission will be considering. We will highlight the key themes and questions that we see running through these case studies upon which we will invite written submissions at the end of these hearings. We turn first to some key features of the agricultural industry. The Commission has published two background papers concerning the agricultural industry. One was prepared by the office of the Royal Commission, and the other by the Commonwealth Department of Agriculture. Both papers are available on the Commission's website.

These papers reveal that the agricultural industry is a very significant contributor to the Australian economy. In the financial year 2016 to '17, the value of Australian agricultural exports was approximately $51.5 billion, accounting for approximately 15 per cent of the value of Australia's merchandise trade. In the same period, approximately 70 per cent of Australia's agricultural production took place in Queensland, New South Wales and Victoria. Each of these states produced over a fifth of Australia's agricultural production amounting to in excess of $14 billion of production per state. New South Wales, Victoria and Queensland also had the highest shares of farm businesses in Australia as at 2015 to '16.

New South Wales had 25,716 farm businesses, being 30 per cent of all farm businesses in Australia; Victoria had 20,532 farm businesses, being 24 per cent of all farm businesses in Australia; and Queensland had 17,929 farm businesses, being 21 per cent of all farm businesses in Australia. In the financial year 2016 to '17, the largest agricultural commodities produced in Australia by gross value were livestock, comprising around 33 per cent by gross value as a percentage of Australia's total agricultural production; broad acre crops such as wheat, barley, canola and sugar cane, comprising around 33 per cent; and livestock products, such as milk, wool and eggs, comprising around 13 per cent. As I have already noted, the agricultural industry is a key source of jobs in many rural and regional areas of Australia, and as at 2016, there were 84,515 farming businesses in Australia with an estimated value of agricultural operations of $40,000 or more.

We next turn to some of the particular challenges faced by agricultural businesses. As we have already noted, the particular challenges which affect their financial position and their ability to meet repayment obligations include exposure to weather events and climate variations, pests and diseases, and commodity price fluctuations. Each of these can result in periods of low income for affected businesses and, in severe cases, can imperil the viability of the business. Primary industries are particularly sensitive to weather extremes and variations in climate.

The Australian Bureau of Agricultural and Resource Economics and Sciences notes that Australia's climate is highly variable with lower mean rainfall and higher rainfall variability than in most other nations and that, as a result, agriculture in Australia is subject to more revenue volatility than in almost any other country in the world. The bureau also notes that changing seasonal conditions are difficult to predict accurately beyond the current season, which can have significant implications for crop yields and livestock production cycles. Pests and diseases can be a major issue faced by agricultural business. Outbreaks of pests and diseases can result in losses of entire crops or yields with consequential financial difficulties.

A significant portion of Australia's agricultural commodities are exported. As a result, global commodity prices and global demand for commodities, as well as the exchange rate, can have a significant impact on agricultural businesses. The same forces that drive up global prices for agricultural commodities also put upward pressure on the prices of many inputs used by the farming sector. For some parts of the industry, these increases in costs have been a significant constraint on profitability. Further, because export trade is regulated by at least two governments, of Australia and of the receiving nation, farmers are subject to regulatory risk arising from changes to the rules governing export and import generally, or to the rules governing the export or import of a particular product. One such decision, the 2011 ban on the live export of cattle to Indonesia, will feature in a number of the case studies.

We turn next to the types of agricultural finance. There are three main types of funding in the agricultural sector: debt finance, equity finance, and government grants. Data published in August 2017 by the Australian Bureau of Statistics on funding to the agricultural, forestry and fishing industry indicates that in 2015 to '16, approximately 27 per cent of these businesses sought debt or equity finance. Of this, 95 per cent involved debt finance and 12 per cent involved equity finance. These types of finance are not mutually exclusive. Almost 85 per cent of debt finance was sought from banks. As this data reveals, debt finance is, by far, the most common type of funding sought. It follows that farmers have a significant dependence on financial services entities.

As at 30 June last year, total rural debt in Australia was $71.7 billion. This was equivalent to around 2.3 per cent of net loans and advances held as assets by ADIs. The share of rural debt held by banks has increased over the last decade. In 2007, banks' share of rural debt was around 89 per cent. As at 30 June last year, that share had risen to approximately 96 per cent, or 68.6 billion out of the total 71.7 billion. In the 2015 to '16 financial year, the most common types of new or additional debt finance sought by participants in the agricultural, forestry and fishing industries were new loans with a term of more than one year, that was 42.5 per cent; new capital or finance or hire purchase agreements, 34.7 per cent; new bank overdrafts, 30.3 per cent; increases in the amount of existing credit facilities or limits, 21.7 per cent; and new mortgage loans, 17.1 per cent.

The participants' primary reasons for seeking finance were business expansion, that amounted to 34 per cent; to maintain short-term cash flow or liquidity, 32.7 per cent; to replace, upgrade or purchase additional non-IT equipment or machinery; 29.1, 28.18 and 26 per cent respectively; and finally, to ensure survival of the business, 25.4 per cent. There has been an increase in the share of bank-sourced debt outstanding for businesses in the agricultural, forestry and fishing sector with larger credit facilities. In particular, debt held by businesses with a credit facility of 2 million or more has increased from holding around 21 per cent of debt in the sector to holding around 46 per cent of debt in the sector during the period from December 2002 to December last year.

That is not to say that all farms carried large bank debts. As at 30 June 2016, more than two-thirds of aggregate broad acre debt was held by 12 per cent of farms, with these farms producing approximately half of the value of broad acre farm production. For the dairy industry, more than two-thirds of total debt was held by one-third of farms. And as at 30 June last year, broad acre farm debt stood at an average of $616,900 per farm, while dairy farm debt stood at an average of $926,700 per farm. One significant source of assistance to primary producers suffering as a result of climatic events is government grants and subsidies.

The Australian Government, through the Department of Agriculture and Water Resources provide grants and financial assistance programs to businesses and individuals to help boost productivity and exports. State Governments also provide grants and subsidies to the rural sector, either through government departments, specific corporations set up to provide assistance to the rural sector, or both. The Farm Management Deposits Scheme is intended to assist primary producers to deal more effectively with fluctuations in cash flows. It is designed to increase the self-reliance of Australian primary producers by helping them manage their financial risk and meet their business costs in low income years by building up cash reserves. The scheme allows eligible primary producers to set aside pre-tax income from production in years of high income, which they can draw on in future years when they need it, such as for restocking or replanting when conditions start to improve.

Income deposited into a farm management deposit account is tax deductible in the financial year the deposit is made. It becomes taxable income in the financial year in which it is withdrawn. The following eligibility conditions currently apply to farm management deposits: the primary producer's non-primary production income must be less than $100,000 in the financial year they make the deposit; the primary producer may hold up to a maximum of $800,000 in farm management deposits; to retain the taxation benefits, a farm management deposit must be held for at least 12 months with an authorised deposit taking institution.

However, a primary producer may be exempt from this 12 month rule if they've received primary producer category C recovery assistance following a natural disaster under the natural disaster relief and recovery arrangements, or are affected by a rainfall deficiency for at least six consecutive months. A financial institution can only offer a farm management deposit product if it meets the Australian Government's prudential requirements or is government guaranteed. This includes most banks, credit unions and building societies. When offering farm management deposit accounts, financial institutions must provide clients with a mandatory statement on the scheme's conditions.

Financial institutions offering farm management deposit accounts are required to report details of the deposits they hold at the end of each month to the Department of Agriculture and Water Resources. As at 30 April this year, $5.17 billion was held in approximately 49,000 farm management deposit accounts across Australia. We turn to some of the features of the legal and regulatory framework which applies to finance provided to agricultural businesses. As we have noted, we are focusing on small and medium sized farming businesses in these hearings. In the third round of hearings, which explored lending to small and medium businesses more broadly, we noted that there is little regulation specifically applicable to small business lending in Australia.

However, as explained in those hearings, the ASIC Act does provide protection to certain small businesses against misleading and deceptive conduct and unconscionable conduct in connection with lending. The ASIC Act also implies mandatory warranties in contracts for the supply of financial services to small businesses that the services will be rendered with due care and skill, and the services will be reasonably fit for any purpose or required result made known to the supplier by the consumer. As you heard in the third round of hearings, in 2015, Parliament also extended the unfair contract terms provisions of the ASIC Act to standard small business contracts entered into or renewed on or after 12 November 2016.

However, as the unfair contract terms provisions only apply where the upfront price payable does not exceed $1 million if the contract is for longer than 12 months, or $3 million for the big four banks, these provisions less frequently apply to lending to agricultural businesses. In the third round of hearings, it was also noted that small business lending may be subject to the Code of Banking Practice. The terms of the code form part of any contract a subscribing bank enters into with its customers, and will apply to loans to small business where the business has less than 100 full-time or equivalent people if the business is or includes the manufacture of goods.

The key provisions of the code were outlined at the beginning of the last round of hearings, and we will not repeat them now. We note, Commissioner, that the draft revised Code of Banking Practice submitted to ASIC for approval in December last year includes a number of amendments which are relevant to agribusiness customers, including longer minimum notice periods to customers about changes to loan conditions or decisions on rollover; the removal of material adverse change clauses, and a reduction in the number of specific events of non-monetary default clauses which can allow a bank to take enforcement action; requiring banks to provide to their customers including farmers full copies of signed loan applications and other relevant documents; and requiring that the code be incorporated, where relevant, into loan contracts and guarantees.

The code has not yet received approval from ASIC and you will recall, Commissioner, that both Mr Saadat of ASIC and Ms Bligh of the ABA gave evidence as to the ongoing discussions about the code between ASIC and the ABA in the last round of hearings.

We turn next to dispute resolution schemes, accessible to small and medium sized agricultural businesses if they become involved in disputes with financial services entities. We turn first to external dispute resolution mechanisms. As explained in the third round of hearings, the two external dispute schemes that deal with small business lending are currently the Financial Ombudsman Service, FOS, and the Credit and Investments Ombudsman. Each of the entities the subject of the case studies to be explored in these hearings is a member of FOS.

In general, FOS can deal with a dispute between a business with fewer than 100 employees and a financial services provider that is a member of FOS. However, FOS cannot deal with disputes where the value of the claim exceeds $500,000 or the dispute is about debt recovery against a small business in relation to a credit facility of more than $2 million. There is also a limit on the compensation that FOS can provide which is currently set at $323,500. FOS and the CIO will have their jurisdiction taken over by the new Australian Financial Complaints Authority which will have jurisdiction to consider small business disputes. AFCA, as it will be known, will be able to consider claims relating to credit facilities of up to $5 million, and will have an expanded compensation cap of $1 million for small business and $2 million for primary producers.

We turn to farm debt mediation. Currently, only New South Wales, Victoria and Queensland have legislated farm debt mediation schemes in place. South Australia uses a voluntary scheme, the South Australian Farm Finance Strategy, in combination with the Farming Industry Dispute Resolution Code. Western Australia also operates a voluntary scheme. Farm debt mediation is a structured negotiation process that involves a neutral and independent mediator assisting a farmer and the creditor to try to reach agreement about current and future debt arrangements. The farm debt mediation schemes make it compulsory for banks and other creditors to offer mediation to farmers before taking enforcement action against farm property, which includes the farm itself and farm machinery.

The farm debt mediation schemes in New South Wales, Victoria and Queensland have been estimated by the Australian Bureau of Agricultural and Resource Economics and Sciences to collectively cover approximately 77 per cent of Australia’s farm businesses. In Victoria, the Victorian Small Business Commissioner has statutory dispute resolution functions under the Farm Debt Mediation Act. In the 2016 to ’17 financial year there were 54 dispute applications under the Act, a decrease of 3.6 per cent from the 56 applications received in the previous year. Of the 47 disputes referred to mediation, 45 were successfully resolved, a success rate of 95.7 per cent.

In the 2016 to ’17 financial year, 73 per cent of farm debt mediations were held in regional Victoria, and the Victorian Small Business Commission received $600,000 in funding, which was close to 20 per cent of its total funding, for farm debt mediations. In New South Wales, the New South Wales Rural Assistance Authority administers the Farm Debt Mediation Act. This New South Wales Act aims to provide for the efficient and equitable resolution of farm debt disputes. Mediation is required before a creditor can take possession of a property or other enforcement action under a farm mortgage. In the 2016 to ’17 financial year, the number of mediations fell to 39 new cases, 34 creditor initiated and 6 farmer initiated, down from 62 cases in the previous financial year. 40 cases were completed in 2016 to ’17, with agreement reached in 90 per cent of the cases that went to mediation.

In Queensland, on 1 July last year, the Farm Business Debt Mediation Act replaced a voluntary farm debt mediation scheme, the Queensland Farm Finance Strategy. The purpose of the Queensland Act is to provide an efficient and equitable way for farmers and mortgagees to attempt to resolve matters relating to their farm business debts. Again, mediation is required before mortgagees can take possession of a property or other enforcement action under a farm mortgage. The Queensland Rural and Industry Development Authority is responsible for administering the mediation process.

Although the three Acts are broadly similar, they are not uniform. For example, the New South Wales Act has recently been amended to expand the operation of the New South Wales Act and various other changes have been made, including to allow farmers affected by extreme weather events over an extended period of time to respond to particular notices served under the Act. Several financial services entities have told the Commission that they would support a uniform farm debt mediation Act, either of national application or at least uniform among those States that presently have mandatory farm debt mediation.

We turn to the information that the Commission has received from members of the public regarding finance provided to agricultural businesses. We turn first to information received through the Commission website. As at 5 pm on 22 June, the Commission had received 6892 submissions from Australians through its website. Of these submissions less than 4 per cent, 268 submissions, indicated that they related to agricultural finance. 32 of the submissions received on that topic relate to the ANZ acquisition of Landmark in 2010, to which I will return.

The Commission carefully reviewed all public submissions concerning agricultural lending to understand each story and to identify common complaints, themes, and geographic concentrations. From there, we spoke with the authors of many of the submissions and called for documents in connection with multiple submissions from the financial services entities so that we could better understand the person submitting the forms concerns. The Commission has also consulted with and received information from several rural financial counselling services. The rural financial counselling services are regional bodies that assist farmers who are in financial distress.

The services are funded primarily by the Commonwealth Government, and provide free financial counselling to farmers, fishing enterprises, forestry growers, and harvesters, and small related businesses across Australia in situations of financial hardship. The Commission has spoken with rural financial counsellors from the New South Wales, northern, central and southern regions, the Victorian western and north-western regions, the Queensland northern and southern regions, and the Western Australian region. In total, more than 20 rural financial counsellors have spoken with the Commission. Some have put us in contact with farmers who had not made a submission via the website but, nonetheless, had a grievance with a financial services entity.

In the information provided to the Commission by farmers and by rural financial counsellors who represent farmers, three key issues were most frequently raised. The first is that banks have initiated non-monetary defaults through a revaluation of property or security assets which alters loan to value ratios. Banks then rely upon these deteriorated loan to value ratios to trigger non-monetary defaults. Submissions relating to non-monetary default issues also referred to customers being given unreasonably short timeframes to repay substantial proportions of their loans.

The second key issue is that farmers have difficulties in accessing appropriate banking services and support, including because of distance from local branches, and difficulties contacting their business manager, particularly during times of financial hardship. Some submissions also highlighted the failure of financial services entities to take into account the cash flow impact of seasonal productivity and drought or other natural disasters on agribusiness ventures when making decisions about calling in loans or acting upon loan defaults.

The third key issue raised related to changes to conditions of lending, such as changes to interest rates, access to facilities such as overdrafts or trading facilities, or changing other conditions in a way that was unfavourable to the customer. In that connection, a number of submissions referred to modifications in lending conditions as a result of structural or ownership changes to the lending institution. The public submissions explained that each of these changes has the potential to result in financial hardship.

Another key issue raised with the Commission was the conduct of receivers. The conduct of receivers does not fall within the terms of reference of this Royal Commission, because receivers do not fall within any of the categories within the definition of a financial services entity. Most relevantly, for present purposes, a receiver cannot be considered to be a person or entity that acts or holds itself out as acting as an intermediary between borrowers and lenders. This is because, while receivers are appointed by a bank, they are generally stipulated to be an agent of the borrower and they are separate to a separate and distinct regulatory regime under chapter 5 of the Corporations Act. As such, the conduct of receivers is not within our terms of reference and will not be examined in these hearings.

After our consultation with consumers, financial counsellors and others, we received 13 statements from financial services entities about agricultural lending matters. From those inquiries, the case studies to be pursued at this round of hearings were selected. I will say more about those case studies shortly. We turn to the information provided to the Commission by financial services entities about their dealings with agricultural business customers and their acknowledged misconduct and conduct falling below community standards and expectations in relation to those customers. This information has been provided by entities both in response to correspondence from the Commission and in response to requests for statements from those entities. We will summarise aspects of the responses and statements which are the subject of the entities which are the subject of the case studies, and we deal with those entities in alphabetical order.

We start with ANZ. ANZ provided multiple submissions to the Commission, including one relating solely to its agribusiness lending activities, and has also provided a series of statements from Mr Benjamin Steinberg, its head of lending services, corporate and commercial. ANZ told the Commission that it currently operates 10 standalone business centres in rural areas of Australia. ANZ currently operates 333 branches in rural areas. This represents a decrease of 91 total rural branches in the last 10 years. The number of branch managers and relationship managers employed in rural areas by ANZ has similarly decreased over the last two years from 726 in 2008 to 541 in 2018.

ANZ also provided information regarding its agricultural clients and lending activity. As at 31 March this year, ANZ had 19,577 agricultural clients which represents a decrease from 26,150 agricultural clients as at the end of 2009. ANZ told the Commission that, as at 30 June last year, it reported as agricultural lending activity total limits of $9 billion of which 7.6 billion was outstanding. New South Wales, Queensland and Victoria make up 64 per cent of ANZs agricultural lending portfolio. As at 31 March this year, 2.24 per cent of ANZ agricultural clients have one or more facilities in default.

ANZ told the Commission that in the period from 2015 to 2018 it had participated in 34 farm debt mediations, with the largest number for any of these years being 21 mediations in 2015. ANZ also reported that, between 2008 and 2017, 162 cases were submitted to FOS in respect of its agricultural clients. The highest number was 41 in 2014. Of the 162 cases submitted in this period, two resulted in recommendations adverse to ANZ, and three resulted in determinations adverse to ANZ. In the period from 2015 to 2018, ANZ has taken enforcement action against 30 agricultural customers.

In its submissions, ANZ disclosed several instances of misconduct and conduct falling below community standards and expectations in relation to agribusiness customers. First, ANZ accepted that in certain respects its management of some former customers of Landmark Financial Services, following ANZs acquisition of the Landmark loan book, fell below community standards and expectations. ANZ also acknowledged that in a small number of cases its conduct in relation to former Landmark customers may have constituted a breach of the obligation in the Code of Banking Practice to act fairly and reasonably towards its customers.

ANZ acknowledged that it should have been more responsive and empathetic to some former Landmark customers, particularly given their difficult financial circumstances, and it acknowledged that its failure to do so caused distress in some cases. As we will explain in more detail later in this opening statement, ANZs handling of former Landmark customers will be the subject of the first case study in these hearings. Second, ANZ told the Commission that in some instances dealings between its commercial collections team and agribusiness customers had breached the Code of Banking Practice and the ASIC Debt Collection Guidelines.

ANZ also told the Commission that, between December 2013 and June 2014, FOS identified an instance of improper collections activity by ANZ in relation to a particular agribusiness customer. Third, ANZ identified system and process errors that affected its small business customers and said that some of these errors affected agribusiness customers. Fourth, ANZ identified instances where its frontline staff engaged in inappropriate sales practices in an effort to increase incentive payments and said it was likely that some of these instances involved agribusiness lending.

We turn to Bankwest. Bankwest is a wholly owned subsidiary of CBA. And we will address CBAs agricultural operations separately. Bankwest has provided a statement to the Commission that relates to its agribusiness lending activities from Sinead Taylor, its executive general manager, personal and business lending. Bankwest told the Commission that as at June last year it operated 44 retail branches and business centres in rural areas. This represents a decrease of 25 rural retail branches and business centres over the last 10 years. The number of branch managers and relationship managers employed in rural areas has also decreased over the last 10 years from 52 to 47 branch managers, and from 81 to 44 business development and relationship managers.

Bankwest provided information regarding its agricultural clients and lending activity. As at 30 June last year, Bankwest had 3638 agricultural customers, of which 1600 were agricultural lending customers. 91 per cent of Bankwest’s total agricultural lending is in Western Australia. As at 30 June last year, 1.71 per cent of Bankwest agricultural clients were in monetary default and 1.66 per cent were in non-monetary default. Bankwest told the Commission that in the period from 2008 to 2018 it had participated in 47 farm debt mediations.

Bankwest also reported that, between 2008 and 2018, 36 agricultural customers made FOS complaints. Of those cases, three resulted in determinations wholly or partly in favour of the customer. Bankwest told the Commission that over the last 10 years it has taken enforcement action against 34 agricultural customers. We will come to the acknowledgements by Bankwest of misconduct and conduct falling below community standards and expectations as the acknowledgements made by CBA in its submissions also covered Bankwest.

We turn next to Bendigo and Adelaide Bank which we will refer to as Bendigo Bank. Bendigo Bank provided two submissions to the Commission, one of which related solely to agribusiness lending activities, and also provided a statement from Alexandra Gartmann, the CEO and managing director of Rural Bank, which was acquired by Bendigo Bank in 2009 and '10. Bendigo Bank told the Commission that it currently operates 283 branches in rural areas of Australia. This represents an increase of 79 rural branches over the last 10 years. The number of branch managers and relationship managers employed by Bendigo Bank and rural bank in rural areas has also increased over the last 10 years.

Bendigo Bank provided information regarding its agricultural clients and lending activity, as well as Rural Bank's agricultural clients and lending activity. As at 2018, Bendigo Bank had 2637 agricultural clients, and Rural Bank had 8150 agricultural clients. As at 31 March this year, an average of 1.06 per cent of Bendigo Bank agricultural clients and 3.91 per cent of Rural Bank agricultural clients had one or more facilities in default. Bendigo Bank reported that over the last 10 years it had participated in nine farm debt mediations, and Rural Bank had participated in 76 farm debt mediations. Bendigo Bank also reported that during this period 15 cases were submitted to FOS in respect of its agricultural clients, and of these only one resulted in a FOS recommendation or determination which was in Bendigo Bank's favour.

During that period, 65 cases were submitted to FOS in respect to Rural Bank's agricultural clients. Of these 8 resulted in a FOS recommendation or determination, one of which was in the customer's favour. Over the last 10 years, Bendigo Bank has taken enforcement action against six agricultural customers and Rural Bank has taken enforcement action against 67 agricultural customers. In its submissions, Bendigo Bank identified five examples of instances in which the conduct of Rural Bank in relation to agricultural loans had fallen below community standards and expectations.

The first example concerned Rural Bank's response to a notification by a customer that her signature had been forged by her husband on documents to increase the limit of their agricultural loan facilities, and that her signature on some of the banks had been improperly witnessed by an agent of the bank. Rural Bank had advised the customer to report the matter to police, but did not investigate the matter itself, relying on the police investigation which is yet to be concluded some years later. The second example concerned an incident in 2016 when Rural Bank erroneously charged fees on season overdraft and agri-manager products. The error affected 2164 customers and the overall financial impact was $163,461. All customers were remediated. The third example involved the underpayment of interest on term deposit accounts for a period of up to five years. 81 customers were affected with the total financial impact being $10,166: all customers were remediated.

The fourth example involved a situation in 2015 where a relationship manager had verbally approved a loan above the manager's designated lending authority. In reliance on this approval, the customer successfully bid on a property. Their loan application was subsequently declined on the basis that it did not meet lending criteria. After the customers threatened legal action, Rural Bank settled their complaint by paying them the deposit amount as compensation. The fifth example involved failures to make appropriate inquiries and verifications prior to the approval of loans taken out by a number of customers in the Queensland cattle industry, which became non-performing loans. Rural Bank staff did not appropriately establish loan serviceability, over relied on security values, and did not adequately manage the loans. This matter will be the subject of one of the case studies in these hearings.

We turn next to CBA. CBA has provided multiple submissions to the Commission, one of which relates solely to its agribusiness lending activities, and each of which also covers Bankwest. CBA has also provided statements from Grant Cairns, executive manager, regional and agribusiness banking; Mark Wlossak, general manager group credit structuring corporate; and Joanna White, managing director of business lending. CBA told the Commission that as at 30 April this year, it operated 57 business centres in rural areas of Australia. CBA also operated 349 branches in rural areas. This represents a decrease of 10 rural business centres and 20 rural branches over the last 10 years. The number of branch managers and relationship managers employed in rural areas has also decreased over this period by around 23 per cent.

CBA also provided information regarding its agricultural clients and lending activity as at 27 May this year CBA had 25,261 agricultural client relationships and 4999 agricultural lending relationships. Currently, approximately 144 of CBAs agricultural clients are in regulatory default. CBA reported that it had participated in 113 farm debt mediations over the last 10 years, with the largest number for any of these years being 31 in 2013. CBA also reported that between 2011 and 2018, 87 cases were submitted to FOS in respect of its agricultural clients. Of these cases, three resulted in recommendations or determinations adverse to CBA.

CBA told the Commission it has taken enforcement action against 82 agricultural customers over the last 10 years. In its submission provided to the Commission on 29 January this year, CBA said that there had been some suggestions in recent years that enforcement action in relation to farms had been excessively high and that such decisions were taken in haste by financial institutions with little engagement with customers. CBA indicated that this was not its experience. In lengthy tables provided to the Commission in March this year, CBA disclosed five instances of agriculture finance related misconduct.

Further information about four of these instances was provided by CBA in its May submission to the Commission which dealt solely with agribusiness issues. Of those four instances, three related to CBAs AgriAdvantage Plus and AgriAdvantage products. The three instances were as follows: first, CBA disclosed an incident relating to a failure to apply fee waivers and ongoing package benefits such as bonus credit interest to eligible customers who had purchased an AgriAdvantage Plus package. That package is directed at customers in the regional and agribusiness segment. CBA disclosed that it had reported the incident to ASIC, and that it had completed a mediation program in 2015, by which it reimbursed approximately 8400 customers the sum of approximately $7.6 million. This incident is the subject of a statement by Joanna White managing director of business lending which will be tendered in these hearings.

Second, CBA disclosed that it had also had an earlier related issue with its AgriAdvantage product relating to an instance of overdraft line fee overcharging. CBA identified the issue in September 2012 and a total of 265 accounts were impacted. CBA conducted a remediation program in April 2013 which resulted in refunds totalling approximately $72,000. The instance was not reported to ASIC. Third, CBA disclosed a further issue which, like the first issue, related to the AgriAdvantage Plus package. The issue involved certain customers not being provided with concessions offered under the offer. The issue was identified in July 2014 and was reported to ASIC on the day it was identified.

The fourth instance which was not related to AgriAdvantage Plus or AgriAdvantage products related to a product called the AgriOptions product. The instance of misconduct related to an estimated overcharging of fees in respect of that product which was identified in about September 2012 and reported to ASIC. A total of 726 accounts were impacted, a remediation program was completed in October 2012, and resulted in fee refunds to affected customers of approximately $330,000.

In addition to these four instances of misconduct, CBA also disclosed one instance of potentially inappropriate advice which in part may have related to CBA agribusiness products. CBA told the Commission that this issue was reported to ASIC in March 2015. In its May submission dealing with agribusiness, CBA provided information specifically about additional agricultural finance related issues. First, CBA noted that 16 additional incidents had been disclosed to the Commission when CBA provided the Commission with data from its risk insight system. These incidents had originally been omitted from the table of misconduct provided in March because the compliance incident record had been rated insignificant or low.

Second, CBA disclosed to the Commission that it had identified two further operational incidents which had not been included in the table of misconduct provided in March. In 2013, CBA identified risk management issues in the regional and agribusiness banking division of business and private banking. The risk management issues related to potential interest rate management mis-selling. More specifically, the issues related to interest rate hedges that did not match customer loan terms, as well as customers stating that they were unclear of terms and conditions. CBA identified 19 customers potentially impacted by the issue, including 10 agribusiness customers. CBA told the Commission it is conducting individual remediations in respect of this issue.

As at the date of its letter to the Commission, CBA had closed 18 cases and had refunded a total of $1.37 million to those customers. $660,000 of that amount was refunded to agribusiness customers. As at the date of the letter to the Commission, one case remained outstanding. And the second operational incident also related to 2013 when CBA identified an incident regarding the incorrect mapping of a reference rate for an agricultural line of credit product onto a banking platform. CBA remediated customers to the value of approximately $78,000. Third, CBA also made some disclosures in relation to individual CBA clients, including clients in whose favour the Financial Ombudsman Service had resolved disputes.

We turn next to NAB. NAB has also provided multiple submissions to the Commission including one relating solely to its agribusiness lending activities. NAB has also provided a statement from Mr Ross McNaughton, general manager, strategic business services. FAB told the Commission that as at April this year it operated 177 branches in rural areas. This represents a decrease of 13 rural branches over the last 10 years. The number of branch managers employed in rural areas has also decreased over that period from 136 to 120 employees. NAB provided information regarding its agricultural clients and lending activity.

As at 30 June last year, NAB had 20,997 agricultural clients. NAB told the Commission that as at that date, 30 June last year, in all states and territories other than Tasmania, less than .5 per cent of its agricultural borrowers had a loan which was more than 90 days past due. The highest total value of loans past 90 days due was in New South Wales at $14.7 million, followed by Victoria, $9.3 million, and Western Australia, $4.09 million. As at 30 June last year, 1.06 per cent of NAB agricultural clients had one or more facilities in default. NAB reported that over the last 10 years it had participated in 245 farm debt mediations.

NAB also reported that between 2010 and May 2018, 262 cases were submitted to FOS in respect of its agricultural clients. Of these, 12 resulted in recommendations or determinations adverse to NAB. NAB told the Commission that it has taken enforcement action against 173 agricultural customers over the last 10 years. In its submission provided to the Commission in January this year NAB admitted, in a generalised way, that it had breached various provisions of the Code of Banking Practice in its dealings with agricultural customers. One example concerned failing to pay interest on customer accounts. However, despite this, NAB did not admit any misconduct in respect of agricultural customers.

In its second submission, NAB identified numerous events of misconduct that had been logged in its risk management system, risksmart, since 2013. Over 85 of these events concerned agricultural clients. The Commission has reviewed those entries. Things that emerge include failures by NAB to advise or communicate with its agribusiness customers about who is responsible for stamping and registration fees, and misunderstandings or disagreements between NAB and its customers about key aspects or functions of customer products and accounts, such as whether a deposit account operates as an offset account, or what the interest rate or term of a particular product is. Save for identifying the particular risksmart entries that related to agribusiness clients in its initial two responses, NAB did not identify any other misconduct or conduct falling below community standards and expectations in the submission it provided, solely in relation to agricultural lending activities in May.

We turn finally to Rabobank. Rabobank is a Dutch bank specialising banking to the food and agricultural industries. Unusually for a bank of its size it has a cooperative structure and is not listed on any stock exchange. Rabobank has provided two submissions to the Commission relating to its agribusiness lending activities, and two statements from Mr Bradley James, regional manager for Southern Queensland and New South Wales. Rabobank informed the Commission that it currently operates 61 branches in rural areas. This represents an increase of 10 rural branches over the last 10 years. The number of branch managers and relationship managers employed in rural areas also increased over the last 10 years from 170 to 235 employees in these roles.

Rabobank provided information regarding its agricultural clients and lending activity. As at 31 December last year, Rabobank had 33,970 agricultural clients, and 21,436 agricultural client groups. Of these, 11,050 agricultural clients and 8750 agricultural client groups had active loans. As at 30 June last year, .69 per cent of Rabobank agricultural clients had one or more facilities in default. Rabobank reported that over the last 10 years it had participated in 99 farm debt mediations. Rabobank also reported that between January 2008 and May 2018, 37 cases were submitted to FOS in respect of its agricultural clients. Of those cases, one resulted in a recommendation or determination adverse to Rabobank.

Rabobank told the Commission it has taken enforcement action against 59 agricultural customers in the period from 2008 to 2017. Rabobank acknowledged seven instances of conduct directly relating to agribusiness lending that involved misconduct or conduct falling below community standards and expectations. Three of these involved the incorrect application of interest rates across a number of different types of accounts, and over a number of different time periods. One involved the overcharging of fees to 126 clients in 2011 with a total financial impact of $372,000. The remaining three involved the conduct of three employees, one of whom had amended documents after they had been executed by a customer on more than one occasion, one of whom failed to disclose a conflict of interest through involvement with a customer and by executing a bank document on behalf of that customer, and one of whom had entered into personal commercial arrangements with customers that were not disclosed to the bank.

In addition to receiving and analysing the submission and statements from these financial services entities to which I have just referred, the Commission issued 50 notices to produce to 11 agricultural lenders. These notices yielded close to 12,000 documents about various aspects of each entity’s practices, procedures and conduct, both generally and in relation to particular cases. We turn now to the particular case studies through which the conduct of financial services entities will be addressed in these hearings in relation to the topic of finance to agricultural customers. The first case study will examine issues arising from ANZs acquisition of the loan and deposit books of Landmark Financial Services in 2010.

We should make clear, Commissioner, that when we refer to Landmark in these hearings we are referring to Landmark Financial Services. Landmark Financial Services was a division of Landmark that provided agribusiness loans and deposit accounts to customers. Landmark was, and still is, a diversified agribusiness company. When we refer to Landmark in these hearings we are not referring to the other businesses still operated by Landmark. For some years, it has been clear that a significant number of former Landmark customers felt that they were treated unfairly by ANZ after its acquisition of Landmark's loan and deposit books.

In late 2015 and early 2016, the Commonwealth Parliamentary inquiry into the impairment of customer loans examined matters associated with ANZs acquisition of these loan and deposit books. Complaints about ANZs dealings with former Landmark customers have also featured significantly in public submissions received by the Commission. Around 12 per cent of the submissions received by the Commission that related to agricultural lending concerned a Landmark loan that was acquired by ANZ. The Commission obtained four statements from ANZ in relation to this matter. One of those statements deals with ANZs acquisition of the Landmark loan book and the bank's dealings with agribusiness customers more generally, and three relate to seven specific cases of former Landmark customers.

Of those cases, four concerned cattle farms based in Queensland, one concerns a sheep farm based in Western Australia, one concerns a mixed cropping farm based in Victoria, and one concerns a forestry business based in Tasmania. The first case study will consider ANZs conduct in connection with the acquisition of the Landmark loan book, both at a general level and through the lens of these specific cases. The second, third and fourth case studies examine the conduct of three banks, Rabobank, Bankwest and NAB in connection with loans made to three sets of Queensland cattle farmers, the Brauers, the Ruddys and the Smiths.

The issues that were experienced by these cattle farmers expose a number of the difficulties faced by Queensland cattle farmers in the past 10 years. Some of these difficulties were triggered or exacerbated by a series of external factors impacting the Queensland cattle industry over this period, including a decline in property prices, a decline in cattle prices, a number of severe weather events, including both drought and cyclone related flooding, and the live cattle export ban.

Each of these three case studies raises issues that warrant investigation, including issues about responsible lending, the use of property valuations, the provision of hardship assistance by banks, the adequacy of the farm debt mediation process, and bank practices in connection with the charging of default interest. The final case study concerns loans made by rural bank to Queensland cattle industry farmers, particularly in the period from 2003 to 2007. This case study will tie together some of the themes identified in the earlier case studies by examining the impact of Rural

Bank's loan origination and loan monitoring practices on its Queensland loan portfolio.

Before moving to those case studies, we intend to call three witnesses with experience in rural and agricultural finance to give concurrent evidence. Those witnesses are Mr Denis McMahon of Legal Aid Queensland, Mr Warren Day of ASIC, and Mr Chris Wheatcroft of the Rural Financial Counselling Service in Western Australia. Commissioner, that concludes the opening address for the agricultural finance part of this block of hearings. Might we briefly adjourn to allow the panel to convene.

THE COMMISSIONER: Yes. How long do you need, Ms Orr?

MS ORR: I think if we came back at quarter to, that would be fine, Commissioner.

THE COMMISSIONER: Quarter to. Very well. I will come back at quarter to midday.

MS ORR: Thank you, Commissioner.

ADJOURNED **[11.38 am]**

RESUMED **[11.53 am]**

THE COMMISSIONER: I'm told very confidently, by those who should know, that we've sorted out what was happening with the microphones and that the feedback buzz, or whatever else was happening and was particularly interfering, apparently, with the feed, has been resolved. If it plays up again, we will have people look at it again at lunchtime and see if we can solve it. I understand how important the feed is, but we're trying. Ms Orr.

MS ORR: Thank you, Commissioner. I call Denis McMahon, Chris Wheatcroft and Warren Day to give concurrent evidence.

<CHRIS WHEATCROFT, SWORN **[11.54 am]**

THE COMMISSIONER: Thank you very much.

<DENIS McMAHON, SWORN **[11.54 am]**

THE COMMISSIONER: Thank you very much, Mr McMahon.

<WARREN DAY, SWORN [11.54 am]

THE COMMISSIONER: Thank you very much, Mr Day. Do sit down. Yes, Ms Orr.

MS ORR: Mr McMahon, could I start with you. Your full name is Denis McMahon?

MR McMAHON: That's correct.

MS ORR: You are a senior lawyer with Legal Aid Queensland?

MR McMAHON: That's correct.

MS ORR: And Legal Aid's head office is at 44 Herschel Street in Brisbane.

MR McMAHON: Correct.

MS ORR: And have you received a summons to attend and give evidence today, Mr McMahon?

MR McMAHON: I have.

MS ORR: Do you have that summons, sir?

MR McMAHON: I do have.

MS ORR: I tender that summons, Commissioner.

THE COMMISSIONER: Exhibit 4.1 summons to Mr McMahon.

EXHIBIT #4.1 SUMMONS TO MR MCMAHON

MS ORR: Mr McMahon, you've made a statement to the Commission dated 19 January – sorry, 19 June 2018.

MR McMAHON: That's correct.

MS ORR: And you have that statement there.

MR McMAHON: That's correct.

MS ORR: Are the contents of that statement true and correct?

MR McMAHON: Yes.

MS ORR: I tender that statement.

THE COMMISSIONER: The statement of Mr McMahon of 19 June 2018, exhibit 4.2.

EXHIBIT #4.2 STATEMENT OF MR MCMAHON DATED 19/06/2018

MS ORR: Before I move to the other witnesses, can I ask you a few preliminary questions, Mr McMahon. How long have you been a solicitor?

MR McMAHON: I was admitted in 1979.

MS ORR: And you work in the Farm & Rural Legal Services unit at Legal Aid Queensland?

MR McMAHON: That's correct.

MS ORR: And how long have you worked in that unit?

MR McMAHON: Since 2003.

MS ORR: And could you describe for the Commission the work of the Farm & Rural Legal Services Unit?

MR McMAHON: The unit only deals with negotiations for farmers and rural-based businesses with their credit providers. It tends to negotiations and mediations.

MS ORR: And what's your role within that unit, Mr McMahon?

MR McMAHON: I'm a senior lawyer within the unit.

MS ORR: Thank you. How many lawyers are in that unit?

MR McMAHON: Two.

MS ORR: Thank you. And how do farming clients find their way to the Farm & Rural Legal Services unit in Queensland Legal Aid?

MR McMAHON: Until the recent Act was brought – introduced, the Queensland farm finance strategy had obligations in the document obligating banks to encourage their customers, if they considered them to be in financial difficulties, to seek professional help. That included seeking help from their accountants, rural financial counsellors, solicitors. Legal Aid was part of the process there, but we would primarily get our referrals from rural financial counsellors, sometimes from private profession, and even sometimes from banks.

MS ORR: And under the new scheme, under the compulsory scheme, are banks also obligated - - -

MR McMAHON: Under the new scheme there's no obligation – there's nothing mentioned in the Act about how it's referred, and our referrals would primarily be coming from the rural financial counselling services.

MS ORR: Thank you. And are there conditions that a potential client has to meet before Legal Aid can act for them?

MR McMAHON: Under the farming rural legal service, if the client has been engaged with difficulties with their banks, they would normally qualify. There's no asset or income test attaching to the process.

MS ORR: Thank you. Now, I will ask the other panellists some questions and come back to you, Mr McMahon. Mr Wheatcroft, your name is Chris Wheatcroft?

MR WHEATCROFT: Yes.

MS ORR: And you are the chief executive officer of Primary Production Services Incorporated.

MR WHEATCROFT: That's correct.

MS ORR: And your address is 111 Augustus Street in Geraldton - - -

MR WHEATCROFT: Correct.

MS ORR: - - - in Western Australia. Now, Mr Wheatcroft, have you received a summons to attend and give evidence?

MR WHEATCROFT: I have.

MS ORR: Do you have that summons there?

MR WHEATCROFT: I have.

MS ORR: I tender that summons, Commissioner.

THE COMMISSIONER: Exhibit 4.3, the summons to Mr Wheatcroft.

EXHIBIT #4.3 SUMMONS TO MR WHEATCROFT

MS ORR: And Mr Wheatcroft, you've made a statement to the Royal Commission dated 15 June 2018?

MR WHEATCROFT: I have.

MS ORR: Are the contents of that statement true and correct?

MR WHEATCROFT: They are.

MS ORR: Thank you. I tender that statement.

THE COMMISSIONER: Exhibit 4.4, the statement of Mr Wheatcroft of 15 June '18.

EXHIBIT #4.4 STATEMENT OF MR WHEATCROFT DATED 15/06/2018

MS ORR: Mr Wheatcroft, Primary Production Services Incorporated, the entity of which you are CEO, is the entity that runs the Western Australian Rural Financial Counselling Service?

MR WHEATCROFT: That's correct.

MS ORR: And how long has Primary Production Services run the Western Australian Rural Financial Counselling Service?

MR WHEATCROFT: It has existed for three years, but the board that runs it has run it for 11 years.

MS ORR: Thank you. Could you please explain what a rural financial counsellor does?

MR WHEATCROFT: The intention is to return people to profitability or to assist them in adjusting within or out of agriculture. We use a harbour business framing framework to facilitate people's understanding of their business position, and against that we use counselling skills to facilitate the understanding of people as to the meaning of the implications of – and the dissonances that exist within what they have mapped out for themselves.

MS ORR: And are there any particular qualifications that are necessary to be a rural financial counsellor?

MR WHEATCROFT: There is a diploma of financial counselling that they need to have, and in addition we require they have a good understanding of the finance industry and banking for farmers. They have to also have a good understanding of agriculture and the various forms we deal with it, it's not just broad acre, and they need to have a propensity to be able to listen and carry out the counselling skills that are required, but they don't have true counselling qualifications in terms of a degree.

MS ORR: And there are rural financial counselling services throughout Australia?

MR WHEATCROFT: There are.

MS ORR: And could you explain how they're organised?

MR WHEATCROFT: I – there are three set services, South Australia, Queensland – South Australia, Western Australia and Victoria, and Tasmania. Victoria have four, New South Wales have three, from memory, Queensland has two.

MS ORR: And how are the rural financial counselling services funded?

MR WHEATCROFT: They – 90 per cent, roughly, approximately comes from the Federal Government and the remainder from the state government.

MS ORR: And how many rural financial counsellors do you have in Western Australia?

MR WHEATCROFT: We have 10 at this time.

MS ORR: And what sort of backgrounds do they have?

MR WHEATCROFT: From CPA qualifications, banking, farming.

MS ORR: And - - -

MR WHEATCROFT: There's teaching – yes, education.

MS ORR: And you worked as a rural financial counsellor yourself for - - -

MR WHEATCROFT: I did for seven years, yes.

MS ORR: Thank you. And now that you're CEO do you maintain any involvement with the clients?

MR WHEATCROFT: I supervise all difficult cases and have oversight of the program.

MS ORR: And how do clients find their way to a rural financial counsellor in Western Australia?

MR WHEATCROFT: So half would be self-referred and it's usually the farming partner, the wife, that refers them. Outside that it's the stakeholders, from banks to accountants to the people who are involved and know there's a problem in the – for the farmer.

MS ORR: Thank you, Mr Wheatcroft. Now, could I turn to you, Mr Day. Your name is Warren Day?

MR DAY: Yes.

MS ORR: And you are the Australian Securities and Investments Commission's regional Commissioner for Victoria?

MR DAY: Yes.

MS ORR: And your business address is 120 Collins Street, Melbourne?

MR DAY: Yes.

MS ORR: Mr Day, have you received a summons to attend and give evidence?

MR DAY: Yes, I have.

MS ORR: Do you have that summons there?

MR DAY: I do.

MS ORR: I tender that summons.

THE COMMISSIONER: Exhibit 4.5, the summons to Mr Day.

EXHIBIT #4.5 SUMMONS TO MR DAY

MS ORR: And Mr Day, you've made a statement to the Royal Commission dated 8 June 2018?

MR DAY: Yes, I have.

MS ORR: Are the contents of that statement true and correct?

MR DAY: Yes.

MS ORR: I tender that statement, Commissioner.

THE COMMISSIONER: Exhibit 4.6, statement of Mr Day, 8 June '18.

EXHIBIT #4.6 STATEMENT OF MR DAY DATED 08/06/2018

MR DAY: It's pretty bloody thick, isn't it?

MS ORR: Mr Day, you're a member of the Commission's senior executive leadership team with responsibility for ASICs Assessment & Intelligence Group?

MR DAY: That's correct.

MS ORR: And the Assessment & Intelligence Group has responsibility for misconduct and breach reporting?

MR DAY: Amongst other things, yes.

MS ORR: And how does ASIC and how do you, in your official capacity, come into contact with farmers?

MR DAY: It's generally through two ways. So through the misconduct and breach reporting team which is ASICs, in effect, national complaints program. Obviously, there's a large number of matters that are raised on various issues, including farm finance and farming issues. Through that channel, if you like. That may also, though, include contacts direct to the Commission or referrals we get from parliamentarians on behalf of their constituents. So they all come in through that group and we look at it that way. Certainly, in relation to some of the matters raised by parliamentarians or directly through the Commission, I might become personally involved and speak to farmers in relation to the matters they've raised.

The second way is through my regional commissioner work. We attend a number of events and a number of outreach activities across the State of Victoria. And so through that it may be that I will speak to a number of farmers at field days or other farming Expos and like events and through that contact, you know, again use that as a channel within which to understand the issues that are going on.

MS ORR: And you've identified 68 complaints to ASIC in the period from 1 January 2008 to 19 May 2008 that were about rural – I'm sorry, 2018 – that were about rural matters, farm lending or enforcement?

MR DAY: My – my team has, yes.

MS ORR: Yes. And much of your statement is informed by analysis that your team has done of those complaints?

MR DAY: That's correct.

MS ORR: Thank you. All right. Now, can I come back to you firstly, Mr Wheatcroft. Could you explain to the Commission how important is debt finance to farmers?

MR WHEATCROFT: I would estimate that probably 80 per cent of agriculture relies on debt financing.

MS ORR: And Mr McMahon, do you have any comment on that?

MR McMAHON: I think debt financing is absolutely vital for agriculture, for the development and the continuation of it.

MS ORR: And Mr McMahon, what are the types of facilities that are most commonly used by farmers?

MR McMAHON: The normal trading account would be the overdraft. That is, the majority of farmers would have those. There's also many other various forms of loans that are available, and each bank has a different name for them and whatever, but they can have a loan structure where there's term loans tied up with interest only loans, short-term loans even though they're in a facility that's for 20 years, you have parts of it can be drawn in early. So there is a lot of – a mixture of those sort of things, as well as they do even go down to credit card facilities. There's – there's stock mortgages, there's facilities for crop – crop funding, etcetera.

MS ORR: And what security is usually taken by banks who lend to farmers?

MR McMAHON: The banks would normally take a registered mortgage over the farm itself, over the land. And that normally would have – most instances that would involve the farmhouse, or it can – can be intergenerational, it can be three or four families on the one property. In addition to the land as security, they will take security over the livestock, plant and equipment, some crops, they will take personal guarantees, they will also take farm assets as security. They can take mortgages or – over the asset. For example, the partnership can be secured by way of an agreement with the bank.

MS ORR: Mr Wheatcroft, do you have any further comment on the securities taken by banks in farming finance?

MR WHEATCROFT: I just mention to the Commission that, regardless of whether or not the mortgage is over the home, you cannot go broke in Australia without the bank having access to it. The only benefit of not having a mortgage over a property if you go broke is you can dispose of it under your own terms. It's debatable whether you can even use the proceeds for your own purpose, but really there is little benefit in practice.

MS ORR: Mr Day, does ASIC have a role in the regulation of farming finance?

MR DAY: I had the benefit of hearing your opening this morning, Ms Orr, and effectively farm finance is, in some respects, a subset of small business lending and the Corporations Act effectively has very little coverage, if any, of – in relation to small business lending and farm finance, therefore. The only real provisions are in relation to unfair contract terms, which are quite recent. The provisions in relation to misleading and deceptive conduct, warranties and unconscionable conduct in the ASIC Act, not in the Corporations Act. And, you know – so limitations in those types of spaces is – is really what we're dealing with.

Therefore, there's no need for a licence in Australia for small business lending, albeit that the major lenders who take up the – you know, huge majority of loans in Australia all have licences for other respects and, therefore, you know, there are certain standards they have to meet in terms of external dispute resolution and those types of things.

MS ORR: And in your view should ASIC have a greater role in the regulation of farming finance?

MR DAY: There's certainly an argument for that. As I said, if you're – if you're a non-bank lender for farm finance it may be that you – you know, if you have no other licence you're not required to be a member of external dispute resolution schemes such as CIO or FOS and soon to be AFCA and, therefore, you might not be – you know, a borrower wouldn't be able to avail themselves of those services, whereas they can at the moment. So, you know, a standard in relation to that. The other questions really are then about the sort of practices and standards of conduct required of banks in relation to their lending activities, and some of that is covered effectively through the code of conduct, banking code of conduct.

Some of that is also covered in relation to their requirement because of the other licences they have of membership of the external dispute resolution scheme. So I guess the point I'm making is a lot of the features, if you like, of a licensing regime, borrowers for small business or farming finance enjoy those things, but the minimum standards responsible lending, those things aren't there at the moment. So there is an argument maybe that's required.

MS ORR: Mr Wheatcroft, how do farmers in Western Australia most commonly interact with banks?

MR WHEATCROFT: Often in person. I think this is about whether people come to the farms. Usually there is a manager who will visit them. Some farmers choose to deal in Perth, because they prefer to keep it away from their local area. And once you enter a difficulty you will deal with the asset management, wherever the bank happens to have those people located, and it is not consistent. Like, it may be with the same bank, one person will be dealing interstate and another within the state. Is that an answer?

MS ORR: Yes, thank you. And Mr McMahon, in Queensland, how do farmers interact with banks?

MR McMAHON: Mainly in person. The Farm and Rural Legal Service mainly deals with asset management, so dealing with the bank officers normally in the capitals. However, the clients prior to getting into asset management would normally be dealing with their local agribusiness banker, and they – they're strategically placed throughout the State.

MS ORR: And Mr Wheatcroft, have there been many, to your observation, bank closures in rural areas of Western Australia in recent years?

MR WHEATCROFT: I think it's correct that most country towns – many country towns are reducing and the banks are one of the institutions that disappear, yes.

MS ORR: And in Queensland, Mr McMahon?

MR McMAHON: Yes. There's similar experiences, Ms Orr. The – recently, it was in the Queensland Country Life published there that, I think, Ingham had its ANZ and Suncorp branches were just recently closed, and the ANZ branch in Clermont was closed. It was just publication in the last two weeks, and I think that the same thing exists. The problem with customers in those circumstances are that they have a long way to travel to their – their next branch.

MR WHEATCROFT: I would make the point when people – especially if they enter difficulty, they – the best thing for them to have is a competent manager with decision-making ability and understanding of their business and the issues that are affecting them, and I – I do not think that the localness of that matters. It actually is the bank having someone that can make decisions competently at that point, and in a timely fashion, because timeliness costs money if it's delayed.

THE COMMISSIONER: No matter where they are?

MR WHEATCROFT: I don't think it matters where they are. They will usually travel for one meeting about it, but the – no.

MS ORR: And do I take it, Mr Wheatcroft, you're referring to the asset management phase of the engagement of a farmer with the bank, rather than a loan origination phase, for example?

MR WHEATCROFT: So with free enterprise, the banks are very keen on maximising the benefit. So I think they decide whether the person needs to be local or not, and that's done in their interest. Asset management is correct. I'm referring to the competent person is what's needed at that time.

MS ORR: But that's at the point when the farmer's already in trouble in default on their facilities?

MR WHEATCROFT: It's actually – difficulties in farming take a long time, years, compared to other businesses. So it's at the point where decisions need to be made. As – if finance starts to be restricted because decisions take too long to be made, the opportunities to lower your costs, to be timely in putting in the crop, are lost. And those things cost businesses significantly. And most of the angst I experience with people that feel they have suffered badly is because of the timeliness, because they've lost the timeliness of the decision-making.

THE COMMISSIONER: But lost the time between – what are the outer limits of the time that's lost? What's the point that starts time running and then you get a decision – I understand that – but what's the time you're referring to? When they have gone to the bank, when the bank should be - - -

MR WHEATCROFT: So the end – sorry - - -

THE COMMISSIONER: - - - moving? Go on.

MR WHEATCROFT: - - - Commissioner. At the end of a season for broad acre, the farmer is then looking at funding for the following year. It's timely to have the decisions then as to how much money they have, because the opportunity to purchase fertiliser, to back load at a lower cost, are significant savings to a business. In my experience, as the bank reduces – well, as they enter difficulty, the bank extends that time out, almost to the start of seeding. And we will find people – you should be dry seeding, say, in April in the northern region, and people can still be debating with the bank in April/May as to what money they have.

There is also a timeliness that – in addition to that we – CSIRO have developed a very good cropping model that takes the soil characteristics and water rainfall in 100 years of history and it gives a probability of yield based against additional fertiliser given the rain. Forecasts of rain is five days out. You can look at your profit, which is the model they use, and you can say, "If I put yield on, if I put additional fertiliser on, it will – 80 per cent chance of increasing the yield and subsequent profit." It's a five day window. So in answer, both windows are important.

MS ORR: Mr Wheatcroft, have you noticed any changes in the agricultural lenders that are operating within Western Australia over the last 10 years?

MR WHEATCROFT: There has been some entry/exit.

MS ORR: Yes. Who has entered and exited?

MR WHEATCROFT: In my statement I've noted that Suncorp have come and then reduced, Landmark, Elders Finance, largely. There was a West Coast livestock that started and AACL has come and gone, which was almost a share – sorry, it was – had investors sharing in the production risk and the profit.

MS ORR: And did you observe consequences for farmers in Western Australia of the entry and exit of those entities from the lending market?

MR WHEATCROFT: I did.

MS ORR: What were they?

MR WHEATCROFT: So with Landmark it was particularly noticeable because much of Western Australia was heading into a drought. The – the book changed and we couldn't find people to make decisions, and it was – it was almost impossible for those farmers to have responses to their requests, and so the – yes. That was a significant difficulty for them. Suncorp similarly, as they've withdrawn, they've tended to move management to Queensland, but the difficulty there is that people aren't experienced in Western Australia, so that distance between – what I said earlier, it doesn't matter. I don't think it would have mattered if they had people that really understood what was happening, but that's lost. And – yes.

MS ORR: Mr McMahon, what about Queensland? Are there particular players in the market who have entered and exited in recent years?

MR McMAHON: In recent years, with the Commonwealth Bank acquisition of Bankwest, Bankwest book, they basically stopped lending in Queensland, and the Bankwest customers were either migrated over or they had no – they had to find finance elsewhere. Then, of course, there was the Landmark, AWB acquisition by ANZ, and the – there has been various name changes, and the like, with Rural Bank and Elders, it was Elders Rural Finance for a while there, and I think it's now called Rural Bank or Rural Financial Services or something like that.

MS ORR: And what did you observe as the consequences of the Bankwest and Landmark events that you referred to then?

MR McMAHON: Well, I think it was similar to what Mr Wheatcroft has mentioned, that the customers – there was complaints about not knowing who to talk to, about people – there was an enormous change in staff, people would have a manager for a short time, and then that manager would be gone. The clients really needed to have someone that understood their business, and as – as in Western Australia – you have to have the funding absolutely necessary at the time, and if that wasn't available, the – the consequences for a business is it's not just that particular year. With farming it can go on for several years after that.

If you don't – for example, with sugar, if you don't give it the correct fertiliser and sprays at – at the correct time, that's potentially going to affect the crop production for the next couple of years, and that – and that in turn affects not only the customer but also the bank's position as well, because the – the value of the property goes down. Everyone – it's very easy to see the effects of a failure to manage those crops, and all – all the prospective buyers, if that's what ultimately happens, would see that that property hasn't been managed to the correct way or to the usual format. So certainly timeliness is – is a massive issue.

MS ORR: And Mr Day, are you aware of the relative market share of the major banks in the agricultural lending market?

MR DAY: So the major banks have increased over time their share of rural finance lending, to the point now that it's in, you know, the high 80s into early 90s per cent of the market and you've seen over time a number of other non-bank lenders disappear from the market as well. So in the Victorian circumstance you've seen, in the past, the venture offerers, such as Southern Securities or Banksia be in the market. They are obviously, for a whole range of reasons post-GFC, not there anymore, or their activities have been taken over by others. I think Southern Securities was taken over by Bendigo Bank, their activities there, but those other – other lenders have just disappeared.

MS ORR: And Mr Wheatcroft, who are the major agricultural lenders in Western Australia now?

MR WHEATCROFT: I would say the four large banks, Rabo – to a lesser extent, Rural Bank, I think.

MS ORR: And in Queensland, Mr McMahon?

MR McMAHON: All of those institutions, plus Suncorp, and there are – some credit unions do provide some facilities, and of course you've got the pastoral houses that provide ongoing finance for either stock or – or crop and there's merchant houses that may provide assistance to horticulturalists and those type of people.

MS ORR: Mr McMahon, in your view what are the most common causes for farmers facing financial difficulty?

MR McMAHON: That's a difficult question, because each matter is – really has its own sets of circumstances. I suppose I – when I'm looking at a file, I look at the original loan to see whether there was some alarm bells there, and they often arise if – you can see that if the – if the loan was too tight at the beginning, that within a short period of time there was cash flow difficulties, clients were going back to the banks asking for more finance and that would perhaps be an indicator that there was insufficient funds given in the first place, they weren't provided – there was insufficient consideration given to cash flows, and so the – there is that initial problem.

Throughout the conduct of the – the matter, if you see that over a period of time the – the loans – the loan is continuing to rise, that may indicate either a failing business or that there has been through successive periods of drought and the like, and then you look at, well, what was the cause of default, and the – often it will be the overdrafts being overdrawn to – to meet the interest payments on the other facilities, and that's – can be – because either of a failure of a crop, failure for drought, or just bad timing: the crop may not be ready to come off. So there's – the fact that facilities will fall out of order may not necessarily be an indication of the business itself, but it certainly is – is grounds for the bank to raise some concerns about the conduct of the account.

MS ORR: Do you think that banks do enough to take into account the seasonal nature of agriculture and the effects of weather events like droughts and floods?

MR McMAHON: It's – I find that the – it's – that's – another difficult question to answer, but the – if the client is aware that issues are going to be arising – and normally they – they can be, if they, for example, they're – they're aware that this season has had a poor return, they can go and discuss with their bank – or they should be able to go and discuss with their bank these are the concerns they have and, "What are we going to do for the future?" So the – if – if the concern relates to the – to seasonal conditions, then there should be a – an ability within the business to – to work through the program.

This is where you've got to have rural financial counsellors looking at it, doing projections, and if the clients are given early access to encouragement to go and seek these services, a lot of the problems that arise may not become the acute matters that they eventually do become without the proper assistance.

MS ORR: Mr Day, do you have observations about what ASIC sees as the most common causes of financial difficulty for farmers?

MR DAY: I think, as Mr McMahon said, it's sometimes difficult to categorise them, but I think the types of issues we see is a key person issue. So one of the family might become gravely ill and that distracts from the – you know, the endeavour, and so that will cause impacts. A lack of experience. Often you see people going into farming who just don't have that – the level of requisite experience or, you know, family history in farming, and that causes issues. Obviously climate, weather, drought, natural weather events, those types of impacts, changes in markets in terms of price, because of oil prices or because of other – you know, changes such as export of cattle problems that are caused.

Also, commonly we also – we have seen loan to value ratio issues been raised in the past. Terms coming up, like the end of a term of a loan, and a very short – to the point of insufficient – period of time and notice given to the farmer, therefore, they can't get – you know, arrange other finance and the problems that's caused. But we've also seen over extension or taking on too much risk. So you will occasionally farming businesses that try to take on other investment activities, such as development of property for housing or land, or taking on other business opportunities and the farm – the income from the farm just can't support that as well. So you see a range of those types of issues.

MS ORR: Mr Wheatcroft, can I ask you the same question. What do you observe about the most common causes for farmers being in financial distress?

MR WHEATCROFT: Can I separate my answer out. I was born a fifth generation farmer, and back then I absolutely would have said it's the environment within which you work because there are so many things when you're out there farming that just – you can't know which – what the result is going to be, in terms of rainfall, disease, the whole range of it. Eight years on – eight years of tertiary study on, my head sees things as they teach you to in terms of how you would manage those risks. It doesn't diminish the reality of – of the situation for the farmers going through it.

The same decision made four years apart, in my experience, that I have seen, one business thrive and the other go broke, because you cannot – because the impact of those following years when you have to take the risk of expanding and virtually any Australian agricultural enterprise has had to do that to still be farming today, or in the last decade, so those – there is a lot that isn't actually controlled by management. So yes, it is always management in one sense, because how you deal with it is how you're managing it, but there are things that happen that are good decisions that end up with bad results. The difficulty I see is not so much the seasonal stuff, but when – of relevance to this Commission is when there has been inability of the bank to respond in a timely manner, and the offence that people feel and the sense that they are – it's not justified. What has happened to them is unjustified.

In – if we look at Harvard's business planning framework, they say that your values are really important in terms of the business. And what's happening with our – with agriculture with people that struggle to accept what's going on is something is happening that's offending their values, the core beliefs of why they farm and how they're there. And that affects their ability to adjust quickly. And there is a notion that farmers put their head in the sand, but I don't accept that. I think it is true that farmers often look to tough it out. They look to adopt what they have used previously that's been successful and they apply it again. And the systems that work actually allow them to sit there almost for too long and too much loss occurs, and once money is lost there is no way back.

And so I – I think there are a lot of seasonal issues and often they are the fundamental trigger that causes problems. Yes, it is about management, but it's also about the values that people have and the way that they can be – as people, we react to – to offence. And, you know, in an MBA they spend a lot of time these days teaching you how you respond ..... things that are hidden to you as well as the people you are dealing with. And I think much of what rural financial counselling has to do is to actually facilitate the process of people coming to terms with what's going on, and sometimes it is the bank that's actually out of shape on it, but that whole process can be worked through, yes. I think I've said enough on that, Commissioner.

THE COMMISSIONER: No, you haven't. Go on. You tell me that there's an offence to values. Can you blow that out a bit more and expand on that? You haven't said too much, you haven't said enough yet. Go on.

MR WHEATCROFT: So the perception in – when you're involved in agriculture where I grew up is you actually are doing something good for the world, the country, community. Most of those people are supporting their communities, they're supporting each other. So it's a very integrated group. Additionally in WA, with reducing populations, often your friends aren't the people you would choose. Right? So you actually – it's an interesting mix in country towns ..... in country communities, because you're working together and in a sense that battling, there are always ways in which things are diminishing for country people at this time. Communities are getting smaller: the shift in WA away from sheep somewhat removed people from the towns. So that's all happening, and they're focused on surviving.

So if everything is fair and just, we make good decisions, and it takes energy to work really hard for low returns. In WA, you know, in the northern wheat belt there's two decent years, two very poor years and six moderate. Break even. Sometimes there's three poor in a row. Those two good years you have to capture, you have to be able to respond when they come around. And to some degree it applies to the other areas. So the inability – for those people sitting there, as their debt increases, so the banks are less likely to confirm whether or not they're going to give them money. So for their experience, they're just sitting there waiting for answers, battling for a response, ready to work, ready and go and do it, but every day goes by, they're deprived of the opportunity. And this goes on for a couple of years.

Now, from the banking perspective, they have got loans out there, they know they're getting towards the risk. So in many ways, they want to actually restrict that, but if the way of restricting that is to limit the amount of money available, which is in some ways the sensible option, they can deprive the farmer of the opportunity for the additional fertiliser or more likely the additional chemical when it's needed early on to put the crop in to control the – the weeds. The longer – you can understand a bank waiting until it knows whether it's going to rain, because as we said yield profit actually predicts then what the approximate yield is.

So for the bank, it makes great sense to hold off on that decision. Goes up the ladder, no one makes it. So from a bank's perspective, in addition to the banking perspective, you've got the local branch manager is – is paid on his portfolio, has a reputation but he also makes money out of it. He expands it, he can double his income. So that's one driver for him. He doesn't want a defaulting loan, he doesn't want to talk to the farmer about dropping back, because it's going to cost him real money. Above that, I'm uncertain in WA whether they're branch performers, but I've heard in other places there are. So they're judged as a group.

But certainly at the state manager level, they have to predict to the national level what they're going – what their book is going to look like, the level of loan, the level of risk, likely the level of losses, and then they're held accountable to that. So in terms of how they manage it, if the season is looking to be difficult, they will – as I understand it, of course, it's only my understanding – but they will make the projections and then they will act to make them come true. So if they've said, "We're going to write 6 million off in bad debts this year", it likely will be 6 million. So some people might – they might act earlier with some people than they will others and for some they will delay it.

So for the farmer sitting there, all of this stuff feeds into the unfairness of it. They know someone else who actually has been funded, they know someone else who has got through a year before or five years before. And so that sense of injustice about what's happening makes – it doesn't make them cry, it makes them want to tough it out, it makes them become more in their – in their minds more resilient and more likely to try to battle the bank. And so – and that's the dynamic. And so on occasion, there is no doubt in my mind that real harm comes to some people from that process, and businesses. And it's an unintended consequence, actually.

MS ORR: Mr McMahon, can I ask you: do you regard farmers as generally being proactive in managing their finances and dealing with the bank?

MR McMAHON: Very much so, yes. They – they are quite resilient and they're quite aware of where – where they're at with their – with the overdrafts and the like. With the – with regards to people with their head in the sand, some of those people may have been through years and years of drought, some of them have had to destroy all the livestock, may not have any income for the foreseeable future. That takes quite a number of years and, you know, they – I've been to properties where there's three months' worth of mail sitting in the corner and the person not able to open it, and the bank manager would be complaining that the person isn't – isn't responding to requests for information and the like.

And those people aren't – they're sick: they are suffering from depression, and they need a lot of assistance. They need time to work through their problems. They don't really know who to go to, to discuss issues like this. Like Mr Wheatcroft said, they're proud people, they've been trying hard. And we've found that by giving them – by discussing it with them, it – there are potential avenues available for them, sometimes. Sometimes they may have no option but to exit, but if they are exiting, at least they will try to do it on their own terms, or feel more comfortable going to the bank and discussing things. But they certainly – you just need to give – the banks need to give people time and understand the people that are managing those files need to understand the trauma and distress these people are going through, and treat them – don't treat them with indifference.

MS ORR: Mr Day, what do you see in your work in terms of mental health issues affecting farmers in situations of financial distress?

MR DAY: Picking up what Mr McMahon said, I mean, often you will see a number of years have transpired, you know, where they – the farmer is doing everything they can to try and hang on, do what they need to do, and then it does build up. And so you – the depression and – the pressure, if you like, of not performing becomes high. There's issues of – I mean, as a small business these are very different because the family home and probably intergenerational home is on the property. They're a member of that local community. The fact that they're not doing well – maybe picking up on something Mr Wheatcroft said, you know, compared to others is putting pressure on them as well. So all of those impact.

So often the people who come to us who are at the very end and have been through probably some form of mediation or been through FOS or some other mechanism, they've reached the end of their tether, and you can see quite often that, you know, depression is certainly present amongst other things, and that makes it then a very difficult circumstance, you know, for the farmer to deal with. And the bank, I think, picking up again what Mr McMahon said, I mean, the banks need to appreciate that as well. And I think they are trying but, generally speaking, I don't think that they are equipped to deal with that. Similarly, they've got business decisions to make themselves. And so you've got this really difficult circumstance of personal issues, business decisions being made by the lender at that time, and it just becomes very difficult then for all involved.

MS ORR: And Mr Wheatcroft, how do rural financial counsellors assist in those circumstances?

MR WHEATCROFT: If we exclude the people who – the exceptional cases, because I think that's slightly different – in the general terms, by calming the situation, by mapping out against the Harvard's Business Planning Framework is what – the way to look at a business, the opportunities in the risks, the values and how they look at a future forwards. People calm and they clarify what it is they're trying to achieve and at that point they will make good decisions. It's actually – you know, I reject the notion that people are actually – they're the poor decision makers. It's not. Many of these people make very good decisions but the – the effect of the stress over years has actually diminished their capacity to make good decisions, as it does all of us. We know that from psychology. There's also a large amount of antidepressants into the rural community, I know, by the pharmacies. All of that builds into the problem of restricting that clear decision making.

MR DAY: I'm sorry, Ms Orr, if I can just add – I mean, in terms of people coming to us, you know, they obviously want someone to help, and they – to a certain extent may say they want someone to protect them. And the problem – and I'm not seeking sympathy, but the problem for ASIC is very little – as I said before – we can do. What we do want to do is refer them to those services that might help put frame works around them to help them make decisions and engage with issues at hand, and that will be rural financial counselling, that will be personal counselling as well, that will be to fund mediation and those services.

Now, often people don't like us telling us that, they want to see something else out of what they see as the banking regulator, but the best thing for a lot of them that we can do is put them to those valuable support services, so that they can actually get frameworks and making better decisions around them, because at that time they probably can't do that.

MS ORR: Mr Wheatcroft.

MR WHEATCROFT: May I flag at that – at the moment of difficulties, those – it would be interesting to know how many of the cases had receiverships involved out of the ones that complained to you, because the act of putting in a receiver never benefits a client. Absolutely categorically say that. I actually think in most cases it doesn't benefit the bank, and I suspect something else occurs: the banking decision to put them in may be driven by something else. They may actually think it's the independent person that will do the right thing. I'm uncertain, but I wonder if the Commission couldn't look at why receivers are put in, as opposed to the receivers in practice – practice of receivership.

It is – there is nowhere to go once the receiver is in. And in terms of values, farmers will see that hard-earned money, farm, asset, disappear under a receiver like you've never seen. They would perceive the money is absolutely wasted and I would be hard – with my background from either the farming or the business management – to say that's not correct. There's as massive destruction of value. And that sits deeply with people, Commissioner.

THE COMMISSIONER: We will be better off, ladies and gentlemen, I think, without the commentary. Let's just get on. Yes. Go on, Ms Orr.

MS ORR: Can I turn now to specific aspects of banks' practices in relation to lending to farmers. Can I start, Mr McMahon, by asking you: by the time you become involved in disputes between farmers and banks, do you often see default interest having been charged on the farmers' facilities?

MR McMAHON: Yes, Ms Orr. There's – it does depend on which bank is involved. Some banks tend to use interest as – high interest charges as a – as a tool in their – in their weaponry, if I can term it like that. It's an encouragement for people to – to address issues. I often see it as a self-fulfilling prophecy. When they – when someone is in difficulties, the last thing they need is higher interest rates, and so it – it certainly does depend on the bank. Some banks charge higher interest rates on the whole facility, if it's – if it has got out of order. Others will charge higher rates on the part of the facility that's out of order. So, for example, they might continue to make payments on a term loan, and increase the overdraft facilities, which is out, and charge the higher rates on those. It really depends on the matter.

MS ORR: And what sorts of rates of default interest have you seen?

MR McMAHON: Well, I have seen rates of up to 16 per cent but, you know, most – most banks will have a higher rate in any event for agriculture than what it would be for normal loan. Small business loans attract a higher rate. And, look, it does vary from – not only from bank to bank, but also from client matter to client matter.

MS ORR: And do you see instances of banks using the amount of default interest that's being charged as part of the leverage to resolve a dispute with a farmer?

MR McMAHON: I certainly see it with – with mediations, they will use it as a carrot and stick approach. "If you achieve certain milestones, we will rebate the default rates." If you – so that's a type of approach that some of them do use. Others will say, "Look, we will just rebate all the interest rates from now on and we won't charge you – from – from certain time when – and then – and then won't charge any default rates on the facility." Certainly when they're in – during a deed of forbearance, normally the facility generally should be regarded as being back within order but, you know, it really depends on the particular bank.

MS ORR: And Mr Wheatcroft, do you see banks charging default interest in clients who come to you?

MR WHEATCROFT: Absolutely, because banking – from banking mindset, the way they tell a customer that they're actually getting at risk is by increasing the interest rate. I actually think it's part of their language. So I don't think it's – yes, absolutely, they do. The – and it makes it difficult for farmers, of course, because if you're in difficulty, the one thing you're trying to do is reduce your expenses. So that would be correct, as Mr McMahon has mentioned.

MS ORR: And, Mr Day, does ASIC have any views on whether or not it's appropriate for banks to charge default interest?

MR DAY: In terms of whether it's appropriate or not, I mean, that's down to the terms of the contract and the lending contract but what we do see is that it's very difficult for – and the common complaint to us is that the borrower can't get a reconcilable statement about how the bank has constructed those default and penalty rates in the first place. I think then what becomes very frustrating for the borrower, certainly when they get to a mediation or negotiation point, is that seemingly then the default and penalty rates have changed and lowered so there's a question about whether or not they were real in the first place anyway.

So that's that question of leverage: is penalty and default rates being applied as some form of leverage point to get, if you like, the farmer or the borrower to behave in a way that the bank does want? And yet it's still surprising to us, often when – you know, the things that are shown to us that a bank which is in the business of providing statements of account seems to have problems, you know, creating a defendable, reconcilable statement about what actually is owed. But I pick up the points that Mr Wheatcroft and Mr McMahon said as well.

THE COMMISSIONER: When you speak of banks using default interest as leverage, leverage to do what? It's hardly going to be – is it to get the farmer to work harder? The farmer is working hard. So leverage to do what?

MR McMAHON: If it's in – if it's in a process of being in a deed of forbearance, to achieve reduction in debt or to – to sell a property.

THE COMMISSIONER: It will almost always be realise assets, won't it?

MR McMAHON: Almost always, yes.

THE COMMISSIONER: Because otherwise how is the debt going to go down?

MR McMAHON: Well, just getting back on one of the past comments – I think it was Mr Wheatcroft – was talking about when the – the property – with the timeliness of providing funding and the like, if – we've seen circumstances where the – for one unknown reason a bank has left one customer, who is in similar circumstances to another, hasn't taken action, and – and in that particular matter, both – the bank was saying to both of them, "Look, we've got concerns about your viability." And they had actually offered both mediations, and one wasn't able to proceed due to illness, but there was – bumper crops happened over the next 12, 18 months.

The fellow that – the farmer that was forced into the mediation in that, he has had no other option, he felt very – felt that the – it was very unfair him going into mediation when he had a good crop, and the irony is they had been through years and years of poor crops, the good crop and then for the next two years there was actually very good crops. And the farmer that was able to not go into mediation and manage his affairs and not have to be forced to sell, he ended up coming out the other side very well. He had a very, very good return for two or three years, sold one property, had the other property debt free, and had much money in the bank. Whereas the other client has felt very much – he has been – felt it was very unfair that he wasn't able to take opportunities when for years he had suffered through the droughts and then there was an opportunity to get through, and they all see one another. They – you know, you could live 50 mile away from one another and they all – everyone knows everyone in the area and they see how things are progressing, so it's - - -

MS ORR: Mr Wheatcroft, can I ask you some questions about property valuations.

MR WHEATCROFT: Yes.

MS ORR: For what purposes do banks use property valuations?

MR WHEATCROFT: To determine a level of borrowings for the – the amount that they will lend as security.

MS ORR: And who generally performs the valuations?

MR WHEATCROFT: An independent valuer paid for by the bank and – paid for by the borrower, and the valuation goes to the bank.

MS ORR: And Mr McMahon, have you observed instances where property valuations have been prepared not by an external valuer, but by one of the bank managers?

MR McMAHON: Bank managers, yes.

MS ORR: And in your view, do valuations prepared by people internal to the bank who are managing the origination of the loan pose any risks?

MR McMAHON: I think the risk is that the – that the "valuation", in inverted commas, will be to assist the loan application as opposed to being what may be an accurate reflection of the value of the property, and there certainly is that risk, because the manager is likely to be getting some incentive out of the loan.

MS ORR: Now, Mr Wheatcroft, you said that the borrower pays for the valuation. That's right?

MR WHEATCROFT: Yes.

MS ORR: In your experience, do banks typically share the results of the valuation, the valuation report - - -

MR WHEATCROFT: It would be.

MS ORR: - - - that the borrower has paid for with the borrower?

MR WHEATCROFT: It would be untypical for them to share it. It does happen on occasion, but it's not normal, and the response normally is that it's just the bank's valuation.

MS ORR: And in your view should the banks share the valuation with the customer?

MR WHEATCROFT: I wouldn't use the word "should" but I would say it would be valuable to have, at the point when negotiations are occurring at the end – almost before a receiver or things are finishing, for – the more understanding and clarity and transparency that is available at that point the better in those negotiations. The more a farmer understands what the bank is thinking and why – how they're making their decisions, I think, is beneficial.

THE COMMISSIONER: So why not "should"? You said – you stopped short of saying "should". Why?

MR WHEATCROFT: It's only because I'm telling someone what to do, that's all.

THE COMMISSIONER: A lot of people doing that to me at the moment.

MR WHEATCROFT: That's all, Commissioner. It would be very useful to have it.

THE COMMISSIONER: But what's your view? Is it that the bank should do it? It would be wise for the bank to do it or it would be better for the bank to do it?

MR WHEATCROFT: So I have a slightly larger – in the overall issue, I think there are times when banks carry people through. In Western Australia there is no doubt, at the second year of a drought with no sign in sight of it breaking, that you would not want new valuations done at the moment. Properties that are put up for sale at the moment won't sell. So the bank carries that. I'm unsure if they have to have valuations, but as I – my observation is the banks maintain that land value so that they don't default their whole book. So I wouldn't want to interfere with those processes where I think banks act responsibly.

I don't have the view actually that banks, you know, don't work with farming largely. They do. The problem occurs when things go wrong, and as we've said, the timeliness. But overall, I think the issue of valuations should be generally – I think we – the bank is the one risks the money, so I'm okay – basically, you know what your value is anyway as a farmer. So it's not arguing strongly it should be – because if there – there may be an unintended consequence, Commissioner, of forcing it out into the open, in which case the bank would need to withdraw money, and I think that's – that's a risk. That's all.

MS ORR: Mr McMahon, do you want to comment on that? Do you see banks maintaining the land value in those difficult times, or do you have a different experience?

MR McMAHON: In – in respect of maintaining the land values or the - - -

MS ORR: Yes. And refraining – I think what Mr Wheatcroft is saying that the bank is refraining from getting a valuation in those periods. Is that – is that what I understood correctly, Mr Wheatcroft?

MR WHEATCROFT: I wouldn't want to be responsible for saying the bank should get new valuations at those moments.

MR McMAHON: I find one of the problems with the – with talking about valuations and if – if the problem has arisen because of a collapse in commodity, properties are likely to come down in value because of – because of the commodity collapse. And that's not going to be a long-term thing. It will turn around when the – when the industry recovers. And that is – we've seen it in the sugar industry in Queensland, we've seen it in the beef industry, now there's record prices for everything. And the interesting thing with the beef – when the beef industry picked up, the values across the board picked up.

And the – when – if banks are tightening their lending, making it more difficult for people to sell in that, because other people can't buy, that in turn devalues the area and the whole property market becomes deflated. And the – there is no – no one wins in those circumstances, because if the farmer's being forced to sell, often they can't sell and they take years to sell. And if we've been through mediation, we've got to go back and get extensions on the deeds, and that type of thing, because people just cannot sell. And so the bank is partly responsible for that whole valuation decline, because there's so many forced sales coming on at the same time. And relying upon valuations is – I think it should be more important as to the capacity of the business to manage the debt when values are low, rather than what the – the values are at that particular time.

MS ORR: Mr Day, does ASIC have a position on whether banks ought provide copies of property valuations paid for by the borrower to the borrower?

MR DAY: ASIC thinks they should. I mean, we – I think I note the Code of Banking Practice now says the banks will do that and I think they should do that. But my personal view is I really question the point of valuations generally speaking anyway. They're only a snapshot at a point of time. As Mr McMahon says they're impacted by so many different things, you really have to question the value of them. And that doesn't matter if it's in the hands of a borrower or in the hands of the lender. A borrower will always have a very sunny side up view of what the property's worth and its prospects going forward. A lender will change its view depending on a whole range of other circumstances, depending on what it is.

In fact, you know, the arguments that I've seen caused just by disagreement about valuation and the valuer, the valuer's experience, knowledge of the market, all of those – it nearly creates a fight for no reason other than just there's a document. I just really personally question the value of valuations in the first place.

MR McMAHON: In that – when the beef industry was really in difficult circumstances, particularly in North Queensland, valuers were finding it very, very difficult to get – to do a proper valuation in any event because of the – there was no historic sales around that would be relevant. And so at mediation, a lot of the times the banks would say, "Look, we don't really want to rely upon the valuation, because they're a historical snapshot. What does agents say they could get for these properties?" And quite often the agent would say they're unsellable in that current market. And that's where I'm talking about that patience is needed by everyone, I suppose, but certainly by the bank to – to see that forcing people out in those sorts of environments is just creating a disaster for everyone, including other bank customers, because they all seem – will be falling into that same category. If they're – if they're using LVR type loan structures - - -

MS ORR: So a decreased valuation can result in a breach of an LVR covenant - - -

MR McMAHON: It can, yes.

MS ORR: - - - on the loan. Are non-monetary defaults, whether caused by a valuation or caused by something else, a common issue in farming disputes, in your experience?

MR McMAHON: They can be. I think the major one would be that the – that the existing facilities are out of order and the bank has decided that they would like it paid back, or they want it – they want more – a lot of the facilities give the banks the discretionary powers to ask for money back, and in circumstances where it's difficult, it's almost impossible. The – I – adverse material, the change of use, and that type of thing, there certainly was an issue with the dairy industry years ago. Some – there has been farmers who haven't asked their – their facilities are in order, but the bank is still proceeding with mediation and wanting them to exit, wanting to end the relationship.

So it doesn't necessarily have to be even breach. They can just have the decision that, "We no longer will renew that facility." And because the overdrafts can be reviewed annually, that gives them the option to do so. We've often seen where the loan facilities might have a function in it where the bank has got a discretion to ask for a large capital payment back, and there's no possibility of that being able to be done without the sale of the farm. We've even seen where farms have – farmers have gone and asked for loans to purchase a new property.

The bank says, yes, they will fund that. When the – the loan documents arrive, it says, "We will fund you to purchase this property, but part of the condition is you've got to sell another property." And that hadn't been discussed with the – with the farmer. The farmer had already committed themselves to the contract, because they were basically told their finance would be approved. So there are all sorts of ways in which the facilities can be clawed back.

MS ORR: And Mr Wheatcroft, in Western Australia, do you see instances of non-monetary defaults being relied on by the banks?

MR WHEATCROFT: I initially thought the answer was no, but – and it's not a general practice, but the Landmark case is a case in point where they – Landmark valued their – they used to include machinery and livestock in their valuations. When it went to ANZ, ANZ excluded them, so almost certainly most of those loans were in default. They certainly weren't – they – they weren't done in a way that ANZ did them, which I think fed into the problem ANZ had in dealing with them.

And we saw people – you have to question people when they take out a loan in one year and it's clawed in within 12 months. To me that's a trigger that something's going wrong in that situation.

MS ORR: And Mr Day, the complaints to ASIC, do they tend to involve non-monetary defaults?

MR DAY: Generally, they involve a monetary default, but the clause or the term that might be relied on might be a non-monetary default, but in the matters we've seen – and, again, it's a very small sample over a 10 year period, we've seen monetary default in the majority of those. We've also seen where the monetary default may have been caused by the borrower needing to pay for an independent accountant's report, or effectively then a valuation as well, and that has helped to exacerbate the situation to get to that point. But the majority of – far and away the majority of them are monetary defaults.

MS ORR: Commissioner, I see the time. I have a couple of topics left to deal with, with the panel, but this might be an appropriate time for a break.

THE COMMISSIONER: Yes. 2 pm.

MS ORR: Thank you, Commissioner.

THE COMMISSIONER: We will adjourn until 2 pm.

ADJOURNED [12.59 pm]

RESUMED [2.00 pm]

THE COMMISSIONER: Yes, Ms Orr.

MS ORR: I would like to ask some questions now about farm debt mediation. Mr McMahon, you have participated in many farm debt mediations. Could you please comment on the process generally, and whether you think it's useful?

MR McMAHON: Yes. I have participated in many farm debt mediations. The process – when it was under the Queensland Farm Finance Strategy, the philosophy behind the strategy was early intervention, and to negotiate – trying to negotiate with the bank and the farmer. And if they entered into an agreement, then if there was default under that agreement then the farm debt mediation would be offered. That was the idea and principle. The mediation was to be offered before enforcement action was taken, which was either going to court, appointing receivers, taking possession of the properties. The – prior to that there was – it was simply nothing that would – could prevent a bank, after it issued its notices of demand, from taking possession.

So the mediation process has been very, very important. The – the – I suppose the difficulty is with it is that there is a significant power imbalance, and the – when you're going to mediation, the – obtaining the information from the bank is – is extremely difficult. Particularly relevant information, if you have concerns about the veracity of the loan, or that certain actions that the bank may have taken during that – that are concerning to you, often that information just doesn't become available. The – under the old strategy, there was no overarching body that you could go to and – and make a complaint, and – or there was no way of even enforcing any bank to go to mediation. There was a bank that simply refused to mediate for a while there.

The – so the process did have its flaws, but the early intervention part of the process was very good. With the introduction of the new Act in 2017, the – there has been a more strident approach to the mediation. It certainly is much more – there are steps that have got to be taken. There is provisions in – in the Act for the bank to provide certain documentation. Probably not as much as we would like to have. In fact, when – when the bank does provide all the information, and all of the information is there for the client to see, if it's not in favour of the client, at least the client can see that – that the bank hasn't been doing the terrible things that – that the farmer thought.

However, on the occasions when there are concerns and the bank does provide that material, it's – it address – it enables all the parties to negotiate on a far more equal footing. And so that power imbalance is reduced. With the new Act, the – there is QRIDA, Queensland Industry Rural Development Authority . It's the authority that looks after the administration of the Act, and the Act does provide that the – all mortgagees – so it just doesn't – Queensland farm finance strategy was really only banks that decided to sign up to the strategy, whereas, this – it's all mortgagees. It doesn't matter whether you're a credit union or a private lender or a major bank: you're all captured by it.

And the provisions – if you don't mediate, then the Act does provide for penalties for that. So the – but the mediation – it also provides that parties must act in good faith, and the – the process, if it's operated correctly, it – it's a very good process, certainly much better than what was available before. I can say that some people feel that they are under duress to reach an agreement, and the reality is that if they don't reach an agreement – but that the bank has acted in good faith – then the bank can apply – the mediator signs off and says the – there was a satisfactory mediation.

Then that form goes to QRIDA and QRIDA issues a show cause notice to the farmer and says, "Is there any reason why I shouldn't issue an enforcement notice so as the bank can take enforcement action?" So clients feel that they must get an outcome. There's no obligation on them to reach an outcome, but the reality is they – they've got to take a commercial decision. If they don't get an outcome, their only other option would be to go to court, because they can't go to Financial Ombudsman

Service, there's no other sort of services around. So the – and the fact of people going to court is just completely out of the – the question for the vast majority of people that would be under financial stress.

I have actually approached – tried to seek other organisations – organisations that might fund some of these actions for public interest. It's difficult to get lawyers that have got – that aren't conflicted out, that have got experience in the banking industry, that aren't conflicted out with acting for clients in these matters. So in the absence of that, and I've only – I don't – I've never had a client that has been able to gain any traction that way – the clients have to make the commercial decision, "Will I enter into an agreement?" Or the – the worst – the result is that if they don't enter into an agreement they run the risk of the bank taking enforcement action.

MS ORR: Mr Wheatcroft, Western Australia doesn't have compulsory farm debt mediation, but you have participated in the voluntary scheme within Western Australia; is that right?

MR WHEATCROFT: That's correct.

MS ORR: And what are your views about the effectiveness of that voluntary scheme?

MR WHEATCROFT: The most effective aspect of it is that it's early. It doesn't wait for the letter of demand, so it can – either party can bring it, with agreement of the other party, to debt mediation early on. It also enables – the people who run it, Small Business Development Corporation, have previously run small business debt mediation and they realise the importance of having someone assist the farmer going through their documentation and actually understanding their position. And they immediately involve us, the Rural Financial Counselling Service. And as I've noted, 90-odd per cent of the cases are solved before it actually gets to formal mediation, because it – yes, engages people early and it starts the conversation – restarts the conversation.

MS ORR: In your view, why is it important to engage people early?

MR WHEATCROFT: I think that notion we described earlier of people toughing it out, taking a position and trying to defend it, often leads to a lack of communication with the bank. And the bank – from the farmer's point of view, the bank sends a lot of letters of which none of them really seem to matter. That's incorrect, because the bank is following a legal process that has an end point, but I think very often – the bank's views are somewhat dismissed by the farmers, because it's not part of – behaviourally, they've had letters that don't matter, in a sense, so it restarts the conversation and lets them hear the bank's point of view.

MS ORR: Mr Day, does ASIC have any views on whether farm debt mediation is a process that should be applied in all farm finance disputes?

MR DAY: ASIC supports external dispute resolution at all times in these types of matters. We can see from farm debt mediation, it has a number of strengths. It seems to be a more personal face-to-face process, and that obviously is beneficial. Obviously, the farmers want to be listened to and be dealing with people who understand farming issues. So that seems to be a big benefit. Also, as Mr Wheatcroft said, this ability to call that type of mediation or, if you like, the precursor to the mediation on earlier is obviously advantageous. So rather than it being, you know, a dire circumstance and, at the end of the process, having it earlier is obviously a good thing.

What we've also seen – what we have seen, though, is that the interrelationship or the interaction between farm debt mediation and FOS – the Financial Ombudsman scheme – which the big banks all are a member of – there is a problem sometimes between interaction of those two. So if the certificate for denoting the end or signalling the end or completion of the mediation, farm debt mediation has been issued, we have seen cases where FOS will not look at the matter at all. We think that's a shame, because mediation – farm debt mediation is just that: it is just mediation. There is no arbitration that follows, as part of that process, as part of that scheme. Whereas, obviously, FOS has a mediation component, albeit its mediation component by and large is on the telephone, which we think for farming circumstances is probably less than, you know, advantageous in that, and farm debt mediation, as I said before, has advantages in that respect.

But in circumstances where the mediation is not successful, and the parties can't come to an agreement, the matter can move then to arbitration in the hands of FOS, as the ombudsman scheme, and that has real benefit. And we have seen instances where the farmers – and, again, this may be the only time and hopefully the only time in their life they have – they are involved in these types of issues, and they don't understand that, and don't understand how those two things don't interrelate properly. Again, one is either a voluntary scheme or state prescribed scheme. FOS is obviously in relation to licences at a federal level and they don't actually refer to each other or interrelate in a way that's advantageous to the borrower.

MS ORR: Mr Wheatcroft.

MR WHEATCROFT: One more point one of the reason it works is because it brings the level of person into the room that can make decisions. So the banks almost – I think they have the person handling it, plus someone to review what they're doing, and that level allows a greater decision-making capability.

MR McMAHON: The advantage of mediation is also that the farmer has some control over what's happening, and is able to negotiate in that outcome, where they both will have some compromises to reach an agreement, and it's far better for the farmer to be participating in the process than sitting on the sidelines. And – and, you know, they can be determining what the future is going to be in their – it's in their hands as well.

MS ORR: You've annexed to your statement, Mr McMahon, a table showing the number of farm debt mediations that your unit has participated in over the last 10 years. That's at RCD.0024.0019.0021. That will be on the screen now.

MR McMAHON: Sorry, yes – yes.

MS ORR: Can you explain this table? Does this relate to formal farm debt mediations or to instances where the farm debt mediation scheme is invoked that might resolve prior to a formal mediation?

MR McMAHON: These would be the farm debt mediations that have actually taken place. That doesn't include the number of mediated agreements – sorry, if agreements outside of mediation.

MS ORR: Yes, I see.

MR McMAHON: Yes.

MS ORR: So we see there that from 2008 through to 2018, your organisation has been involved in 224 farm debt - - -

MR McMAHON: That's correct, yes.

MS ORR: - - - mediations. And the entity that you've dealt with most in farm debt mediations is ANZ, 60 of the 224.

MR McMAHON: That's correct.

MS ORR: Followed by NAB at 53 of the 224.

MR McMAHON: Mmm.

MS ORR: And the largest numbers of farm debt mediations appear to have been in 2014 when your organisation was involved in 63 farm debt mediations. Are you able to offer any explanation for that spike in farm debt mediations in that year?

MR McMAHON: When clients are offered mediation, often the events have happened several years before.

MS ORR: Yes.

MR McMAHON: And it takes a number of years for them to filter through the system before they're coming into farm debt mediation procedures. And if you look back, 2010 is when there was the – the Millennium Drought was broken, there was the floods. 2011, we had the live export ban. And then on – I'm sure 2013 we had the significant floods again. There was – and funnily enough, the floods – the flooding events were much more catastrophic to a lot of businesses than the drought.

The drought sort of lingered on and – whereas the flooding events or cyclones, whatever, really just came in and smashed crops and livelihoods.

So I think that the spike would have been as a result of – when the – after the rain, after all those years of drought, properties were by – a lot of times were unsellable, after the rain – when they would be able to grass up and whatever, I think banks took the opportunities to say, well, these – these properties were marketable again. And unfortunately, during some of these periods, clients found it almost impossible to sell some of the properties, yes.

MS ORR: And what, if anything, should we make of the representation of the ANZ figures here? So I mentioned already that they had the highest number of participation in the farm debt mediations. That applies in that year, 2014 as well, with 23 of the 63 farm debt mediations in 2014.

MR McMAHON: Yes. Well, some of those ones that are under the banner of ANZ would have been ones that would have been previously a Landmark file that had been transitioned over to ANZ.

MS ORR: Yes.

MR McMAHON: And others would have – would have been just the ANZ customers, but I haven't done an analysis of that. It would take some time to – to go through that.

MS ORR: Yes. And farm debt mediations can result in a deed of forbearance being entered into between the farmer and the bank.

MR McMAHON: Yes, generally speaking they do, yes.

MS ORR: Can you explain what that is, what a deed of forbearance is?

MR McMAHON: Well, it's an agreement between the parties that during – whatever the negotiated period is, the bank will forebear from taking any enforcement action and the parties will agree to – whether it's sell, refinance, sell part of the property, and refinance, or sell everything, there's generally given timeframes to – to fulfil these particular functions, and at the end of the day, if they haven't fulfilled them by that – by the expiry date, then it's up to the parties to whether they can extend it, the banks – it's really up to the bank whether they're prepared to agree to extend the facility, or to – or the bank will take possession.

MS ORR: And in your experience, to what extent do farmers have a say in the terms of the deed of forbearance?

MR McMAHON: The farmers aren't told they must sign. It's – it's – it ultimately is their – their decision as to whether to sign or not. But the timeframes, generally speaking, the farmers are wanting more timeframes than the banks are prepared to give, and there's a lot of argy-bargy negotiating in relation to those things. If you have a look at the valuations, the valuations will often say what the estimated market – marketing – normal marketing period for a type of property, and for example, the further west you go, the – the longer the marketing period will be, because by the very nature there will be fewer and fewer buyers the further west, for both having the – the financial backing to be able to purchase them, and also the capacity to run properties out there.

So each area has a different marketing period, and the – often, the banks aren't prepared to consider that length of time for the forbearance period. And that's – it's an extremely stressful period for the farmer because they're under a stress to sell something which isn't the normal marketing period for the property, and they often have to take a reduced sale price in order to sell, if they can. But – but the tragedy of it all was when there was significant mediations and properties in forced sale environment, very few of them were selling and there was – a lot of extensions had to happen. And this has some – as property prices improved, it's enabled the – some of them – most of them to – to have sold.

That – sorry, one of the reasons – one of the things that we did mention about in submissions was that the – the difficulty in people getting refinance in the circumstances if they're under – either a deed of forbearance, asset management, if any of their facilities are out of order, most banks – in fact, what we've been told by finance brokers and the like is banks don't want – don't want to look at another bank's problem. So unless the bank and the farmer can negotiate to get the facilities back in order by renewing or restructuring the facilities, even during the forbearance period, to – so as the facility is trading within their limits – if there is that option available, there is a possibility of a refinance, or if a property – part of the property is sold, then – then refinance the balance debt. So there is that particular problem that you have to consider when you're looking at negotiating outcomes.

The other thing is if a bank is prepared to do a debt write down, the other banks won't look at them. And some of – there may be one or two of the – not the big banks, the others that may look at a refinance in those sorts of circumstances. This is all information coming to me by finance brokers and clients and accountants, and rural financial counsellors. And the – if the – if a bank says, "Look, we're prepared to take a hit to get out," then trying to refinance that debt to another institution is very difficult, even if there is full capacity of the business to manage that written down debt. So there is a – a place in the finance world that really needs to be looked at.

If banks are prepared to give debt write-downs, then someone needs to take them on. Whereas, before the GFC, it was a fairly common occurrence that – when we were negotiating – and frankly, before 2008, we did very few mediations. Most outcomes were negotiated, and there was a lot of debt write-down. Other banks would go and take them on. It wasn't an issue. But since GFC, it has been a major problem. Is that answering - - -

MS ORR: Yes, thank you. Mr Wheatcroft, can I ask you if you could comment on the first – on the question I asked, and any other part of Mr McMahon's answer then, the question being the extent to which farmers have a say in the terms of a deed of forbearance?

MR WHEATCROFT: Not suggesting anything that's said wasn't correct, but in addition to that, anecdotally when you're offered a deed of forbearance the bank is saying, "We could take your property but we are going to put on hold that if you do certain number of things." So farmers really need to sign it if they want to continue farming. It's a very simple decision for them. I have seen it where they've taken those – the deed of forbearances off to a lawyer and paid $10,000 to get back a complicated explanations, but of course doesn't simplify it for a farmer, because it's in legal terms anyway, and deeds of forbearance actually just reinstate the bank has the right to everything that it is already enabled to do under the loan agreement.

So in one sense they're good for the farmer, because they allow the debt to be put on hold – well, not the debt on hold, actually, they simply allow – the bank is prepared to finance them for a period of time while that sits and they're holding forbearance their action. In WA it almost always is part of an inevitable path to people leaving, but it can be – and we have seen the bank write-off money, and other banks take them on in WA. I think it relates back to what I said about structure of banks and who is trying to build their book at any time and who is trying to reduce it. But as such, deeds of forbearance for farmers, really, they give them – they give them – just the offer, "Do you want to continue or not?" That's how they see them.

MR McMAHON: I was going to say one of the other issues that needs to be considered is that deeds of forbearance shouldn't be used for the bank to improve its position. It has already got significant – you know, all of the information that's in the – in the contract itself. So when they're improving their position by insisting upon additional material being put in there, I think it's grossly unfair. But the – often, it's not even a deed of forbearance in that it might – it could be just a very, very short agreement. But - - -

MS ORR: Mr Wheatcroft, Mr Day before referred to the interaction between farm debt mediation and FOS. In your view, is FOS an effective body for determination of disputes between farmers and banks?

MR WHEATCROFT: Largely, where it fits, it is. But FOS has limited scope and limited ability to reimburse for the – for the farmer to receive compensation. But it is – we like it, because it enables people with no resources, no money, to actually have, in a sense, someone look at their situation. So we strongly support it.

MS ORR: And Mr McMahon, what do you have to say about the effectiveness of FOS?

MR McMAHON: Our service doesn't directly become involved with the – well, hasn't to this date been directly involved with FOS, for very reason that the – if the clients have been to mediation, they don't – they won't look at it. The – and the jurisdiction is – is quite limited. Most farmers just wouldn't qualify for it. There are a limited number of matters that – where clients have gone through other services, they have commented that they would – not sure whether FOS understood the nuances of – of rural lending, and rural businesses.

It's totally different to selling a house in town. You know, there's all sorts of different issues that need to be considered when you're marketing a rural property, timeframes, and also about the – the – even if – with cash flows, understanding that a cash flow may not necessarily reflect the business that they're lending into, and having that sort of information, that knowledge, would be important. But I certainly – I think from – if we're – if clients aren't satisfied with the outcome at mediation, having them – an option for them to go somewhere else, I think, is absolutely necessary. It would give both parties, in a sense, to get a resolution.

MS ORR: Mr Day, in your role and in the review that your team has done of the complaints that have come in from farmers, have you discerned any change in the way banks deal with farmers in default in recent years?

MR DAY: You can see, certainly, the number of matters that are coming to us are – are smaller in recent years, and that reflected in the type of material in Mr McMahon's exhibit that you displayed before. In terms of change of approach, change of behaviour, it does seem to be a slight – increased tendency to want to negotiate and work that through, but have I seen that as a change in stance in terms of the haste at which receivers are appointed, or other – other options are, you know, considered by the banks? I think the answer to that would be no.

MS ORR: Mr Wheatcroft, have you observed a change in recent years?

MR WHEATCROFT: Absolutely, regarding a couple of the Landmark case. ANZ have actually resolved virtually all of the difficulty – all of the continuing difficulties with farmers that are still operating. The – the ones that have already exited the industries, that – I presume they're not resolved properly. But, yes, certainly they changed – in fact, I would say the notion there might have going to be a Royal Commission has actually influenced the banks to think that they might sort this – to pay more attention to it from a higher level, yes.

MS ORR: And Mr McMahon?

MR McMAHON: Yes. Look, there has been certainly a great change, and Mr Wheatcroft mentioned ANZ. ANZ, you know, implemented a moratorium – I think it was 2015. Any property that was in a drought declared area, they didn't take any enforcement action. They extended that for 12 months. And also they are – they have supported customers, whereas in the past they may not have done so. They've certainly been far more cooperative and conciliatory with customers and negotiating outcomes than – than what had been the case before.

MS ORR: Can I finish by asking one question that I would like each of you to address, perhaps starting with you, Mr Day. If you could fix one thing in relation to agricultural finance and the problems that we've been discussing, what would it be?

MR DAY: I think it's the matter I raised before. I think the position of farm debt mediation is great, you know, compared to the approach FOS has taken to mediation in terms of it is face-to-face, it does involve people who understand farming, and I think that has been good. I think the movement from FOS to AFCA is – is welcome in terms of the increased jurisdiction and a defined set of terms around lenders to primary producers, but I would like to think that that interaction and interrelationship between farm debt mediation and the ability to access arbitration through AFCA could be, you know, sorted out. But to a point that it gives, if you like, a best of breed response I wouldn't like to see you have a national scheme that might be administered in the same way FOS has done mediations to date.

I think taking the benefits of the state systems that exist, whether they voluntary or compulsory, so that there is face-to-face mediations involving farmers, and people with experience involved as those mediators, I think, would be a welcome change. So I think the interaction between the two systems, if you like, or schemes, I think there should be some work done to improve the circumstance, because both of them will have benefits, but I think if they're working well together, then it could be an increased set of benefits.

MS ORR: Mr Wheatcroft.

MR WHEATCROFT: I would say that in WA most businesses are profitable, overall. The ..... bank lease benchmarks that I have tendered show that. I calculated the amount of destroyed value in the clients we deal with over the period they have when they're in difficulty to when they exit, and so every billion dollars of value gets destroyed during that period. And that's because there's something about the time it takes and the way it's done. I would – I would like the Commission to examine whether or not the appointment of receivers achieves what the bank thinks it does. I – I suspect, actually, the banks don't realise – haven't really looked at it, and it certainly doesn't support a client. I know of no case where it has worked.

So if I could have – put up an issue, it would be about how receivers are used. If the Commission can't look at receivers themselves, that's fine, but let's look at how they're used and whether the banks actually intend them to do something that's fair. It was said earlier, outside of this, that those receivers work on behalf of the clients. And I had to admit that I had never come across that notion. It is outside my experience that that is actually how they operate, so I suggest that perhaps there's a misconception – well, I just put it up as an issue to be looked at.

MS ORR: Thank you. Mr McMahon.

MR McMAHON: I'm – I keep on going back to what clients keep on telling me about the unfairness of facilities being able to be, at the bank's discretion, changed.

And they have great difficulty in – in – well, everyone would have great difficulty, if they're at the end of – if they're the ones that are the subject of those changes, where one side can unilaterally change the conditions in the – in the agreement. And if those facilities – if it's unfair in – as the public would see it, then it would be – if this was a – you know, special little thing to be able to have – and I don't know how we could ever rider this – but to have some ability for the fairness and the reasonableness of the actions to be considered.

Legally, they can do, under their documentation under the loan contracts. But, you know, with the change – it would have to be requiring a change of philosophy within the banks, but also probably law, that a fairness and reasonableness be taken into account in relation to bank action, and I think clients would be far more comfortable with outcomes if they knew what – that it was fair.

MS ORR: Thank you very much. I have no further questions.

THE COMMISSIONER: Any party having leave to appear seek leave to ask questions of any of these gentlemen? No. Gentlemen, thank you very much for your attendance and for your evidence. It's very thought provoking. And you may step down. You're excused.

<THE WITNESSES WITHDREW [2.32 pm]

MS ORR: Would the Commission give us a few minutes to arrange for the next witness.

THE COMMISSIONER: If I come back, what, 20 to 3?

MS ORR: Thank you, Commissioner.

THE COMMISSIONER: Yes.

ADJOURNED [2.33 pm]

ADJOURNED [2.40 pm]

THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Commissioner, the next witness is Mr Benjamin Steinberg.

THE COMMISSIONER: Before we go on, I understand there has been some hiccup with the feed. I think it's working again, but no doubt people will keep me posted. If the feed goes down, we may have to stop. I think we will see where we get to.

MS ORR: I'm told there's still an issue, Commissioner. I'm afraid I don't know the nature of the issue, but perhaps we should take a brief adjournment to see if we can resolve that before Mr Steinberg's evidence commences.

THE COMMISSIONER: I will come back in any event at quarter two, but can we work out what's happening and see whether we've got a fix in view. If we haven't got a fix in view, I think I will probably have to go on. But let's see if we can find whether there's a fix.

MS ORR: Thank you, Commissioner.

THE COMMISSIONER: Quarter to.

ADJOURNED **[2.41 pm]**

RESUMED **[2.49 pm]**

THE COMMISSIONER: Try again, Ms Orr.

MS ORR: Thank you, Commissioner, I will try.

THE COMMISSIONER: It seems Mr Murphy and his law is still alive.

MS ORR: Mr Benjamin Steinberg, Commissioner.

<BENJAMIN WILLIAM STEINBERG, AFFIRMED **[2.49 pm]**

<EXAMINATION-IN-CHIEF BY DR COLLINS

THE COMMISSIONER: Do sit down, thank you, Mr Steinberg. Yes, Dr Collins.

DR COLLINS: Is your full name Benjamin William Steinberg?---Yes, it is.

Mr Steinberg, is your business address 100 Queen Street, Melbourne in Victoria?---Yes.

Are you the head of lending services, corporate and commercial, for the Australia and New Zealand Banking Group?---Yes, I am.

Mr Steinberg, have you received a summons to appear before the Commission and produce documents?---Yes, I have.

Do you have that summons with you in the witness box?---I do.

Commissioner, I tender the summons.

THE COMMISSIONER: Exhibit 4.7, the summons to Mr Steinberg.

EXHIBIT #4.7 SUMMONS TO MR STEINBERG

DR COLLINS: I was waiting for a number.

THE COMMISSIONER: Exhibit 4.7 - - -

DR COLLINS: Sorry, Commissioner.

THE COMMISSIONER: - - - is what I said.

DR COLLINS: Mr Steinberg, have you made a witness statement for the purposes of the Commission numbered Rubric 4-1?---Yes, I have.

Yes. And do you have that with you in the witness box?---Yes, I do.

Are the contents of that statement true and correct?---Yes.

Commissioner, I tender the statement in Rubric 4-1.

THE COMMISSIONER: Exhibit 4.8, witness statement of Mr Steinberg concerning Rubric 4-1.

EXHIBIT #4.8 WITNESS STATEMENT OF MR STEINBERG CONCERNING RUBRIC 4-1

DR COLLINS: Mr Steinberg, have you made a further statement for the purposes of the hearings of the Commission in Rubric 4-20?---Yes.

And do you have that with you in the witness box?---Yes.

Are there some corrections that you wish to make to that statement?---No.

If I might lead you. Would you have a look at paragraph 33.

THE COMMISSIONER: There are corrections you want to make to that, apparently, Mr Steinberg. Yes, go on.

DR COLLINS: I'm sorry, I'm being told it's the annexures to Rubric 4-20.

THE COMMISSIONER: The corrections Dr Collins wants to make to himself. Yes.

DR COLLINS: Mr Steinberg, your statement in Rubric 4-20, does it have a number of annexures?---Yes, it does.

Yes. And do you wish to make some corrections to statement D in Rubric 4-20?---Can I just have a look at that, please. Yes, that's right.

And is the first correction to paragraph 33(c) in annexure D?---Paragraph 33 of annexure D?

Yes. And is the correction in paragraph 33(c) to delete the number "426" and substitute the number "427"?---Yes, that's correct.

Thank you. Could you note that in handwriting and just initial in the margin. Is the next correction to paragraph 56 of the same annexure?---Yes.

And is the correction to delete the number "808" and substitute the number "2808"?---Yes, it is.

Yes. Would you make that change and initial in the margin. And in the same paragraph, is there a correction to be made in the row regarding insurance in place of the number "245" should it be the number "1245"?---Yes.

Would you make that change and initial the margin. And finally, Mr Steinberg, in paragraph 60 in the row referring to volume 2688, folio 172 - - -?---Yes.

- - - do you wish to delete the number "926" and substitute the number "936"?---Can you just give me that volume and folio again, please?

Yes, I'm sorry. Volume 60, you will read – see the words "sold together with volume 2808, folio 926", should it be volume 2808, folio 936?---I am just looking at the column parcel of McAlinden property; is that the right column for me to be looking at?

THE COMMISSIONER: There has got to be a more efficient way of doing this, Dr Collins.

DR COLLINS: Sorry, Commissioner.

THE COMMISSIONER: Get on with it.

DR COLLINS: It is the last one, nearly.

THE COMMISSIONER: Fix it. Yes. Go on. Have the witness fix it.

DR COLLINS: So in paragraph 60?---Yes.

In the row referring to “volume 2688, folio 172”, which is the bottom of page 14?---Yes, I’ve got that.

Yes. And then if you look at the top of the next page, you will see the continuation in the shaded column, the continuation of the volume and folio number?---Yes.

And is the correction to delete the number 9 – I’m sorry, not – Mr Steinberg, in the fourth column, you see “sold together with volume 2808”?---Yes, I’ve got that.

Folio 926. Should that be folio 936?---Yes.

Thank you. Would you make that change and initial the margin?---Yes.

And can I ask you, please, to go to annexure E?---Yes.

In paragraph 33, on the second line?---Paragraph 33, yes.

Do you wish to delete the month “November” and substitute the month “October”?---Yes.

Thank you. Would you make that change. And in the same annexure in paragraph 110?---Yes.

On the first line, do you wish to delete the month “September” and substitute the month “October”?---Yes, I do.

Yes. Would you make that change. Mr Steinberg, with those corrections, are the contents of your statement in Rubric 4-20 and the annexures to that statement true and correct?---Yes, they are.

Commissioner, I tender - - -

THE COMMISSIONER: Exhibit 4.9, witness statement Steinberg in relation to Rubric 4-20 and its annexures.

EXHIBIT #4.9 WITNESS STATEMENT STEINBERG IN RELATION TO RUBRIC 4-20 WITH ANNEXURES

DR COLLINS: Mr Steinberg, have you made a further statement for the purposes of the Commission in Rubric 4-38?---Yes.

Do you have that statement with you in the witness box?---Yes, I do.

Yes. Are the contents of that statement true and correct?---Yes, they are.

Commissioner, I tender the statement in Rubric 4-38.

THE COMMISSIONER: Exhibit 4.10 is witness statement in relation to Rubric 4-38.

EXHIBIT #4.10 WITNESS STATEMENT IN RELATION TO RUBRIC 4-38

DR COLLINS: And Mr Steinberg, have you made a supplementary witness statement for the purposes of Rubric 4-38?---Yes, I have.

Are the contents of that supplementary statement true and correct?---Yes.

Commissioner, I tender the supplementary statement.

THE COMMISSIONER: Exhibit 4.11, supplementary statement of Mr Steinberg concerning Rubric 4-38.

EXHIBIT #4.11 SUPPLEMENTARY STATEMENT OF MR STEINBERG CONCERNING RUBRIC 4-38

DR COLLINS: Thank you, Commissioner.

THE COMMISSIONER: Yes. Yes, Ms Orr.

<CROSS-EXAMINATION BY MS ORR [2.58 pm]

MS ORR: Excuse me just for a moment, Commissioner. Sorry, Commissioner, there is a further statement that was prepared by Mr Steinberg which will be tendered after the cross-examination, because I understand the original of it is not yet available, but it will be made available.

Now, Mr Steinberg, you’ve been put forward by ANZ to answer questions about ANZs acquisition of the loan book of Landmark Financial Services?---Yes, that’s right.

And also to deal with the way that ANZ dealt with the former Landmark clients?---That's right.

And in your role as head of lending services, corporate and commercial, you're responsible for managing the high risk loans in ANZs corporate and commercial portfolio?---That's right.

And that includes the agricultural portfolio?---Yes, it does.

And you've had responsibility for the agricultural portfolio within lending services since 2013?---That's correct.

And in 2015 you were involved in a taskforce that reviewed what you've called the high risk Landmark files?---That's right.

Now, you've provided a number of statements, as we've heard, to the Commission, most of which deal with ANZs acquisition of Landmark, both in a general sense and by dealing with specific clients?---Yes.

Former clients of Landmark?---Yes.

You've also provided a statement that dealt with a customer of ANZ who was not a former Landmark customer, and that's the statement that will be tendered, I understand, later. You recall that statement as well?---Yes, I do.

Thank you. Now, if I can deal with your statements that relate to the Landmark – the former Landmark clients. I want to start by asking you some questions about ANZs acquisition of the Landmark loan book, and then deal with some of the specific cases. You understand?---Yes, I do.

Yes. Now, Landmark was a division of AWB Limited?---Yes.

And Landmark Financial Services was a division of Landmark?---That's right.

And Landmark Financial Services provided loans and deposit services to agribusiness customers?---Yes.

And in 2009, AWB Limited approached ANZ about ANZ purchasing Landmark's loan and deposit books?---That's right.

And on 21 October 2009, after a period of due diligence, ANZs board considered a proposal for the acquisition of those loan and deposit books?---Yes.

And the board decided to approve the acquisition?---That's right.

Can I take you to some aspects of the proposal that was put to the board, and can I ask you to look at the first exhibit to your exhibit statement, which is a statement dealing with general matters?---Yes.

So exhibit 1 to that statement, which is ANZ.800.097.7082?---Yes.

Just wait for it to come on to the screen, but you can see that it's a management board report dated 21 October 2009?---Yes.

And if we turn to the first page of that document at 7083, we can see the background and strategic rationale for the acquisition of the Landmark loan book. Is that right?---That's right, yes.

And under the heading Background, we see in the final dot point that:

> *A non-binding proposal was submitted on 8 October 2009 to acquire the lending and deposit books at book value, adjusted for additional provisions, and to enter into an exclusive distribution agreement.*

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

And you see that under the heading Strategic Rationale in the last dot point, we see:

> *ANZ has the objective of becoming a super-regional agribusiness bank.*

?---Yes, I see that.

And that was ANZs objective at this time?---Yes, according to this document, I agree, yes.

Yes. And that was, as you understand it, the objective?---Yes.

Thank you. And then over the page, at 7084, we can see the opportunities that ANZ believed would flow from the acquisition of the Landmark loan and deposit books. Do you see under Strategic Rationale at the top of the page:

> *The proposed purchase and exclusive referral agreement provides ANZ with an opportunity to move ANZ to number 2 in agribusiness and improve commercial market share by almost 1 per cent, enhance our agribusiness portfolio in our targeted industries (cropping, beef, mixed livestock) and geographies (Western Australia, Queensland and New South Wales), expand ANZs rural footprint, customer reach and enrich our farm lending specialist skill base, leverage Landmark network to cross-sell commercial, retail and wealth management products, including maximising retail deposits of existing and future Landmark customers, and providing wealth management products to retiring farmers.*

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

And this is explained in a bit more detail below under the heading Business Model and Integration. And we can see there that:

> *The proposed business model covered management of the acquired portfolio and targeting the Landmark customer base. Landmark will exclusively refer customers, with commissions paid by ANZ, at a rate which is lower than the current broker industry norm; referrals and ongoing customer relationships supported by ANZ relationship managers focused on cross-selling the full ANZ product range to currently under-serviced Landmark Financial Services customers, and the remaining Landmark customer base (95,000 customers) to be targeted by joint ANZ and Landmark initiatives.*

?---Yes.

So a large part of the rationale for the acquisition was to allow ANZ to sell its products to farmers?---I think that was part of it, yes.

And it seems to be a significant part, from this document; do you agree?---Well, I – I – I think the reasons are evenly outlined in the document, and I think that the – the potential to win market share and move into the number 2 position in that agribusiness enhanced the portfolio and moving to areas where ANZ otherwise didn't have market strength. To me they appeared to be the – the predominant reasons.

Why do you say they're the predominant reasons, Mr Steinberg?---It's a view that I formed when I read the document.

And what in the document makes you think that those were more predominant reasons than allowing ANZ a vehicle to sell its products to farmers?---Yes, no, I – I agree with that proposition. I was just responding to whether in my opinion that – that was the – the main purpose of the acquisition. I don't believe it was the main purpose. I think it was one of the purposes, combined with all of the others that are listed in that document.

What is the full ANZ product range that we see referred to in the third bullet point under Business Model and Integration?---I wasn't involved in the preparation of this document, so I can't really say exactly what the writer meant when they wrote this, but it appears to me that, you know, generally, the products at ANZ – that ANZ offers to its customers, its intention was to be able to market those products to Landmark customers as well.

As part of an exclusive distribution agreement?---That's right.

Yes. And further down that page, still under the heading Business Model and Integration, we can see that ANZ intended to retain about 80 per cent of the current Landmark Financial Services staff. Do you see that in the last point on the page, Mr Steinberg?---Yes, I do.

And did ANZ do this, to your knowledge, because it was thought that those staff would bring their experience in dealing with agribusiness customers?---Yes.

They did?---No, no, I'm – no, well, my understanding, Ms Orr, is that there is some documents that indicate that six months into the transition, ANZ had lost 10 per cent of the - - -

Yes?--- - - - Landmark staff.

Yes?---I don't know what the number was 12 months later, but I do know that there was some concern that, in fact, we may lose more than the 20 per cent target.

Yes. Yes. I have seen those documents, Mr Steinberg?---Yes.

And your recollection of them accords with mine. But in this – at this time, in October 2009, we see that the document records an intention to integrate about 80 per cent of those staff. Now, we will come to whether that was able to be executed as a plan?---Yes.

But that appears to have been the intention?---Yes.

And what I'm asking you is whether you understand that that intention was so that customers would benefit from having the relationship managers from Landmark bring across their expertise?---Yes, I agree.

Okay. Now, on the following page, 7085, we see a summary of the findings from the due diligence that was conducted. And do you see at the top of the page there under the heading Due Diligence Findings:

> *Due diligence has identified the following key issues (none of which are considered "show stoppers").*

Do you understand what's meant by that, Mr Steinberg?---I – I assume deal-breakers.

I see?---Yes.

I see. So these are the issues – the key issues identified in the due diligence process, but none of them were deal-breakers. That's how you read that?---That's how I understand it, that's right.

And the first issue we see there relates to credit provisions:

> *Following a review of detailed loan information and physical files, additional individual provisions of $20 million above current Landmark Financial Services levels have been estimated. A further fair value adjustment for expected losses of $52 million above Landmark Financial Services current collective provisions has also been identified.*

Now, can you explain what “individual and collective provisions” are, Mr Steinberg?---Yes, Ms Orr. An individual provision is an estimate of a loss that we may suffer, or that we estimate we will suffer, on an individual customer basis.

Yes?---A collective provision is a – a broader look at a lending portfolio, and estimates the potential loss in that portfolio outside of the accounts that have individual provisions.

Yes. Thank you. So what we see from this reference is that Landmark had not adequately provisioned for the losses that ANZ expected it would make on the Landmark loan book?---That was in ANZs view, yes.

Yes. So in other words, at this time, in October 2009, ANZ thought that it was likely to incur a loss on certain loans that Landmark had not made provision for?---Yes.

Then the second issue identified in these Due Diligence Findings related to customer migration:

> *Further work is required to refine the mechanism for migrating customer accounts and negotiate an appropriate Transitional Services Agreement. Customer migration is a key risk being addressed in integration planning (particularly on deposits).*

So in October 2009 it was also recognised that further work was needed to make sure that customers had a smooth transition from Landmark to ANZ?---Yes.

Okay. Now, I’m going to come back to that, but you said earlier that the board approved the acquisition in October 2009?---That’s right.

And ANZ signed the sale and purchase deed in December 2009?---Yes.

And then the acquisition completed on 1 March 2010?---That’s correct.

So from that date, 1 March 2010, the former Landmark customers were customers of ANZ?---That’s right.

Okay. And ANZ staff had management of their loan and deposit accounts?---Initially, the intention was it would be predominantly Landmark staff that it transitioned across to ANZ, but over time, some of the ANZ staff also managed some of those accounts.

And when I say ANZ staff, I mean including the Landmark staff that had transitioned across - - -?---I agree .....

Across, because they became ANZ staff?---They did. Yes, they did.

Okay. So the staff managing the loans and deposit accounts were a mixture of Landmark staff who had transitioned across, and ANZ staff?---Yes.

Is that right?---Yes – yes. Initially, mainly Landmark staff and then as some of the Landmark staff left, then there was a – an integration of ANZ staff members as well.

Yes. Now, at the time of the acquisition, there were 7124 loans in the Landmark loan book. You give us that figure in your statement?---Yes, that's right.

And the total value of those loans was $2.293 billion?---That's correct.

Okay. Now, following the acquisition, in March 2010 ANZ sent letters to former Landmark customers about the acquisition?---Yes, we did.

And they were pro forma letters?---Yes, they were.

And I would like to take you to one of those letters which you've exhibited to your statement as exhibit 12. ANZ.800.620.1996?---Yes.

So this is a copy of the pro forma letter that went to customers of Landmark that transitioned across to ANZ?---Yes.

We see the first paragraph there:

> *On 1 March 2010, ANZ acquired Landmark's Financial Services loan and deposit book. We have made this investment because we believe strongly in the future of agribusiness in Australia. ANZ has been banking businesses just like yours for more than 150 years and we plan to continue to work with you for many years to come. As a result of the acquisition, your deposits are with ANZ and your lending accounts are now managed by ANZ. In addition, many of Landmark's financial services staff accepted roles with ANZ. That means the people who know and understand your business will still be available to support you. While your Landmark Rural Finance Manager will now be known as an ANZ Agribusiness Manager, they will continue to visit you and to work closely with the Landmark network.*

So the customers were told by this letter that this was, essentially, a change in name only?---Well, I think it says exactly what you read it said, that – that, "The deposits that you have and your lending accounts are being managed by ANZ, and that Landmark financial services staff had accepted roles at ANZ." And that they would continue to visit, yes, I agree with that.

What – yes, you agree that they were being told it was a change in name only?---Well, I'm not sure it says exactly that, but I – I agree that it says what you read out that it says, yes.

I'm sure you agree that it says what I've read - - -?---Yes.

- - - to you, Mr Steinberg. I'm asking you about what the person who receives this letter would have understood it to mean, and what I am putting to you is that, having read those two paragraphs - - -?---Yes.

- - - the Landmark customer reading this letter would understand that this was a change in name only because the same people were going to be managing their accounts just under a different title?---Well, I – I – I can understand how you might think it would be read that way. I think different people read different documents in different ways.

How do you read it, Mr Steinberg?---So when I read this document, I did not take it the way that you've put it to me. I read the document literally but, again, I can understand how some people might read it in that particular way. It's just not the way that I read the document.

I see?---Yes, but I – I can see how different people read documents in different ways.

Okay?---I'm - - -

What we know, though, Mr Steinberg is at this time ANZ was planning to, or already had, terminated the employment of a number of the Landmark Rural Finance Managers?---I'm not aware that that had happened, I – no.

All right. Well, can I show you a document, Mr Steinberg, which is exhibit 8 to your statement. This is ANZ.800.616.1254?---Yes.

So this is a document we see in relation to Project Conserve. That was the Landmark acquisition project; is that correct?---Yes, that's right.

And it's dated September 2009. So well before the March 2010 letter that I just took you to?---Yes.

Now, if you could turn to 1260 within the document. Do you see there – I'm sorry, I have taken you to the wrong page. 1261?---Yes.

Do you see there at the top of the page – so reminding you this is September 2009:

> *Based on RC & A customer management ratios, only 40 of the current 65 RM posts will be required.*

?---Yes, I see that.

And that was the case, that only 40 of the 65 Landmark relationship managers were required to come across by ANZ?---Yes. I – I accept that based on the fact that it's written there, yes.

Yes. So that was the plan in September 2009?---So Ms Orr, I don't consider this to be the plan. What I consider this to be is a statement that says that, once the acquisition is made, that 40 out of the 65 posts will be required. I wasn't aware that it was part of the plan, but I think it's just stating that that was a mathematical outcome of the way that we analyse a number of relationship managers ANZ uses, depending on the number of accounts, so that – on an account to relationship manager formula.

Well, how many did you take across, Mr Steinberg? Did you take 65 or 40?---I don't know that number. Don't know.

You don't know - - -?---No.

- - - how many Landmark relationship managers went across in the acquisition?---No. What I do know is there was approximately 130 staff that came across from Landmark to ANZ. I don't know how many of those 130 were relationship managers, and in other roles.

Right. So you can't tell the Commission whether or not this indication in this document that only 40 would be required to come across, whether that's what occurred or not?---I don't believe that is what occurred. I believe what occurred is that all of the staff came across, all of the relationship manager staff came across. That was my understanding.

And you told us earlier that within six months about 10 per cent of them were no longer with ANZ?---Yes.

And there was more attrition within a fairly quick period of time after that. Is that right?---Yes. There was more attrition after that, yes.

And what level of attrition?---Look, I – I don't know. What I have read is that there was concern that they were going to breach the 20 per cent retention ratio. So at least that number.

At least 20 per cent within what period?---That was the concern. Within 12 months.

Thank you. All right. Now, did ANZ – when the – you don't know how many Landmark managers – relationship managers came across. I think that's your evidence?---Yes.

But not enough to cover all of the former Landmark customers; is that right? There were also ANZ relationship managers managing some of these accounts?---No. I think at the point of transfer, I think all of the Landmark relationship managers came across. So at that point in time all of the Landmark customers would have been managed by their existing - - -

I see?--- - - - Landmark relationship manager.

I see. And then within six months, we see the numbers drop, and those numbers are supplemented by ANZ relationship managers coming in and dealing with those clients?---Yes.

Is that right?---Yes.

And did ANZ provide those ANZ relationship managers who took over Landmark clients with any particular training in dealing with agribusiness customers?---So these customers were managed by our regional and commercial banking area. So those relationship managers would have already had experience in dealing with agribusiness customers.

Well, what level of experience would they have had, Mr Steinberg?---Look, I – I think that's a question that I would have to apply to each individual person, but – because they were being managed by a regional and commercial area there would have been a team of people who would have had experience managing agribusiness customers.

Well, are you aware, Mr Steinberg, that in a notice to produce issued by the Royal Commission to ANZ, the Commission sought documents for the period from 1 January 2009 to 31 December 2011 that constituted any report, memorandum, or similar document describing the steps taken or proposed to be taken by ANZ to train its staff in dealing with agribusiness customers?---Yes.

Are you aware that that was a request made in a notice to produce to ANZ?---So my understanding of the request was – although I didn't deal with the request myself – my understanding of the request was that it was around the training that the Landmark Financial Services staff had in helping them to integrate into the ANZ network.

Well, that wasn't the nature of the request. It was documents describing the steps taken or proposed to be taken by ANZ to train its staff in dealing with agribusiness customers?---Yes.

Are you aware that ANZ returned only four documents in response to that category, each of which dealt with the training of the Landmark relationship managers that were moving across to ANZ, not with the training of ANZ relationship managers?---Yes. No, so I would need to be able to see those documents to – to make any comment. I'm not familiar with what they are right now.

All right. I will have those documents made available to you - - -?---Okay.

- - - so that you can comment on those - - -?---Yes.

- - - later in your evidence. Can I return now to the letter that we were discussing on 5 March 2010 that went to the customers?---Yes. Is that 12? Yes.

Yes, exhibit 12 to your statement. We see that the letter also says, in the second part of that second paragraph that I read to you that:

The ANZ agribusiness managers would continue to visit former Landmark customers.

Do you see that:

They will continue to visit you and work closely with the Landmark network.

?---Yes, I do.

Was it ANZs policy at this time that the relationship managers should visit customers at their farms?---Yes, it was.

Right. And did the ANZ relationship managers continue to visit the Landmark customers at their farms?---Again, it's very difficult for me to answer that question in a broad way. I would have to look at individual circumstances, but it was the practice in that area to visit their customers on a – on a regular basis.

Well, you know, I assume, from the statements that you've provided, Mr Steinberg, that in at least one of the cases that the Commission asked you to address, which was the case of the Harleys?---Yes.

The ANZ relationship managers did not visit the Harleys at their farm?---So I think what you're referring to there is after the account got transferred to lending services, there was a request by the Harleys for the ANZ lending services relationship manager to visit them, and I agree that that did not happen.

You say in your statement – and I will have this brought up on the screen in relation to the Harleys – ANZ.999.011.0044 - - -?---Can you take me to an exhibit number, please?

It's your statement - - -?---My statement, yes.

- - - in relation to the Harleys. Page 25 of your statement, bottom of the page, subparagraph (c)?---Yes.

This is your statement:

From my review of the file, it does not appear that the ANZ relationship managers ever visited the Harleys in person on their farm.

?---Yes. Yes. So that comment was directed to the time that it was being managed in lending services.

I see. So although it's not clear from the language that you've used in this statement, there's a qualification to that that you say we should read into that, which is:

> *…it does not appear that the ANZ relationship managers ever visited the Harleys in person on their farm –*

after the file was moved to lending services. Is that how - - -?---Yes.

- - - we should understand that?---Yes, please.

Okay. Thank you. Now, back to the letter, Mr Steinberg. So back to - - -?---Yes.

- - - your general statement in ANZ.800.620.1996?---Yes.

The next thing that the customers are told in the third paragraph now that:

> *Your agribusiness manager will be in touch soon.*

Did ANZ have systems in place to ensure that that follow-up occurred to the customers who received these letters?---What I've seen is that there were some training sessions and integration sessions with former Landmark staff that gave them a program as to what they should do in order to transition their customers across from Landmark to ANZ.

So I just want to understand what the answer to my question is, Mr Steinberg. Did ANZ have systems in place to make sure that that follow-up that was promised in this letter happened?---Yes. So I don't believe it comes down to systems. I think what needed to happen was there needed to be a process in place so that the customers would be transitioned across to ANZ, and the documents that I've seen indicate that there was training and processes put in place - - -

And were there - - -?--- - - - to have that happen.

Were there systems to ensure that those processes were followed?---I'm not aware of there being any systems.

Right. Should there have been?---Yes.

Thank you. Now, along with this letter, the customer received a brochure. Is that right?---Yes, that's right.

We see over the page at ANZ.800.620.1998. And if we turn to the inside of the brochure, which is 1999 - - -?---Yes.

- - - we see that it said under the heading Official Notice of the Lending Facility Changes:

On behalf of the lender, we give you notice that changes to your facility will be made.

?---Yes.

And one of those changes was that new fees and charges were going to apply to the accounts. Do you see that in 1(b)?---Yes.

And another was that there would be a change to the way that variable interest rates were determined?---Are you reading that in 1(c)?

I am?---Yes.

And another was that ANZ would now only need to give 30 days' notice of changes to the facility instead of the 60 days' notice that was given by Landmark. That's 1(d)?---Yes, I see that.

And back over to the front page of the brochure on 1998, the customer was told that they were required to open an ANZ account. Do you see that? 1(g)?---Yes.

Now, was the receipt of this letter and this accompanying brochure the first time that former Landmark customers were told about the acquisition?---No, it wasn't.

And when were they told about the acquisition?---So I believe that there was a letter sent out pre-acquisition – I think it was December 2009 – that gave them the earlier notification of the pending acquisition.

Have you annexed that letter to your statement, Mr Steinberg?---No, I haven't.

Why not?---I'm – I'm assuming that, when I read the questions, that it wasn't responsive to the questions that I was asked to address.

I see. And what do you say the customers were told in December 2009 about the pending acquisition?---So again I don't have that document with me, but it was a document that just advised them of the – of the acquisition, and that they were going to receive some more communication from – from the bank.

Okay. Now, let's assume that there was, as you say, the letter on December 2009 flagging the acquisition for customers?---Yes.

Is the next communication they received the March 2010 communication that we've just looked at, the letter with the brochure?---Yes. I – I actually think, Ms Orr, that there were two correspondences that went out pre-acquisition. But certainly this one in front of me is the first one that went out post-acquisition.

I see?---Yes.

So two communications pre-acquisition saying what, in general terms?---In general terms, just letting the Landmark customers know that there was an acquisition in progress and that when the – and advising what the date of the acquisition is, and letting them know that they will receive more communication after the acquisition has occurred.

And do you think that happened before or after ANZ signed the sale and purchase deed on 8 December 2009?---I can't recall.

Would it be likely that ANZ communicated with them prior to signing the sale and purchase deed?---Look, as I sit here, I – I don't know.

Okay. And do you think ANZ took adequate steps to explain the acquisition to former Landmark customers?---So I think that we informed them pre the acquisition and I think we informed them post the acquisition. That said, I think – and we've made public statements to this effect before – that we should have done a better job in the way that we communicated that to the Landmark customers.

Yes. And what do you see as the problems with the way ANZ communicated with those customers? What could you have done in doing a better job?---So the – the communication initially is around what the integration meant for the customers, the fact that a lot of these Landmark customers had never dealt with a – with a – a large financial institution before, like ANZ. We could also have communicated more around the systems transfer and the integration, yes.

What should you have told them about the systems and integration?---Perhaps more information around what they – they could have expected but, more importantly, also in the manner in which the customers were transitioned from Landmark to ANZ.

And having acknowledged that you could have done this better, this communication with customers, what do you understand to have been the effect of the inadequacies of ANZs communication on the former Landmark customers?---I don't feel that I can answer that question in relation to the entire customer pool. I think the impact would have been different for each individual customer, if any at all. So I think we would have to break that down into individual customers to be able to answer that.

Could you give us some examples of what you understand to have been ways that this inadequate communication affected former Landmark customers?---Can I have a moment to think about that, please? Thank you. So, as an example, I'm aware that some of the customers felt that ANZ didn't have the same level of agribusiness experience as the – the former Landmark staff had. So I think that's one example where – where they may have been – or they feel that they were affected.

Was that about your communication with them, or about the nature of the experience that your relationship managers had?---It's – it's addressing what – how some customers may have been affected by the transition.

Yes. I don't want to labour the point, but I was trying to understand what you understood the effects of the inadequacies of the communication about the acquisition - - -?---Yes.

- - - to be?---Yes. And so the point I'm making there is that some of the customers felt that had they been advised earlier - - -

Yes?--- - - - they may have made a decision to refinance their facilities - - -

Yes?--- - - - from Landmark before the acquisition occurred.

Yes, I see. Now, if a similar sort of acquisition happened now, what would ANZ do differently in its communications with customers?---So this is not a part of the bank that I normally work in, Ms Orr, so it's a difficult question for me to answer. But, you know, as a general statement – you know, I would say that we need to be clearer in the way we communicate the impact of an acquisition to impacted customers.

All right. So over the following year after the acquisition, ANZ migrated the former Landmark customers on to its technology platform; is that right?---On to ANZs technology, yes, that's right.

Yes. And did that process go smoothly?---Not in all cases, no.

What went wrong?---Well, in some cases, limits were incorrectly loaded on to the systems. In some cases, interest rates were incorrectly charged.

Any other difficulties?---I mean, they are the ones that come to mind right now.

What about customers experiencing difficulties in opening their accounts as a result of the migration?---Yes, I'm aware that that happened as well. Yes.

And what about delays in responses to information and funding requests as a result of migration difficulties?---Yes, I accept that happened in some cases.

And did ANZ investigate what caused those issues?---Well, in the cases that I'm aware of, they did.

And what was the cause?---Error – error by bank staff, in most cases.

Isolated errors, or systemic errors?---Look, I wouldn't call them systemic, no.

Are we talking about a small number of errors, or a large number of errors?---Look, I – I don't know.

Do you know anything about the numbers of customers that were affected by those errors?---No, I couldn't give you a number, no.

Okay. All right. Okay. So if a similar sort of acquisition happened today, what would ANZ do differently in relation to the migration of customers on to a technology platform?---Yes. Again, Ms Orr, this is not a part of work that I do, so I'm finding it difficult to answer that question.

All right. Mr Steinberg, you've explained in your statement that following the acquisition, the loans from Landmark were held in a trust; is that right?---That's right.

And from March 2010, ANZ began a process of redocumenting customers' loans out of the trust structure to loans that were written by ANZ?---Yes, that's right.

And what did that involve?---It – it involved undertaking a review of our customers' facilities, preparing a new letter of offer, an ANZ letter of offer, talking to the customer about the new letter of offer, also taking the securities on to ANZ as ANZ securities. That's – that's what I think was involved.

And why did ANZ engage in that process?---It was for efficiency reasons. The – the view was that it would be more efficient to have all of our customers on similar terms and conditions, similar platforms. It was a decision taken by the integration team, that that would be a more efficient way to manage that pool of customers.

More efficient for who, Mr Steinberg?---More efficient for the bank.

For the bank. So the bank required each of the customers to engage in this process because getting them all to do that would be more efficient for the bank?---I wouldn't put it in those terms. The way that it was done was that as facilities came up for annual review – or as customers requested an increase in their facilities, then ANZ used that as an opportunity to redocument those loans on to ANZ paper. Not all customers took that offer up.

But within the year, had you redocumented all their loans?---No, I don't believe so. And I – and even as we – we sit here today, there are a number of customers who have elected not to transition on to ANZ paper.

And what proportion do you think that is, of the - - -?---It's a small proportion. It's – right now, it's in the order 50 to 60 customers, but I'm not sure of the rate at which that occurred over time.

40 to 60 out of how many customers who transferred across?---4000.

4000. Thank you.?---4500, I think.

Now, one of the due diligence reports prepared in preparation for the acquisition related to ANZs credit stream and I wanted to ask you about that. That's your exhibit 7, which is ANZ.800.616.1266. This is another Project Conserve document. I can't recall now if I asked you before what Project Conserve was, Mr Steinberg?---I think it's just the project name given to the due diligence for the credit part of the whole due diligence process.

I see. Thank you. And what is the credit stream?---So credit stream would be looking at the – the quality of the – the credit aspects of each of the customers that ANZ was acquiring.

The quality of the credit aspects, did you say?---Yes, that's right.

Okay. Now, if we turn to 1268?---Yes.

Which is part of the executive summary for this document, we see there that the fifth bullet point tells us that there is – and before I read this, I should just remind you this is September 2009, which you will have seen from the front page?---Yes.

Continuing:

> *There is an immediate repricing opportunity given the variable book (1 billion) is currently priced off a conserve index rate –*

a conserve index rate, do we read that as a Landmark index rate? Is that what that means?---I don't know what it means.

Right. Okay. So:

> *An immediate repricing opportunity given the variable book of $1 billion is currently priced off a conserve index rate, implying a reasonably simple conversion to an appropriate ANZ pricing index. Currently, there is a .63 per cent margin differential between ANZ and conserve variable rates offering a potential $6 million annual revenue opportunity.*

Can you explain that, Mr Steinberg?---Yes. My understanding of what it's saying is that the – the view at the time was that the Landmark book was potentially under-priced relative to the ANZ portfolio. And I believe what this is saying is that as a result of that, there is a – an opportunity to have a revenue uplift through repricing the Landmark portfolio.

So ANZ saw an opportunity immediately to reprice many of the loans with a $6 million benefit to ANZ; is that right?---Well, I think that's what the – the document says.

Yes?---In terms of what actually happened, I – I don't know. I have seen through some of the case studies that I have worked on that there were price increases - - -

Yes?--- - - - at various stages.

Yes?---But I don't know how that was dealt with across the portfolio.

So is it the case, Mr Steinberg, that you've come to this Royal Commission to answer questions about the Landmark acquisition, but you can't tell the Commissioner whether ANZ took up the opportunity that it identified to reprice the loans to obtain an advantage of $6 million?---Yes, that's right. I wasn't involved in that, so I don't know.

Right. Did ANZ make other changes to the terms of customers' loans when it redocumented the loans?---Again, I think that needs to be addressed on a case-by-case basis. I don't think there's one remark that could describe what happened to all – all of the customers. So I think I would need to address that on a case-by-case basis.

Are you aware of any general types of changes that were made across large numbers of the loans?---No, I'm not. The ones that I've seen have been, you know, changes on a case-by-case basis. I haven't seen any – anything that has indicated a wholesale change at any one point in time.

You don't know if that happened or not?---Well, I – I haven't – I haven't seen any evidence of that happening.

Okay. Now, you've told us in your statement that ANZ acknowledges that its communication with former Landmark customers wasn't always satisfactory?---Yes.

And ANZ acknowledges that some former Landmark customers experienced delays in receiving responses to information and funding requests?---In some cases, yes.

And ANZ has acknowledged that this conduct fell below community standards and expectations?---In certain respects, yes, we acknowledge that.

In which respects, Mr Steinberg?---Well, in respect of the – the things that we've spoken about, the communication, the lack of responsiveness, I – I agree with that.

The migration across?---Yes.

Yes. And there were also issues in cases where customers were transferred to lending services; is that right?---Yes, that is.

And you tell us in your statement that lending services is the division of ANZ that's responsible for the high risk loans?---Yes, that's right.

And in what circumstances might a customer's file be transferred to lending services?---So the way we determine that, Ms Orr, is based on the customer credit rating. So at ANZ we have a customer credit rating system that goes to zero – from zero to 10. Zero being a top quality credit and 10 being an impaired loan.

Yes?---And so our system is that when an account reaches a risk rate of 7D it's classified as high risk and typically would be transferred to lending services. There can be exceptions either way of that.

Okay. And who decides whether a file should be transferred to lending services?---So they would normally be what I would call a credit decision that's made by the authority holders on a – on a customer-by-customer basis. Ordinarily, there would be a credit paper that would be prepared documenting the circumstances with a recommendation that would then have to be decisioned by the authority holders.

And what does lending services do once the file is transferred to it?---So typically, what we would do is we would go out and make – either meet or make contact with our customer. We will then undertake a review of the customer's circumstances to understand the – the reasons as to why they have found themselves in lending services. And then we would talk with our customer to try and establish a strategy for how to get that customer back on track.

And did any Landmark staff come across to ANZs lending services division?---A small number did, yes.

Do you know how many?---No, I don't.

A small number, you say. So if a former Landmark customer's file was transferred to lending services, then a large number of them would have been dealing with ANZ employees rather than former Landmark employees; is that right?---I don't think so. My understanding was that there was enough Landmark lending services equivalent staff that came across into ANZs lending services to continue to manage the accounts that – that they were managing, but there may have been some cross-pollination in that process as well.

Well, did it remain the case that there were enough former Landmark staff in lending services to deal with all the former Landmark files that were coming across to lending services?---As time progressed, no.

Yes. And how quickly was that the case?---I don't – I don't know. I haven't looked into that, so I don't know.

You told us earlier that at the time of the acquisition, the total value of the Landmark loan book was $2.298 billion?---Yes.

And you tell us in your statement that of that 2.298, 273 million, or 12 per cent - - -?---Yes.

- - - was classified as D1 stress, D2, legal action, and E default. Can you explain those classifications?---Yes. So, Ms Orr, they are Landmark classifications. So D1 and D2 would be what I would classify as our risk grade 7s and 8s. So they're in that – what we would call the high risk category - - -

Yes?--- - - - but not yet impaired.

Yes?---The E loans are what I would call our risk grade 10 loans which are the loans which have an impairment charge or individual provision against them.

So those figures mean then that ANZ knew, before the acquisition, that a significant proportion of the Landmark loan book presented a risk?---Yes. So we knew that those 273 million were risk graded D1, D2 and E and we understood that they were the higher risk elements of the Landmark portfolio.

Yes, I see. Can I take you to another of your exhibits, exhibit 3, which is ANZ.800.616.1038. Now, this is the financial due diligence report - - -?---Yes.

- - - for ANZs acquisition of the Landmark loan book - - -?---Yes.

- - - prepared by McGrathNicol?---Yes.

What's the purpose of a financial due diligence report, Mr Steinberg?---So the purpose of this was to understand the financial metrics of the pending acquisition including the portfolio, the make-up of the portfolio, provisioning profitability. It's essentially a financial review of the business that the bank was looking to acquire.

And we see at 1045 that this report sets out an overview of the proposed transaction. We see it's recorded there that Landmark was a specialist agrifinance provider to rural Australia offering its customer loan, savings accounts and insurance services?---Yes.

Continuing:

> *The loan book and debenture book are considered in scope and the insurance business out of scope for the proposed transaction.*

?---Yes.

Continuing:

> *Landmark reaches its customers via a mobile network of regional financial managers who operate primarily out of Landmark owned or franchised stores. A significant component of the proposed transaction involves ANZ and the vendor negotiating an acceptable distribution agreement.*

That's the agreement we referred to before - - -?---Yes.

- - - in relation to the sale of ANZ products?---That's right.

Continuing:

Our scope does not include analysis of the proposed distribution agreement. The loan book is managed within two trusts, specifically the RWT and CPT, which are primarily funded by ANZ and Rabobank. The contemplated transaction involves ANZ purchasing certain assets and liabilities of Landmark which include –

and there's a note there that I won't read out –

they include a loan book of 2.354 billion which resides in the CPT and RWT. The total loan book is 2.372 billion, but 18.2 million of the loans sit in Landmark and the current proposed transaction excludes those loans, and total provisions of 111.6 million associated with in-scope loans.

?---Yes.

Continuing:

This includes a specific provision as calculated by ANZ credit risk of 45.4 million.

?---Yes.

Continuing:

And a collective provision as calculated by ANZ Capital Management of 66.2 million.

?---Yes.

Now, can I move then to the following page before asking you some questions where the report sets out the transaction rationale:

We understand ANZ is interested in the proposed transaction for the following reasons: ANZs agribusiness market share is less than its key competitors, therefore, the proposed acquisition would achieve significant growth in market share. And ANZs current agribusiness loan book is of a higher quality than the profile experience by Landmark, therefore, the proposed acquisition would combine a high quality loan book with a lesser performing loan book.

?---Yes.

So we see there that ANZ considered that its loan book was of higher quality than the Landmark loan book?---Yes. That – that – that's a statement by McGrathNicol, but - - -

I'm sorry, yes?---Yes, that's right.

And this was prepared for ANZ?---Yes, that's right.

This financial due diligence?---Yes.

And there is recognition there that, compared with ANZs existing loan book, a greater proportion of the Landmark loan book was likely to be problematic; is that right?---Yes.

And McGrathNicol go on to set out their key findings from the due diligence that they conducted, At 1047, they commence, and I just want to take you to a few of those. Now, on this page we see key findings in relation to the loan book. And we see there that:

> *As the loan book had shown signs of significant deterioration over the past 12 months in respect of both risk rating and security indicators, there was significant risk of managers incorrectly classifying customers by risk rating and/or security indicator which may hide further evidence of deterioration in the loan book portfolio. Specifically, there may be a large number of loans currently classified in the C1 or C2 risk category which are in fact D1 or D2. Limited credit management resources not being able to closely manage those accounts which require attention as the loan book quality decreases and the number of managed accounts continues to increase.*

Now, McGrathNicol suggest a recommendation in the right-hand column to address this problem. We see that in the third bullet point down:

> *ANZ operations may need to consider increasing the number of credit management personnel to focus on the credit risk rating classifications with support from RFMs prior to the transaction being completed or immediately following transaction close. The objective is to ensure close to 100 per cent of the loans are independently reviewed to assess Landmark's classification by risk rating and security indicator to ensure compliance with ANZ policy, and that problem accounts are identified and a strategy to manage those accounts is put in place.*

?---Yes.

So we see there that McGrathNicol is recommending to ANZ that it may need additional credit management resources to manage the issues, perhaps some hidden issues, with the Landmark loan book. You see that?---Yes. I see that, yes.

And did ANZ put in place extra credit management resources to manage this issue?---I'm not aware of anything specific, Ms Orr, that was added. But my understanding was that at the time the bank had the right resources dedicated to, you know, managing this process and also the accounts that were subsequently then transferred into lending services, but I didn't have any direct involvement in this process.

Well, can you see there that McGrathNicol didn't think ANZ did? McGrathNicol thought that additional credit resources would be required?---Yes, I understand that.

You don't know whether those additional credit resources were obtained?---No. I wasn't involved. I can see that's – that there's a recommendation there from McGrathNicol, yes.

Okay. Around you don't know whether the recommendation was adopted?---No. Other than – I was around the bank at the moment and my understanding was there was sufficient resources to deal with it but, yes, I do not know specifically what was done.

Okay. All right. Can we turn to 1049, still within the McGrathNicol report. And we see there's some further key findings. And we see a breakdown on 1050. Could I actually have – if it's possible to have 1049 and 1050 both on the page, that would be helpful. It may not be, because of the orientation. Thank you. So we can see there a breakdown of the loan book both by risk rating on the left-hand side and by security rating on the right-hand side?---Yes.

And if we could enlarge the right-hand side, focusing on security rating can you see, Mr Steinberg, that more than 45 per cent in total of the loan book by value had either a D, E or F security rating, both in November 2008 and in August 2009?---So are you looking at the Table 1050 there?

I am?---Yes.

And I am looking at the D, E and F classifications?---Yes.

Both in 2008 and 2009?---Yes.

And I am adding those figures?---Yes.

And I get to more than 45 per cent – and Mr Hosking helpfully points out for me that I don't need to add the figures because they're added underneath. Sum B - - -?---Yes.

45.8?---Yes.

And 45.9. So you don't need to do the maths that I've done, Mr Steinberg. So you can see there that more than 45 per cent of the loan book by value had either a D, E or F security rating?---Yes, I can.

Are those concerning figures?---Not necessarily. So the security indicator is not an assessment of probability of default. So these security indicators, as I understand it Ms Orr, are ANZ security indicators, not the Landmark risk grading - - -

Yes?--- - - - ratings.

Yes?---And so what that's saying is that 45 per cent of the book are not over or well secured and, in a lending portfolio, that's not necessarily unusual. The bank does lend on cash flow, and we do take security to support the cash flow, but predominantly our purpose of lending is around cash flow. So I agree with you that it would be better if that number was lower, but other – other than that, it doesn't look remarkable to me other than that.

I see. I see. Not concerning to you, those figures?---Well – well, I prefer it to be lower, but it – it's just telling us that the security is not as strong as we would like it to be.

Can I ask you to look at 1078, where McGrathNicol - - -?---1078?

Yes. McGrathNicol make a number of observations about the control environment. Do you see there Landmark Policy Observations, at the top of the page. And under the heading – what we see on this page, I want to suggest to you, is some of the reasons that McGrathNicol has identified as to why there were issues with the quality of the Landmark loan book, and they included the issues in relation to delegated authorities. You see there that:

> *The branch located RFMs appear to have an uncomfortably high level of formal authority in the qualitative aspects of loan approval and management. For example, RFMs can roll over existing loans under 500,000, perform their own assessments of value (valuations) and monitor accounts. RFMs are incentivised up to 20 per cent of base pay to establish new loan facilities and, despite best intentions, could have difficulties with being truly independent considering the size of the communities they serve and the extent that their success is also highly reliant on them building friendships with their customers. There are very few independent valuations. Generally, all valuations are informal and driven from the branch level, either from the RFMs own appraisal or through Landmark real estate.*

And further down:

> *On face value, in the absence of compensating controls, the high involvement of RFMs in qualifying the quality of their own loans puts a significant degree of risk into the loan portfolio.*

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

Now, these practices were different from the practices of ANZ at origination at this time; is that right?---Yes.

And we see also on this page McGrathNicol identifies under the heading Regulatory Pressure that:

> *Landmark is not a licensed ADI. As such, is largely unregulated and has limited external pressures relating to the strength of its control environment. The LFS regulatory oversight comprises an AFSL requiring Landmark operations to have an external auditor and report on cash liquidity, external auditor and reporting requirements by AWB limited, lending guidelines and biannual operational review, or audit, and the debentures are required to be sold with a prospectus.*

Those were the only regulatory matters for Landmark; is that right?---Or the regulatory oversight matters, yes, that's right.

And what was the effect of Landmark not being regulated in the same way that ANZ was?---Well, as far as the work that I have seen is concerned, they did not have the same processes in terms of evaluating their lending. They did not have to sign up to the Code of Banking Practice, as an ADI does, and that is the – the biggest difference that I've seen have an impact based on the work that I've done.

So these are all matters about the quality of the Landmark loan book that were well understood by ANZ at the time of the acquisition; is that right?---Yes.

Now, can I then just take you back within this document to 1052. And this is back into McGrathNicol's key findings and this page relates to the provisions made by Landmark management. And if we turn to the following page, which is a continuation of this at 1053, we see that McGrathNicol formed the view that:

> *Overall, management specific provision and collective provision process was poor, and the dollar value of both the specific provision and collective provision was significantly understated. Our view has been supported by the detailed file review and provision assessment performed by ANZ credit risk.*

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

And McGrathNicol went on to say further down at the bottom of that page:

> *We applied an arbitrary risk weighting across the risk rating categories, and concluded a provision between 82 million and 110.9 million using 100 per cent and 80 per cent of loan book real estate security values respectively. ANZ credit risk and ANZ capital management have calculated a total provision of 111.6 million, which is at the top end of our high level due diligence estimate.*

?---Yes.

Now, did ANZ go on to make provision for the Landmark loans in accordance with McGrathNicol's recommendations?---We – we certainly made provision at the acquisition, and in terms of calculating what the final purchase price would be, and that's outlined in the completion accounts that were prepared. I can't tell you right now if we used the exact numbers that McGrathNicol put in front of me, but I'm happy to go to that document if you would like me to, but we have allowed in that document for an adjustment for individual provisions and collective provisions, which the two of them together I – I can't recall right now what it came to, but it - - -

So – that's all right. Your understanding is that ANZ did make provision for the problematic loans; is that right?---At – at acquisition and in terms of the – the purchase, yes.

And it was aware, when it did that, that the quality of the loan book that required that provision had come from factors such as a poor control environment within Landmark, a lack of regulatory oversight of Landmark; do you accept both of those things?---Yes. I – I accept that they were the shortfalls identified and, when the due diligence was done, they would have – they would have known about that. Yes.

And do you accept that all of these matters that ANZ was looking into at this time, which led it to make provision for these problematic loans, meant that ANZ was well aware that the Landmark customers that were moving across to ANZ, a significant number of them were likely to experience financial difficulty?---I'm prepared to accept that we knew that some were going to experience financial difficulty; there is a number that's in our completion accounts, a – a dollar number.

Yes?---So we can refer to that as a factor as to what that number was. I just can't remember it now.

I - - -?---I think it is significant, though, so - - -

Yes. It was significant, but I would like you, Mr Steinberg, not to focus on the dollar number?---Yes.

I'm not interested so much in the provisioning that ANZ did?---Yes.

I'm interested in whether ANZ calculated how many customers were going to experience financial difficulty and put a system in place to deal with the impending financial difficulty that those customers were about to encounter?---The documents that I've seen have all centred around calculating the – the dollar – the overall dollar provision.

Yes, I understand that. So from a business perspective ANZ was provisioning for this. What I want to understand is what ANZ was doing to deal with the human impact of what you were seeing in these documents, the fact that you were taking on all of these customers who were headed for financial difficulty?---Well, we had set up our usual processes and procedures that were available to manage those accounts.

Yes, I haven't seen anything that specifically addresses the number of customers, and so I'm not able to tell you now how many of those customers we provided for, but neither is it necessarily the case that, as the Landmark acquisition occurred, that there was going to be a material move of customers into – into lending services.

But the poor quality loan book meant that it was inevitable that you were going to have customers experiencing financial difficulty, didn't it?---I – I think that's fair. What we didn't know was the – the timing as to – as to when this would occur.

So - - -?---So I don't – I wouldn't want to characterise it as on the day of the acquisition - - -

I understand?--- - - - that it was a large number. It was just something that progressively happened over time.

Yes. And you knew it was going to happen over time. So did you start training your lending services staff in having the difficult conversations that they were going to need to start having with the Landmark customers?---So Ms Orr, I wasn't running this part of lending services at the time that this happened, so I can't speak of having any direct knowledge in that, but I do know that there were plans going on at the time, and there was discussion going on at the time, but I also don't want to give the impression that there was a – you know, an exodus of these accounts into lending services. That's not my understanding of what happened. My understanding is that there was a progressive move of a number of these accounts on an as needed basis, as credit decisions were made, and – and so I – I don't feel that there was any massive one-off impact on that group of people.

Well, did you start putting together a team within lending services to deal with your agribusiness clients?---Are you referring to the specialist team that we - - -

No?---No.

I'm not talking about events much later on?---No.

I'm talking about because of the knowledge that you had because of the poor quality of the Landmark loan book - - -?---Yes.

- - - whether one of the things you did in response to that was set up a specialised agribusiness team within lending services?---In 2010? No, we didn't.

And why not?---Well, at that time we did have people in that lending services team who had experience in working with agribusiness customers, but there was no decision made at that time to establish a dedicated agribusiness team.

Did you do all that you could to retain the Landmark employees that were coming across to make things easier for the customers in their dealings with the bank?---So my understanding is we – we did.

And you were unsuccessful?---Based on the metrics that I've seen, the 10 per cent in the first six months and looking like losing 20 per cent, there were more that went than we expected.

And you accept in your statement that that led to a loss of corporate memory of the former Landmark customers' files?---Yes. I think – I think it's – I think that's right. It's – it's not unusual in banking to have relationship managers change and – and so this is something that generally bankers are accustomed to dealing with, but I otherwise accept that there were people that left and that resulted in a loss of memory, yes.

And you noted that in your statement, the loss of corporate memory - - -?---Yes.

- - - that flowed from the loss of those Landmark - - -?---Yes.

- - - managers, and that led to the loss of established relationships that many of the former Landmark customers had with their bankers, didn't it?---In those cases when they left, yes, it did.

So what I want to put to you – and as I see the time, this will be my last question for the day – what I want to put to you is that although ANZ provisioned financially for the high risk loans, it didn't really prepare itself to deal with the effects that the failure of those loans would have on the borrowers?---No, I don't agree with that proposition. My understanding is that the lending services team at the time who would have managed these accounts were aware that the acquisition was happening, and my recollection is that there was activity – although I can't tell you what that activity was, because I wasn't involved in it – but I knew that there was activity going on in the event that Landmark accounts had to transfer into the lending services area. That's my recollection of the events.

There was some activity?---Yes.

You don't know what the activity was?---Well, I wasn't involved in that business at the time, so unfortunately I – I don't know.

All right. Perhaps if we could leave it there for today, Commissioner.

THE COMMISSIONER: I will resume sitting tomorrow at quarter to 10, rather than 10 o'clock. So 9.45 tomorrow morning. Thank you.

<THE WITNESS WITHDREW [4.19 pm]

MATTER ADJOURNED at 4.19 pm UNTIL TUESDAY, 26 JUNE 2018

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