



AUSCRIPT AUSTRALASIA PTY LIMITED

ACN 110 028 825

T: 1800 AUSCRIPT (1800 287 274)

E: clientservices@auscript.com.au

W: www.auscript.com.au

TRANSCRIPT OF PROCEEDINGS

O/N H-909729

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

9.46 AM, WEDNESDAY, 27 JUNE 2018

Continued from 26.6.18

DAY 32

MS R. ORR QC appears with MR M. COSTELLO as Counsel Assisting with MR M. HOSKING and MS S. ZELEZNIKOW

DR M. COLLINS QC appears for ANZ

MR A. McGRATH appears for Rabobank

MR L. MOLESWORTH appears for the Hirsts

<CROSS-EXAMINATION BY MS ORR

5

THE COMMISSIONER: Yes, Ms Orr.

10 MS ORR: Mr Steinberg, yesterday afternoon I was asking you questions in relation to the Harleys?---Yes.

Who you dealt with in annexure D to your statement. And we had seen that in April 2014 - - -?---Yes.

15 - - - ANZ had refused the Harleys' request for additional time to sell their properties?---Yes.

And we had discussed how ANZ had appointed agents for a mortgagee in possession instead?---Yes.

20

And you said yesterday that you didn't know if there was any reason for ANZ to think that agents for a mortgagee in possession would achieve a better price for the sale of the remaining parcels of land than the Harleys could?---Yes.

25 And you said that what the mortgagee in possession would achieve for ANZ was to actually get the property sold. Do you recall that?---Yes. Although, my recollection is that that was a discussion I had with the Commissioner - - -

Yes?--- - - - and it was a – as I saw it, a general discussion.

30

Yes?---Yes.

But was it also applicable there; the agent for the mortgagee in possession would get these properties sold?---Yes.

35

And it would bring certainty, you said?---Yes.

And it would allow you to close the Harleys' file, or transfer the file out of lending services?---Yes.

40

Now, as we've heard, you've been the head of lending services, corporate and commercial, since 2013?---Yes.

45 And what do you think are the qualities of an effective member of the lending services team?---So I believe emotional intelligence, I believe empathy, I believe some commercial and technical skills. I think there's – there's four.

They are four - - -?---Yes.

- - - that you say are qualities of an effective member of the lending services team?---That's right.

5

And are those qualities reflected in the KPIs, the key performance indicators for staff in lending services?---So the – I will just run through what some of our – our – our indicators for assessing performance are.

10 Yes?---There's performance metrics around us being well managed, so well managed relates to how well we look after the – I guess the prudential and customer engagement part of the – of the work we do. We have some financial metrics which are around the number of files that we manage, and how efficiently we manage those – those files. We have people measuring skills which deals with how we lead our
15 people, how our people conduct themselves. So – so my response would be that in the way we assess our people, things such as the – the lending services purpose and the – the matters that I've spoken about in the last two days, like empathy, are taken into account, as well as other metrics like the well managed and the financial.

20 So you say the people skills KPI is a measure of matters such as emotional intelligence and empathy?---I – I can't recall exactly in our documents what's under the people skill category. I – I can recall seeing those particular words there that you're putting to me, but I would suggest that as a person who does some of these, that I do take that into account when I'm assessing my people, and certainly when
25 we're assessing the performance of our broader team people. We have group discussions at a senior leadership level where the behaviours of our staff and the way that they conduct themselves are discussed and taken into account.

30 What about the financial metrics. You talked about the number of files and how efficiently you deal with the files. What do you mean by that? What is efficiency in lending services?---So I – it's actually not defined. So there's no way that we can define financial metrics in an area like lending services. We – we don't have any financial targets, so we don't have any sales targets. We don't have any targets, for example, for the number of refinances that we should achieve, or for the number of
35 file closures. So we actually don't have any measurable financial targets in lending services.

40 So what happens with that KPI then, the financial metrics KPI? How is performance measured against it?---Well, it's not – it's not a big factor in the way that performance is assessed, because financial out – financial performance is actually not a – there's no budget or KPI that we can set ourselves. For example, you can't estimate or budget what a particular relationship manager's provisioning levels, for example, should be over a period of time. It's not something that we can budget or forecast, and, therefore, we don't set KPIs around it.

45

So at any time since you've been the head of lending services - - -?---Yes.

- - - since 2013, has one of the measures of performance for a member of the lending services team been the number of files closed or transferred out of lending services?---No, it hasn't been. We certainly keep track of that particular metric at a – at a business level. So in terms of my entire portfolio I do keep metrics in relation to
5 the number of files that come in month by month, the number of files that go out month by month. And then for the files that go out month by month, the event that causes them to go out. So, for example, it could be a refinance, it could be the fact that a customer has just paid their exposure down, so we record that. And then on both sides of that, I have the opening number of files, the ups and the downs and then
10 the closing number of files. So I report that to my stakeholders on a – on a monthly basis.

And why is that reported to your stakeholders?---It's so that they know what the activity levels are in lending services. So predominantly, those files that are coming
15 in and going out are files that have come from their business units. And so it gives those stakeholders an opportunity to understand what number of their files are coming into lending services, and – and the ones that are going back. And in – and they tend to have a particular interest in the ones that are coming back to them, because they – they've got a strong desire to want to get the files that come into
20 lending services, they've got a strong desire to want to get them back so that they can keep them as ongoing customers.

All right. Could I ask you to look at a document, Mr Steinberg, which you won't have there with you but it will be brought up on the screen. It's ANZ.800.766.2348.
25 And I'm sorry, this document has quite significant redactions in it. But I want to show you – what I mean by that is it's a multi-page document and there are pages within it with significant redactions. Can I show you the first page so you understand what the document is. ANZ.800 – it seems it will be redacted, the first
30 page.

THE COMMISSIONER: A deeply confidential title to the document, is it?

MS ORR: It seems. Perhaps if your counsel could pass you a copy of the document so you're able to see what it is, because unfortunately - - -
35

THE COMMISSIONER: Can we be let into the secret?

THE WITNESS: Thank you.

40 DR COLLINS: One for you too, Commissioner.

THE COMMISSIONER: Let's have it. I am happy to be let into the secret. I think there are others present as well. Is there anything secret about the title of this document?
45

MS ORR: No.

THE COMMISSIONER: No.

MS ORR: Could we bring up the title to the relevant – what I want to put to you is the relevant part of the document, which is ANZ.800.766.2376. This forms part of a
5 larger document. But what I want to take you to is the strategic plan for lending services for the year ending September 2015. Do you see that, Mr Steinberg?---Yes, I do.

10 So this would have been not long after the agents for a mortgagee in possession were appointed in relation to the Harleys' property, in April or May 2014?---Yes.

And could I ask you to look at 2377. And we see there, on the second bullet point of the page, the four pillars that define our strategy in lending services, corporate and commercial.

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

And they are:

20 *Being a trusted adviser, revenue, cost, capital.*

?---Yes.

Continuing:

25 *People.*

?---Yes.

30 And:

Well managed.

35 ?---That's right.

Now, do they remain the four pillars that define the strategic in lending services corporate and commercial?---No, they don't.

40 What are the current pillars that define the strategy of lending services, corporate and commercial?---So number 1 is customer. Number 2 is people and well managed. And then – sorry, number 3 is well managed. And Ms Orr, I'm going to embarrass myself because I can't quite remember the fourth, even though I do talk about it quite a lot in my role. So there is a fourth.

45 Perhaps it will come to you, Mr Steinberg?---Yes.

And you will let me know if it does?---Yes.

Now, at this time, in 2015, these were the four pillars, and this was the time relevant to the Harleys?---Yes.

5 And each of these four pillars is explained in more detail on subsequent pages of this document. You will be able to see that from your copy there. And can I take you to the explanation of the second pillar:

Revenue, cost, capital.

10 ?---Yes.

Which is at 2380. Do you see at the top of the page:

How do we get there?

15

?---Yes.

And then Capital?---Yes.

20 And under that:

Target, 18 to 24 months for file churn for non-agri files and 24 to 30 months for agri files.

25 ?---Yes.

What does that mean, Mr Steinberg?---So what that means is that at that time we had – you know, I wouldn't call it a performance measure but we had a guide that we should be aiming to look at moving our files in and out of lending services, in the case of a – a non-agri file in 18 to 24 months. And in the case of a agri file, in 24 to 30 months. So what that would encourage was that where we had implemented a remedial strategy for a customer, the philosophy, if you like, was after 12 months, that if it appeared that that remedial strategy was not working, that we would then reset the strategy and try and find a new – a new strategy. Again, with the – with the aim of making sure that we were having a churn. So, as I was saying before, we have our – our ups and our downs every month.

40 But you accept that in 2015 your lending services staff were told that they should be aiming to move the agricultural files out of lending services to have them resolved in some way within 24 to 30 months?---Yes. I – I agree. But this was as much as remediating these files and getting them back to the frontline as it was about doing anything else with them. So this - - -

45 Well, it was about getting them out of lending services, one way or the other, wasn't it?---Well – well, I wouldn't put it that way because there was no KPI around it. We – we actually didn't, if you like, sit down with each relationship manager every half when we did their performance reviews, and we didn't actually have a quantifiable

discussion around this. So it was there as a guide to let our people know, philosophically speaking, how long a remediation strategy for a particular customer should take. That was, as I – as I – as I delivered it to my people, that’s how it was.

5 It was an expectation of them, that they would get the file out within 24 to 30 months?---I think putting the word “expectation” is – would be overstating it. It was a guide.

10 Well, it’s here in the document, Mr Steinberg. It’s what they were told to do, isn’t it?---No, look, I – I would not say that there was ever any communication of a message by me as the leader of the business that there was a hard core requirement or a drop-dead requirement to churn files in the – in a 24 to 30 month period. I – I would describe it as a guide to our people to let them know, philosophically speaking, how long a restructure ought to take.

15 Well, let’s look at the guidance offered by you as the leader of lending services at this time, Mr Steinberg, because this document contains a document produced by you. If we turn to 2384 within the document, we see:

20 *Australia risk function, lending services, 2015 strategic direction. Ben Steinberg, November 2014.*

?---Yes, I see that.

25 So you’re the author of this document?---Yes, I am.

And if we turn to 2388, we see there that – the third bullet point on that page for FY2015 priorities, lending services Australia risk, the third bullet point on that page that you’ve written is:

30 *Look to improve churn in the portfolio, which in turn reduces RWA –*

What’s RWA?---That’s risk weighted assets.

35 Continuing:

Which in turn reduces risk weighted assets and hence capital usage/cost. Aim for 18 to 24 months for non-agri files and 24 to 30 months for agri files.

40 ?---Yes, that’s right.

45 So this was your direction to your staff, Mr Steinberg?---Well, this is a – a document that I prepared for actually presentation to the chief risk officer of the Australia division. It’s not a document that I presented to my staff. Having said that, I – I agree with what that bullet point says, that we were looking to improve the churn in the portfolio, and we were aiming for those guidelines that – that I’ve outlined before.

So that was what you wanted your staff to do?---As I said earlier, it – this was a guide for our staff so that they would have an understanding, philosophically, as to how long a restructure should be. And it was as much about getting our files upgraded and returned to the frontline. So to bring a little bit of understanding to risk weighted assets, one of the drivers of our risk weighted assets in the bank is our security – is our CCR and security indicator. So the sooner we can upgrade our files to higher security indicators and higher risk grades, the – the better the improvement on our risk weighted assets. So – so this is as much as doing that as it is about doing anything else.

10 Well, the Harleys' file was transferred into lending services in July 2011?---That's right.

15 And the agents for mortgagee in possession were appointed in April 2014?---That's right.

So just over 30 months?---That's correct.

20 After the file had come into lending services?---Yes, that's correct.

In line with these targets?---Ms Orr, I – I would suggest that that's coincidental.

It's coincidental, Mr Steinberg?---Yes, it is.

25 What makes you say it's coincidental?---Well, because none of our strategies are – are hard core guided by – by what I'm reading in front of me. So, you know, as I said, I – and as you said, I am the person who has run this business. So I know what I've written here and I know how I've directed my staff. And – and I'm very confident in the answers I've given you at the moment.

30 So it's a coincidence that it happened to be in line with the outer part of the time line referred to in these documents, the decision was finally made to engage mortgagees in possession to sell the properties?---Yes, that's right.

35 I see. Mr Steinberg, what is the objective of dealing with a file in lending services?---Well, the – the main objective is to help our customers get back on – on track. I mean, when you have a look at what we do, we manage the bank's high risk customers. We have a purpose that I've spoken about, our job is to develop a strategy for each particular file on a case-by-case basis, designed to get the best
40 outcome that we can get for both ourselves and for our customer. And I think the case studies have been fairly consistent in outlining what we do. We go out, we generally meet our customers, we put together a strategy, we prepare a document that outlines a strategy. We negotiate arrangements with our customers. And then we monitor the – the execution of those strategies. So that's how broadly I would
45 describe what we do.

Is one of the objectives to maximise the amount of money realised by sale of assets?---Well, we don't have a – a measure around that, but – but I think we are – we are clearly trying to achieve the best result for both the bank and the customer. So we want to lose as little money as we – as we possibly can in circumstances that are – that are often very, very difficult matters to manage.

Well, what's more important; losing as little money as you can, or achieving certainty for the bank?---Look, I – I mean, I think both of those variables are important, and sometimes, you know, it's a matter of balancing the two between each other. I don't think there's any one particular answer that you could apply across the board, but I – I think they are two variables that play into our decision-making.

And are there times when the objective of maximising the amount of realisable value is inconsistent with the objective of achieving certainty?---So as I think about that question, I – the – there's a little bit of complexity to that question, because when – you know, part of this analysis is – brings in concepts like net realisable value, for example. So there – there are cases – and I'm being general in the comment that I'm making – but there are cases where we need to assess the – the net realisable value of the actions we are undertaking in terms of the return that it provides for the bank. So there – you know, that is not a simple concept. So it's not just a matter of comparing one number with another number. A number today could have different value to the same number in 12 months' time, for example. So - - -

Do you accept that the appointment of an external administrator, such as a receiver, might get you certainty but might not get you the maximum realisable value for the property?---I mean, my – my reaction to that question is that I rely on and trust the – the legal framework around the work that we do, Ms Orr, and so when I appoint a receiver and manager or mortgagee in possession, in the background when I do that, I do that with the comfort of knowing that they have statutory obligations to realise the best price possible. I – I think that – that that's a fair comfort for me to draw, that there is statute that ensures that when we take those actions, the best prices are realised that are possible in the circumstances.

THE COMMISSIONER: Well, there's a timing question in that, isn't there? If you appoint a receiver, a receiver will move to sale promptly. Do you accept that?---Generally speaking, Commissioner, there are times when a receiver will, if it looks like it will add value, might do some work to improve a property, but generally, I agree with that, yes.

The circumstances in which the receiver who is appointed, receiver and manager, manages the business as a going concern is, comparatively speaking, infrequent. Is that right?---In the agri space it would be, yes.

So if you appoint a receiver, it is likely that the receiver will move to sale promptly. Is that right?---I – I would actually hope that any receiver we appoint doesn't approach it that way. What I would expect from a receiver that we appoint is that at that point in time, they will do an analysis of what will achieve the best outcome in

those particular circumstances. And if the receiver believes that the best outcome would be to hold back a sale and do something – whatever that might be, whether it's clean the property, whether it's kill the weeds on the property, whether it's planting a crop or developing it, I would expect a receiver to come back to us with a strategy
5 around what the best method of realisation for that property is.

I'm struck by the fact that the case study we have last looked at, the agent for the mortgagee in possession goes to auction in August. The customers wanted to attempt to sell in spring. So we've got a couple of months between them. And the
10 appointment of the agent, the mortgagee in possession cost, I think, 44,000 plus GST in that case, did it not?---Yes.

So you've got the costs. And that agent goes to auction in August where the customer had sold – what was it – four out of nine, five out of nine - - -?---Had sold
15 five out of nine, that's right.

Five out of nine. Thought that they would do better for the remaining four in spring before the weather got hot. Is that right?---Yes.

20 Now, as I say, appointment of a receiver has timing consequences, doesn't it?---Can you explain exactly what you mean by that, Commissioner?

There the agent, not a receiver, I understand, but the appointment of an external administrator led to sale in August. Whereas the customer was looking to sell,
25 presumably September/October?---Yes, I accept that there was only a two month period is what you are suggesting between when the receiver sold it for us and when the customer might have sold it for us.

Yes?---Yes.

30 Just while I've interrupted you, Ms Orr, I notice on the page we have on the screen, the right-hand column "CRO priority", the third bullet point about churn has against it "1". Do I read that correctly as understanding that the chief risk officer regarded this as a matter of high priority?---I think that's a fair assumption for you to make,
35 Commissioner, but, again, if I can just balance that, this particular page is the page that deals with, I guess, the financial side of our metrics. There are others. And when you look at the – you know, the other metrics on that particular page, look for any revenue generating opportunities, which we've allocated a 3, manage our costs to serve within budget. That number 1 is a relative – it's a relative measure against
40 the others that are on that page.

But of those on that page, whole of bank approach was that this was to be given high priority. Is that a fair understanding?---Yes, in terms of churning my entire portfolio through all of the different avenues that are available to me to achieve that churn.
45

Because carrying the provision, as distinct from writing off the loss, has a cost to it?---Commissioner, it – it's more carrying the loan. So once a loan gets downgraded

to a seven, then APRA's prudential regulations require that we hold additional capital. That capital comes to the bank at a – at a cost. That's one of the reasons why in our area there has been a tendency to lift pricing at that stage of the credit cycle, if I could describe it that way.

5

MS ORR: Commissioner, I tender that document. The document as a whole is the Group Wholesale Portfolio Management 2015 Strategy.

10 THE COMMISSIONER: Exhibit 4.22 will be Group Wholesale Portfolio Management Strategy 2015, ANZ.800.766.2348.

EXHIBIT #4.22 GROUP WHOLESALE PORTFOLIO MANAGEMENT STRATEGY 2015 (ANZ.800.766.2348)

15

MS ORR: Now, I just want to take you back to the Harleys now, Mr Steinberg. You agreed yesterday that the remaining four parcels were sold in August 2014, including the parcel on which the Harleys lived?---Yes.

20

And they were sold – three of them for a combined total of \$780,000?---Yes, that sounds right.

25

And the fourth parcel was sold for \$250,000?---Yes.

And the proceeds of those sales were used to pay down the debt?---That's right.

30

Now, could I ask that you look at your exhibit 46, which is ANZ.800.644.0097. This is a letter that we looked at for a different purpose yesterday. This is a letter that ANZ's lawyers sent to the Harleys' lawyers in November 2014 after the sale of these properties in August. Is that right?---Yes, that's right.

35

And the letter said that the Harleys remained indebted to ANZ in the sum of \$309,404?---That's right.

And the letter told the Harleys that if they hadn't paid that amount by 4 December – which is eight-ish days later – then ANZ might commence bankruptcy proceedings against the Harleys?---Yes.

40

So just to recap, ANZ had required the Harleys to sell all of their properties?---Yes.

Including their home?---Yes.

45

And their sheep?---Yes.

And when they didn't sell the properties fast enough, it sold the properties itself as mortgagee in possession?---Yes.

And when that didn't raise enough to pay off the debt, ANZ threatened the Harleys with a bankruptcy proceeding?---Yes. Well, what we said was that we may commence bankruptcy proceedings.

5 Yes?---That's right.

Well, that's a threat of a bankruptcy proceeding, isn't it, Mr Steinberg?---Ms Orr, I just tend to read things exactly as they are, and what we've said there is we've said we may commence. Again, I can – I can see how you would interpret that as being a
10 threat.

If by 4 pm - - ?---But it definitely says that. I agree with you.

Continuing:

15

If by 4 pm on Thursday 4 December 2014 your clients have not repaid the amount owing or reached an agreement with ANZ for the repayment of the amount owing then ANZ may commence bankruptcy proceedings against the individuals and/or apply to wind up the company.

20

?---Yes, that's right.

Right. So if the Harleys had sold their house and their farming business, how did ANZ expect them to discharge the remaining debt?---Well, at this point we don't
25 know. So we've also asked – asked them to contact the writer to discuss the above and to discuss any options.

How much did ANZ charge the Harleys for enforcement costs?---I will need to – I will need to refer to my statement, if I could, for that.

30

You might like to look at paragraph 63 to see how much you charged them for enforcement costs relating to the appointment of agents for the mortgagee in possession?---Is it 63, or is it – or is it 56?

Well, you charged them almost \$60,000, on my count?---The agent's costs were 59,000, yes, correct.

35

\$59,115?---Yes.

And that included the cost of further valuations that were prepared in May 2014 after the appointment of the agents?---Yes.

40

Now, you've set out in your statements the results of the different valuations of the various parcels that made up the property in the table at paragraph 64?---Yes, I have
45 that as paragraph 60. That the – the first column is volume 1293, folio 324.

Yes, you have another table at paragraph 64, which is the table I'm referring to?---Okay.

Some of the information in those tables may be the same?---Yes.

5

But I think this table includes both the earlier valuations and the valuations that were done after the appointment of the agents?---Okay. Yes.

So you have that table there now in paragraph 64?---Yes, I do.

10

And did the Harleys have any say in who ANZ would appoint to conduct those valuations?---Not to my knowledge.

And should they have?---Certainly under today's policy they would.

15

Okay. Now, can we just look at the table, which we have up now. And perhaps if we could have both this page and the subsequent page of the statement on the screen together. We can see from your table that with two exceptions, all of the parcels of land were valued by LMW Hegney in June 2013. And it might assist if I point out the exceptions which are the first parcel in the table. That's the one that was subdivided in February 2013?---Are you looking on the right-hand side or the left-hand side of this page?

20

On the left-hand side?---And you're looking at May 2013?

25

Yes. So that one wasn't valued by LMW Hegney in June 2013, do you see that? Only in 2012?---Are you talking about the one that was valued by Opteon that wasn't valued?

30

No, no. I am asking you to focus on the dates as well. So the first parcel – we know that's the one that was subdivided in February 2013. And it wasn't valued by LMW Hegney in June 2013. Do you agree with that?---I'm sorry, Ms Orr, but I can't answer your question because I'm not following – there are two dates. There's the valuation date.

35

Yes?---And there's a date of issue of report date.

Yes?---Which - - -

40

And you see that they're both dates in 2012, not 2013?---So that's across the volume 1047427. Is that the - - -

I'm not sure where you are, Mr Steinberg. I'm talking about volume 2688, folio 172, on page 16. Do you see the coloured mark now next to that?---Yes. The value of 1 million 800?

45

Yes. So do you see there that that wasn't valued by LMW Hegney in 2013. It's valued in 2012. Do you see that?---I can see that, by LMW Hegney?

That's right?---Yes.

5

And then there's one other that's also not valued by LMW Hegney in 2013. That's the second last parcel in the table on the right-hand side?---The one valued by Opteon for 280,000?

10 Yes. For – it's 1293. It was valued in 2012 because it was sold by the time of June 2013. It was sold by the Harleys in July 2012?---Okay, the dot on my screen came up at volume 1293, volume 234.

Yes?---10 February.

15

No 2013 valuation for that one. Do you agree?---Yes, I do agree.

Okay. Now, four of the parcels of land were valued by Opteon. Do you see that? One on the first page, three on the second page?---One on the first page by Opteon, yes and one – yes, I can - - -

20

So they're all valued in May 2014 after the agents are appointed?---Yes.

So they're the four parcels of land that were sold by the agent for ANZ as the mortgagee in possession?---Yes, it looks like that, yes.

25

And in each case, each of those four cases - - -?---Yes.

- - - we can see that the value of the property reduced significantly between the June 2013 valuation - - -?---Right.

30

- - - and the May 2014 valuation?---Okay.

Do you see that?---Well, I can't see it but I will accept what you're saying.

35

Why can't you see that?---Well, I'm going to have to identify each one of those properties – yes, okay. Yes, I can see that one.

Well, let's go through them?---Yes.

40

For folio 2808 – sorry, volume 2808, folio 934 - - -?---Yes.

- - - it went from \$425,000 down to \$280,000?---Yes, I see that.

45 And do you know how much the agent sold that property for?---Not off the top of my head, I don't know.

Well, your statement tells us it was \$250,000?---Yes.

So that's \$175,000 less than the June 2013 valuation?---Yes.

5 And for folio 1047, folio 427 on the second page - - -?---Yes.

- - - it went from being 350,000 in 2013 down to 270,000 in the agent's valuation. And for folio 1063, folio 994 it went down from 575 to 340. And for volume 1245 folio 40, it went from 250,000 down to 190,000?---Yes.

10

So that's a combined total valuation of 1.175 million under the June 2013 valuation?---Yes.

15 And \$800,000 under the May 2014 valuation. And ANZs agent sold those three parcels for \$780,000. So almost \$400,000 less than the June 2013 valuations. Do you accept that?---Yes. Based on what you've taken me through, I do.

THE COMMISSIONER: Just go back a bit, Ms Orr. You said sold those three parcels. Sold those four parcels or three?

20

MS ORR: No, there were three parcels - - -

THE COMMISSIONER: Yes.

25 MS ORR: - - - sold for 780.

THE COMMISSIONER: Yes.

30 MS ORR: And a fourth parcel for 250. That was the one that had gone from 425 down to 280.

THE COMMISSIONER: 80, yes.

35 THE WITNESS: So therefore, Ms Orr, should the 800 that you mentioned be a million and 30. Have I understood that correctly? Because the 800 is the three properties and then you've added the fourth which is the 250. So that takes us to a million and thirty for the four.

40 For the valuations in two thousand and - - -?---No, no. For the actual sale price.

The actual sale price was 780 plus 250?---Yes. So I've got that as a million and - - - 1030?---Yes. Yes.

45 \$400,000 less for the three parcels than the June 2013 valuation, and for the fourth parcel, 175,000 less?---Yes.

You accept that?---Yes.

All right. Now, can I take you to one of your exhibits, exhibit 47, which is ANZ.800.644.0125. This is a letter dated 23 December 2014 from the Harleys' lawyers to ANZs lawyers. And in that letter, the Harleys' lawyers did a comparison of the different valuations in 2013 with the sale price. Do you see that?---Yes, I do.

And over the page, if we could have both pages on the screen at once, 0126, we see that they set out the discounts at which the various parcels of land had been sold?---Yes, I see that.

And under the tables, the lawyers said to ANZ:

In our view, the sales achieved by our clients do not justify the significantly discounted sale prices (compared to valuation) achieved by your client. We further note that before your client took possession of the lots which were sold by it, we did request on behalf of our clients an extension of time to 31 December 2014 so that our clients could facilitate a timely sale of the properties themselves, which request your client declined.

Further, as we stated in my email, the lots which our clients had sold included the lots which they considered to be the most difficult to sell. According to your letter dated 26 November ... as at 17 November my clients remained indebted to your client in the sum of \$309,404. Lots 11, 2895, 2914 and 4414 sold by your client sold at a combined discount to valuation of \$570,000. Even after allowing for a more reasonable discount from valuation consistent with the discount evident according to the lot sales achieved by our clients, there should have been a surplus remaining after payment of all debt owed by our clients to your client which our clients attribute to a failure by your client to act reasonably and in a manner consistent with your client's obligations as mortgagee in possession.

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

All right. Now, the letter was concluded by a proposal from the Harleys' lawyers that they enter into a deed with ANZ releasing each other from all claims and liabilities, and discharging all remaining securities. Do you see that?---Yes, I do.

And ANZ responded to this letter and the response is your exhibit 48, ANZ.800.644.0093. That response was dated 10 February 2015. And ANZ told the Harleys that it disputed the allegations. It did not intend to engage in litigation by correspondence. And it rejected the Harleys' proposal?---Yes.

So, again, at this point, the Harleys have been required to sell all of their properties, including their home, during a time when Mr Harley was recovering from serious health issues. ANZ had charged them the costs of appointing an agent to sell the remaining properties as mortgagee in possession, left them without their farming

business, which was their method of generating income, and had sold the last four of their properties at prices significantly lower than their values in June 2013. You accept all of those points?---Yes, I do. Again, as I did yesterday, in – in the context, Ms Orr, of us having given the Harleys a number of years to get to that particular point. But I otherwise accept that chronology that you’ve put.

Well, in the circumstances of the chronology I’ve just put to you, do you accept that the community would have expected ANZ to accept an offer of the kind that was proposed by the Harleys?---Again, Ms Orr, I’ve got to bring it back to the submissions we made in – in January around how we have assessed community standards and expectations, and what rings out for me is that we have said there that we – we feel that we have to do what we are – what we say we will do, and in this particular case, that has happened. I agree the story is a sad one, but nonetheless, what we were doing here is pursuing our – our contractual rights to get – get paid, you know, managing money that belongs to our – our depositors. And whilst it’s a very sad list of events to read out and to listen to, I think the community would expect us to do whatever we can to recover the money that’s owed.

Is that right? That’s what you think the community would expect in this situation?---I think the community expects us to do what we say we are going to do, and we’ve been consistent in our dealings with the Harleys over a three-year period, and so where I’ve landed on this one is that we have conducted ourselves in accordance with community standards.

Well, I want to put to you squarely that this was a breach of ANZs obligation under clause 2.2 of the Code of Banking Practice to act fairly and reasonably towards the Harleys in a consistent and ethical manner?---No, I don’t agree with that.

You don’t agree with that?---No.

All right. Now, this was 2015, this letter we’ve just looked at?---Yes.

I want to take you to 2017 - - -

THE COMMISSIONER: Before you do that, Ms Orr, can I go back to the previous letter, the letter from - - -

MS ORR: Yes.

THE COMMISSIONER: - - - the Harleys’ solicitors and the table that is there.

MS ORR: ANZ.800.644.0125 and 26.

THE COMMISSIONER: On page 2 of that letter, Mr Steinberg, you see the solicitors say that realisation of the four lots – so this is the second table on page 2 – realisation of the four lots was for prices representing a discount to valuation of at least one-third. Do I read that correctly, in your view?---I think you read the letter

correctly, Commissioner. I haven't done the maths to check that but that's what it's saying, yes.

I haven't done the maths either. Let's trust the author with the maths?---Yes.

5

Which may or may not be right. But my question is: are you surprised that an external administrator, whether agent for mortgagee in possession or receiver, should achieve on realisation values of the order of one-third less than values struck by an independent valuer within the period with which we're concerned here?---So

10

Commissioner, the discount to the valuation that this letter is referring to, as I understand it, is the earlier valuation, not the valuation obtained by the mortgagees in possession. So that valuation – I can't remember the age of it, but I think it's about a year old, perhaps a little bit more than that. I would be more surprised – in fact, I would be surprised if we had that discount to valuation to the mortgagee's valuation, because that would have been conducted just prior to the sale. I - - -

15

That would have been valuing what the valuer expected to obtain by forced sale by external administrator. Is that right?---I would have to actually have a look at whether the valuation was done on a market basis or on a forced sale basis. Our general practice is we get the properties valued on a market basis but it is possible it was valued on a forced sale basis but I think it's less likely. But I think it would more be driven by the condition of the property at that particular point in time, any environmental conditions that are occurring at that point in time. I think they would be some of the – the drivers.

20

25

With the Harleys having been required to vacate the property?---I think that would depend on the type of buyer. If the buyer was a - - -

30

But the condition of the property would be affected by the fact that the Harleys had been required to vacate, would it not?---It could be, yes. And so, Commissioner, if that is the case, what our practice then is to do is to maintain the property while we're in possession, and we have – we have various ways that we do that. In – in some instances we might put a manager on the property. In other instances, we will – we will manage the maintenance to the property in other ways.

35

It depends – the valuations in May '14 of three lots were 800 and realised 780. A lot turns on whether that valuation at May '14 was forced sale or fair market. And do you know whether the valuation in May '14 was fair market or forced sale?---So my instinctive response would be it would have been done on a market basis. That's – that's generally how we ask for these properties to be valued, and when I was preparing, you know, for – for this evidence, I looked at each one as I went through. I just can't remember this particular one but they generally would stand out to me if they were forced sale, and would generally upset me if that had happened.

40

45

Yes.

MS ORR: I think if you turn to your exhibit 36, you will see the answer there, Mr Steinberg. The valuation report appears to us to have been at market value?---Okay.

5 Would you like to satisfy yourself of that or does that accord with your recollection?---Yes, that is what I would expect.

10 I said I wanted to take you to 2017, Mr Steinberg. In July 2017 ANZ prepared a diary note recommending that ANZ issue a letter to the Harleys saying that ANZ wouldn't pursue their debt. Do you recall this?---Yes, I do.

And ANZ did that in February 2018. Is that right?---Yes, that's right.

15 So three years after the correspondence that we've looked at declining the Harleys' proposal not to pursue the outstanding debt, ANZ wrote to the Harleys telling them that it wouldn't do so. Is that right?---Yes, that's right, Ms Orr. My recollection is that it followed – I think a phone call, perhaps, from the Harleys to – to the bank.

20 Right. So there was a call and a decision was made not to pursue the debt in July 2017?---Yes, if that's the date of the diary note then that would be right, yes.

That is the date of the diary note. It's exhibit 49 to your statement?---Yes.

25 February 2018, that's conveyed to the Harleys. Why did it take ANZ more than six months after it decided not to pursue the debt to send that letter to the Harleys telling them that?---Yes, I don't know the answer to – to that, Ms Orr. I'm trying to think of what it could be, but - - -

30 It's not clear from your statement. So you're not able to tell us why there was a six-month delay between the decision being made and the Harleys being told?---No, no.

35 And this was obviously a period when the Harleys were still asking ANZ and waiting for an answer on whether or not ANZ would continue to pursue this debt?---So what I'm not clear on, Ms Harley, is whether the Harleys – what I'm trying to think through is what – the Harleys made a call at some point in time. I'm not sure whether the response to their phone call was the diary note of 6 July, or whether the response to their call was our letter of 9 February 2018.

40 It's not clear to us, which is why I'm asking the question, Mr Steinberg. You're not able to - - -?---I'm just not able to help with that right now, I'm sorry.

I see. In your statement you've acknowledged that the tone of some of the bank's communications with the Harleys was, in your words, regrettable?---Yes.

45 Which communications are you referring to there?---I'm referring specifically to some conversations that were held between the ANZ relationship manager and Mrs Harley.

And what was regrettable about the tone of those conversations?---So when I was reviewing the file and reading those notes – admittedly I wasn't at these meetings or on these phone calls – but I read into those notes a tone that came across to me as tense, and I was – it made me feel uncomfortable reading the notes. Yes.

5

But in your statement, having gone through all of the events that we have, you have resisted the characterisation of any of ANZs actions in relation to the Harleys as having fallen below community standards and expectations. Is that right?---Yes, I have.

10

And do you maintain that position, Mr Steinberg?---Yes, I do.

All right. Now, there are two remaining points I want to deal with in relation to the Harleys. The first is – I think it's fair that I take you to the valuation report just on this topic of fair market value. So your exhibit 36, the second document in that exhibit, ANZ.800.652.7498. And we see at 7502 - - -?---Yes.

15

I will just wait for it to come up on the screen – we see that the valuation was done on a market value as-is basis?---Yes.

20

Do you see that?---Yes.

Can you explain what a market value as-is basis in comparison to a market value highest and best use basis?---So my understanding is that that is as the property currently is. So without making any changes or modifications, additions.

25

And highest and best use?---Can you show me where that reference is?

7505?---I am sorry, what's your – what's the question?

30

I was asking you to explain market value as a highest and best use?---Yes. No, look, other than describing it as a – as it's written, I'm otherwise not comfortable describing those – those terms.

Okay?---They're not – they are valuation terms and - - -

35

So you accept that this was market value as-is?---Yes, I do.

Yes, thank you. And the final point in relation to the Harleys is that in answer to my questions yesterday about whether you provided the Harleys with copies of valuations, you said that you did not, and it was not the policy or practice at the time to do so?---Yes.

40

Do you recall that?---Yes.

45

Your counsel has provided me with two documents, and I will ask you to look at those documents, and then consider whether you want to change that answer. The documents – I will hand you a copy of those documents?---Thank you.

5 I would like you to read those documents and just give you an opportunity to consider whether you want to change your answer?---Thank you for giving me that opportunity, Ms Orr, but it does appear that we gave the valuations to the Harleys.

Thank you?---Yes.

10

All right. Can I leave the Harleys and move to annexure C to your statement, which deals with – which deals with Elizabeth Handley and a group of accounts that you've referred to in your statement as the Handley group. Do you have that there?---Yes, I do.

15

The Handleys ran a cattle farm in Queensland?---That's right.

And like many Queensland cattle farmers, they were affected by droughts, floods and fires?---Yes.

20

And you accept in your statement that ANZs conduct in relation to the Handleys fell below community standards and expectations?---Yes, in some respects I do, yes.

25 You refer to an instance in November 2014 where the Handleys' lawyers asked ANZ to postpone a mediation on the basis that Mrs Handley had received adverse test results arising from a series of biopsies?---Yes, I do.

30

And instead of seeking further information about Mrs Handley's illness, ANZ declined to postpone the mediation?---That's right.

When in fact, Mrs Handley, you tell us in your statement, had been diagnosed with cancer and was scheduled for surgery?---That's what we found out. That's right.

35

And you accept that ANZs failure to seek more information before declining the mediation fell below community standards and expectations?---Yes, I do.

40 And what would happen if this sort of situation arose within ANZ today?---I would expect my people to inquire further when a call of that nature is received and to make – make the assessment based on the types of values and characteristics that I've spoken to you about before driven by the lending services purpose.

45

Has ANZ made a conscious effort to change the culture of its lending services team?---I would say we are constantly evolving and we're constantly trying to do better. It's – it's never an exercise where you reach your destination. So I would like to think we have been doing that in the past and I would like to think that we are going to continue to do that as long as we exist.

And ANZ also made a series of errors in relation to the overcharging of interest and fees in relation to the Handleys' accounts?---Yes, we did.

5 And some of those errors were associated with the transition of their accounts from Landmark systems to ANZ systems?---Yes.

10 And the effect of those errors was that there was a period when the Handleys didn't have access to funds, and several of the cheques that they had presented were dishonoured?---That's correct.

15 And you accept that those errors fell below community standards and expectations?---I – I certainly think they may have. What has happened there is the bank has made an error, and we've rectified the error when it has come to our attention. But when I was analysing that particular point, Ms Orr, I – I can see how some people might – might think it is.

20 Yes?---My analysis of that particular situation is, yes, we – we got it wrong. We made an error. When we found out that we had made an error, we rectified it. I also have looked at what ANZ did in respect of those bounced cheques, and what ANZ did was it wrote to the individual recipients of those bounced cheques and explained ANZs error, and that the bouncing of the cheque was not our customer's fault.

25 THE COMMISSIONER: Because dishonouring someone's paper is defamatory, isn't it? Dishonouring a cheque, where there are funds to meet it, is defamatory, isn't it?---I – I don't know, Commissioner. Yes. So – so I think we've made an error and we've fixed it. I think that's what we say we do, that if we do make errors we will fix them.

30 MS ORR: And ANZ also failed to extend overdraft limits to the Handleys that it had agreed to extend?---Yes, that's right.

35 Which meant that there was also a period when they were charged default interest when they shouldn't have been?---They were definitely – definitely charged additional interest, and – yes, I agree. And – and we reimbursed that when we discovered the error.

40 And you accept in your statement that that was also conduct that fell below community standards and expectations?---Yes, I say it may have, yes.

45 It may have, or it did?---No, I say it may have.

Well, what do you think, Mr Steinberg?---Well, my analysis on that is as previous, that we made an error, we got something wrong. When we identified it, we fixed it, and – and that's what we say we will do. So - - -

You don't think it did fall below community standards and expectations?---Not that – no. I don't.

I see. And you've also accepted that ANZ engaged in misconduct in relation to the Handleys?---Yes, I do.

5 There was an occasion where an ANZ staff member involved with the Handleys signed documents as a witness, even though the staff member hadn't witnessed the Handleys signing the documents. Is that right?---Yes, that's right.

And you accept that that was misconduct?---Yes, I do.

10 Have you seen the submission that ANZ made to the Commission on 29 January? You must have. I think you've referred to it a number of times in your evidence?---Yes.

15 And are you aware that in that submission ANZ acknowledged that certain financial advisers at ANZ had engaged in similar conduct, in falsely witnessing beneficiary nomination forms?---I'm broadly aware of that, Ms Orr. Because it's not part of that statement that I'm involved in, I wouldn't want to give the impression that I – I've concentrated too much on it.

20 No, I understand that. But ANZ told the Commission in that document that it had reported more than 30 financial advisers to ASIC who had engaged in that conduct?---Yes.

25 Now, was the ANZ staff member who falsely witnessed the Handleys' documents a financial adviser?---I don't know.

30 So you don't know whether this is an issue that extends outside of ANZs Wealth business, where the financial advisers are located?---My – my understanding is that the lady involved was a branch manager. That's my understanding.

So not in the Wealth business?---No.

So the issue extended beyond the Wealth business?---This – yes.

35 And has ANZ taken steps to investigate how widespread the issue of false witnessing of documents is?---I don't know what the bank has done generally in that respect. I know what happened in this particular case.

40 Well, having identified this particular case - - -?---Yes.

- - - has ANZ taken steps to investigate how widespread the issue is, whether it goes beyond this particular branch manager?---Yes. I don't know the answer to that question.

45 You don't know if ANZ has taken steps to investigate it?---I know we investigated this particular matter. I understood your question to be - - -

It is?--- - - - a broader question.

Yes?---And I don't know the answer to that question.

5 I see. Should ANZ take those steps to investigate how widespread this is?---I – I don't quite understand or – or don't quite know how this part of the business operates. I would accept the general principle that there should be, obviously, a culture where this type of behaviour is – is not allowed and is unacceptable.

10 What I'm putting to you is that you should look into whether this is a one-off event, or a more widespread issue. Have you done that?---No, I haven't, but - - -

Has anyone in the business done that?---And that's the answer that I don't know - - -

15 You don't know, okay?--- - - - whether that has happened or not.

All right. Let's move on from the Handleys then. Mr Steinberg, the final case I want to ask you some questions about relates to another set of farmers who are the subject of a non-publication direction. You deal with them in your annexure F. They also
20 were cattle farmers in Queensland?---Yes.

And you accept that ANZs conduct in relation to these customers fell below community standards and expectations?---Yes, I do.

25 Specifically, you've identified that ANZ offered these customers a \$450,000 overdraft facility in May 2010, but there was an error and the overdraft facility that was made available to them was only \$350,000?---Yes, that's correct.

30 And it wasn't until September 2010 that the full facility was made available?---That's right.

35 And you say in your statement you're not sure what caused that error but you think it's likely that it arose because of the transition between the Landmark computer system and the ANZ computer system?---That's correct.

And you acknowledge that the failure to make the full amount of the agreed overdraft available to the customers for a number of months was conduct that fell below community standards and expectations?---Yes, I do.

40 And you've also accepted that there are aspects of ANZs handling of the file for these customers that would be different under ANZs current systems and processes?---Yes.

45 One of the examples you give is that following the floods in Queensland in early 2011, the customers made a request for interest rate relief, and ANZ declined that request?---That's right.

Do you know why ANZ declined that request?---No. As I sit here, I can't recall it, no.

5 But you tell us that under ANZs current approach to disaster relief, that sort of request would now be granted. Is that right?---Yes, that's right.

10 So what's ANZs current approach to disaster relief?---So these approaches aren't – don't develop from my part of the bank, so it's not a – a subject that I'm able to speak about confidently. But what I do know happens is it's conducted by the frontline, by our regional and agri people, that whenever there is a – an event of this nature, usually very quickly afterwards an announcement is made outlining a relief package for the people who are affected. Our customers are contacted and usually a media release is issued to communicate that message to the market more broadly. It usually involves suspending certain payments for a certain period of time, and – and some other – other things that – that's my understanding of generally what happens.

15 So do you agree that it's important for banks to be flexible in their approach to customers who are experiencing financial difficulties as a result of a natural disaster?---Yes, I do.

20 Okay. And in December 2014, we've already heard from other witnesses, ANZ announced a moratorium on farm repossessions for drought affected farmers in Queensland and New South Wales?---Yes.

25 And that was later extended?---That's right.

I see. Now, in your general statement, Mr Steinberg, you also acknowledged that ANZ had engaged in conduct falling below community standards and expectations in relation to seven former Landmark customers. Now - - -?---That's in 4-1, is it not?

30 It is. Now, we've gone through a number of these. The first is the case we've just discussed. I will ask you to turn up your table at paragraph 43, and this is ANZ.9999.010.0084. I'm sorry, I think I gave an extra 9. 999.010.0069. So this is your table showing the particular customers that you acknowledge ANZ engaged in conduct falling below community standards and expectations, Landmark customers?---Yes.

35 Now, the first in the table – you can see but we can't see - - -?---Yes.

40 - - - is the one we've just discussed?---That's right.

The name of the second former Landmark customer is redacted?---Yes.

45 But this is an additional farmer who we haven't discussed. Is that right?---Yes, that's right.

And this farmer was from Western Australia?---That's correct.

And in relation to this farmer, ANZ acknowledged that it engaged in:

5 *Poor communication and inconsistent practice in that it applied the entirety of
the secured property sale proceeds to reduce principal rather than annual
principal and interest.*

?---That's correct.

10 And the third customer referred to in your table is the Cheesmans?---That's correct.

Who we discussed yesterday. The name of the fourth customer is also redacted, but
this is an additional customer who we haven't discussed?---Yes.

15 And perhaps if we have the following page brought on the screen at the same time.
This will help as we move through the table. The fourth farmer was from
Queensland?---Yes.

And ANZ acknowledged in relation to this farmer that it failed to:

20 *Honour cheques contrary to a previous commitment to do so.*

?---Yes.

25 And the name of the fifth former customer is also redacted. This is another
additional farmer?---That's right.

And this farmer was from Tasmania?---That's correct.

30 And in relation to this farmer, ANZ acknowledged that it engaged in poor
communication in relation to the restructure of their loans?---Yes.

The sixth entry is the Handleys, who we've spoken about?---Yes.

35 Now, you didn't mention the Handleys in the original version of this statement, did
you, Mr Steinberg?---No, no.

40 Because at that time you didn't consider that ANZ had engaged in conduct falling
below community standards and expectations in relation to the Handleys?---I'm just
trying to recall – yes, that's right.

Because the Commission brought the Handleys to your attention. That's right, isn't
it?---Yes.

45 The Commission asked you to provide a statement in relation to the Handleys, and
you did that, and after you did that you considered their case further?---That's
correct.

And having done that, you now acknowledge that ANZ not only engaged in conduct that fell below community standards and expectations in relation to the Handleys, but you've also acknowledged that there was the misconduct we just discussed in relation to the Handleys involving the false witnessing?---Yes.

5

And the seventh entry in this table we see – not redacted – is the Hirsts, who I asked you some questions about yesterday?---Yes.

10 So in addition to these seven customers that you acknowledged ANZs conduct fell below community standards and expectations for, if we move further in your statement to paragraph 45 on 0086, we see that you also acknowledge that ANZ breached the Code of Banking Practice in the case of three former Landmark customers. If we could have 0086 and 0087 on the screen. Now, the first of these – it is redacted but we've spoken to the customers whose name appears in the first row, 15 and we have their permission to identify them. So you see that the first of these is a company called Cashmore Farms Proprietary Limited?---Yes.

And the Cashmores were based in Western Australia?---Yes.

20 And ANZ acknowledges that it made significant variations to the Cashmores' loan which was not in monetary default without also communicating those changes in a clear and transparent way, and it applied the sale proceeds of a residential property to a long-term rather than short-term loan?---Yes.

25 And you acknowledge that that was a breach of the obligation in clause 2.2 of the Code of Banking Practice to act fairly and reasonably?---Yes.

30 And the second entry, which is also redacted but, again, we've spoken to the customer who this relates to, and they don't have difficulties with being identified, that relates to Mr Phillott junior, doesn't it?---Yes.

And as we discussed earlier, ANZ acknowledges that it breached clauses 2.2 and 25.2 of the Code of Banking Practice in relation to Mr Phillott?---Yes.

35 And the identity of the third customer, which we will see over the page, at 0088, is also redacted, but you see that this farmer was from South Australia?---Yes.

And ANZ has acknowledged that it took:

40 *Guarantees from this customer's mother and siblings to ascertain if they were suitable to act as guarantors.*

I'm sorry it took:

45 *Guarantees from the customer's mother and siblings without taking all reasonable steps to ascertain if they were suitable to act as guarantors.*

?---Yes.

And that was a breach of the obligation in clause 2.2 of the Code of Banking Practice to act fairly and reasonably?---Yes.

5

Thank you. Now, in the course of dealing with these cases, the cases that I've taken you through and the other cases in these tables, you've told us in the course of your evidence about a number of things that ANZ now does differently. Is that right?---Yes.

10

And I want to ask you a bit about the process that ANZ went through in making those changes?---Yes.

The specialist agribusiness team that you've referred to within lending services, that was established in August 2014?---Yes.

15

And before that, agribusiness files were distributed amongst relationship managers in lending services. Is that right?---Yes.

And they might not have had any specialised agribusiness experience?---Some – some might have and some might not have, yes.

20

And that specialist team, you tell us in your statement, was established because it was thought that high risk agribusiness customers would benefit from being serviced by relationship managers who had specific knowledge of and experience in agriculture and restructuring?---Yes.

25

Was the establishment of that specialist team prompted by ANZs experiences with the former Landmark customers?---I – I would say it would have been a contributing factor. Just to give you some background, the germination of that team, Ms Orr, that came into being on 1 August, the planning for that team began in approximately March 2014 when we undertook a very material restructure of the whole lending services area, and as part of that restructure, one of the decisions we made was to create this agri team, and then there was a – I guess a process that took six or seven months from March until it was established in August in the runway, if you like, in getting that team set up and established.

30

35

And around that same time in August 2014, ANZ also started to use farm debt mediation more frequently. Is that right?---Yes, I think that's right. I can't recall the point in time when we've put that into our policy, but certainly with the establishment of the agri team, we – we – we looked at utilising farm debt mediation as frequently as – as we could.

40

And you also tell us in your statement that around that time ANZ increased the frequency of face-to-face farm visits by lending services staff. Is that right?---Yes, that's right.

45

Then in December 2014, stories about Mr Phillott began to appear in the media?---Yes.

And they attracted political and media attention?---Yes, that's right.

5

And at about that same time, ANZ announced its moratorium on repossessions in Queensland and New South Wales that I asked you about a short time ago?---Yes.

10 Was that decision influenced by the attention attracted by Mr Phillott's story?---Look, I wouldn't want to say it wasn't an input. I think it might have had an input. I – I think the – the – the more – the stronger input was the fact that we knew we had a whole lot of customers in these drought affected areas, but I – I'm prepared to accept that some of this – the publicity, you know, as a bank, we don't want negative publicity, so it may have been a driver to some of these decisions.

15

Well, after this publicity commenced in December 2014, ANZ started making further changes to its lending services team, didn't it?---Can you be a little bit more specific?

20 Well, I want to take you to some documents to show that at that time, after this attention, ANZ started addressing the culture of the lending services team?---No. So – so again, Ms Orr, I think that that is all part of this restructure that started in March 2014. So we had the big restructure in March 2014, we had the establishment of the agri team, officially 1 August 2014, but it actually probably took a little bit longer to get it up and running. Then during the course of 2015, we – we were looking at the –
25 the purpose – the lending services purpose, or that could have been a little bit earlier, but all of this had its genesis from that restructure that was undertaken in March 2014 when we had a new – a new general manager came along and we were looking at doing a – a very – you know, well, the biggest restructure of a lending services area that I've seen in the 30 years that I've been involved in the area. It was a – it was a
30 big change.

Well, I want to put to you that the genesis wasn't all in that March 2014 body of work?---Yes.

35 I want to put to you that the political and media attention that ANZ got as a result of Mr Phillott's engagement with the media in December '14 – 2014, led to quite significant cultural changes being made?---Yes, I – yes, I wouldn't, yes, hide from the fact that as a bank we don't want negative publicity, and – and we try and do everything we can to avoid it. So I – I would accept that that's – that that could have
40 been one of the drivers, but I know from my experience that it had its genesis well before that, but, yes, you are right, we didn't like the publicity and we wanted to do whatever we could to – to not get that bad publicity.

45 Could I ask you to look at a document I've shown you once before which is ANZ.800.610.0479. It's a lending services agribusiness discussion document from 1 June 2015. And I would like you to look at 0480 where we see some of the changes that ANZ was making in this period summarised?---Yes.

Do you recall this table that I took you to?---Yes.

The old versus new?---Yes, I do.

5 With the lending services commercial issues (agri specific) and then the lending services agri solutions?---Yes.

10 So I just want to go through those briefly because we see that the first one, which is the one I had already drawn your attention to, is that there had been a clear lack of customer visitation and communication. And as a result of recognition of that, the move was to an increased focus on customer service and site visitations. Do you see that?---Yes, I do.

15 And previously, the interest rates:

The average interest rate across the commercial lending services agri book was 8.4 per cent with some customers paying as high as 12 per cent.

20 ?---Yes.

The solution was:

25 *Instruction has been given to all staff to reduce rates to an average of five to six per cent.*

Do you see that?---Yes.

In the old system, there was a:

30 *Lack of clear strategy and length of time in lending services, evidence of a number of files having no clear strategy with some files being outsourced to legal firms to manage.*

35 And the solution was that:

All relationship managers were now to prepare a one page summary on every file in lending services agri outlining the background of the file and the strategy going forward... to be reviewed and discussed with their managers.

40 ?---Yes.

Under the old system, there was a:

45 *Lack of formal valuations on land and no thought on security around livestock and plant and equipment. Provisioning generally lacked any sophisticated calculation and appeared very conservative.*

The solution was:

We have set up dedicated training around security, particularly around the PPSR for frontline and LS staff.

5

The PPSR?---Yes.

What is the PPSR?---It's the securities – the security register.

10 Yes. Under the old system:

Many files lacked formal valuations and relied on internal valuations.

And the solution was:

15

More focus on formal valuations and understanding our security position.

And under the old system:

20

There are examples of a number of customers being refused seasonal funding during planting time, and having interest payments due at the wrong time of their working capital cycle.

And the solution was:

25

We now have a dedicated agri team with an understanding of farm cycles.

30 So this was in June 2015, a recognition of the deficiencies in the way lending services had been doing things, and the proposals for dealing with those deficiencies moving forward?---Yes, that's right.

So this is June 2015. And then in July 2015, 60 Minutes broadcast a story about Mr Phillott?---Yes, that's right.

35 And following that story, much more political and media attention was given to ANZs management of its agribusiness customers?---Yes, there was more.

And particularly in relation to its management of former Landmark customers?---Yes.

40

And in July following that piece on 60 Minutes, ANZ put further measures in place to manage the risk to its reputation arising from its handling of the Landmark customers?---Can you take me to that, please?

45 Well, I want to suggest to you that the taskforce was established at that time to review the cases of certain former Landmark customers?---Yes, that's right.

Okay. Now, could I ask you to look at ANZ.800.075.4956. This is a Farming Segment Support Strategy document for the ANZ board for a meeting on 6 August 2015. Is that right, Mr Steinberg?---Yes, that's right. That's what it says, yes.

5 And if we turn to 4957, we can see an executive summary of this document. Do you see there the second heading:

Increased focus on agri customers including media and political attention.

10 ?---Yes.

And there's a reference to Parliamentary inquiries?---Yes.

The two stories on 60 Minutes - - -?---Yes

15

- - - and a possible class action against ANZ?---That's right.

And under the next heading the document says:

20 *Whilst there are a number of existing initiatives in place, additional measures are required to assist distressed farmers, which may also assist in mitigating future litigation and reputation risk.*

?---Yes.

25

And over the page at 4958, we see a list of the existing initiatives in place supporting agri customers. Do you see the reference there to:

30 *Incorporating our lessons learned out of the New Zealand experience and enabling lending services to respond more proactively to emerging issues.*

What was the New Zealand experience?---Can you just point me which bold statement am I looking at for that one?

35 The third bold statement on the page?---The third bold statement says reduced interest rates, does it not?

40 No, are you on 4958, Mr – I'm sorry, you're in the subheadings. I am taking you to the bold heading above those subheadings about – just below halfway down the page. Existing initiatives in place?---Yes. Yes. I don't know exactly what that's referring to. I know that there is a large agri book in our New Zealand office, but I don't know what those lessons learned out of the New Zealand experience are referring to.

45 I see. And over the page at 4959, we see the heading:

To further support agri customers and reduce any future litigation and reputational risk, additional initiatives are being put in place. The first of those was the establishment of the taskforce.

5 ?---Yes

Continuing:

10 *The taskforce will deal specifically with 16 customers, limits of 35 million, current IP 13 million which have been identified as being high risk. All of these files will be reviewed internally by 29 July 2015. This is to ensure that each matter is managed urgently whilst managing the reputational risk and will seek to reach closure on all pending customer disputes and claims with strategies in place for all 16 customers by 31 December 2015.*

15

?---Yes.

And we saw that one of the cases dealt with by the taskforce was the Cheesmans?---That's right.

20

Were you on the taskforce, Mr Steinberg?---Yes, I was.

And how many cases of former Landmark customers did the taskforce ultimately review?---It will be somewhere between 185 – 185 and 200.

25

And how were those cases selected?---So initially we undertook a review of all of the Landmark accounts that were in lending services at the time. So that was the first category. And then the second category was looking at what we called the closed files that had been in lending services and then been closed, and a review was undertaken of all of those to try and identify which in that population may be – may have a high probability of needing a review done. And then some of those files were then passed on to the taskforce for review if they were considered to meet certain criteria.

30

35 Does the taskforce still exist?---Yes, it does.

And what is its role now?---So its role now is to assist our relationship managers across lending services as a forum to bring difficult type matters that ordinarily would be decisioned in – with your normal authority holders, but they have got more difficulty or more complex situations, whether it's financial or other, and so people can come to the taskforce to get guidance on how to deal with those files so that we can be confident that they are dealt with in a consistent way, and in accordance with lending services purpose.

40

45 Were all of the files of former Landmark customers ultimately reviewed by the taskforce?---No. All of the – the files that were existing in lending services at the time, plus a number of the closed files, not all of them.

So do you know how many files weren't reviewed?---So, again, I will just be a little bit clearer. Every file was looked at.

Yes?---My response to your question is which one of those went to the taskforce.

5

Yes?---Every single file was looked at to determine the - - -

Selection?---The selection criteria, that's right.

10 Yes?---And then approximately 200 were then reviewed by the taskforce, and if you – yes.

And do you agree from this document, Mr Steinberg, that a significant motivator for ANZ in introducing the new changes, particularly the taskforce, was to manage the risk to its reputation?---I – I would agree with that proposition. The only addition, if I could make to that, if I could, Ms Orr, is that a subset of looking at the bank's reputation is how we treat our customers and the approach that we take with our customers. So in saying that, the way I look at reputation is the driver of our reputation is the way that we deal with and treat our – our customers.

20

I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 4.23, Farming Segment Support Strategy board paper, 6 August 2015, ANZ.800.075.4956.

25

EXHIBIT #4.23 FARMING SEGMENT SUPPORT STRATEGY BOARD PAPER DATED 06/08/2015 (ANZ.800.075.4956)

30

MS ORR: So since that time, Mr Steinberg, ANZ has continued to make changes to its policies and procedures in relation to high risk customers?---Yes.

35 And in May 2016, we had the change that you've mentioned to me earlier, which is a change in requiring copies of valuations to be provided to customers?---That's correct.

40 And at around that same time, in May 2016, ANZ introduced a requirement for a member of the lending services global leadership team to approve any decision to commence enforcement action?---That's right.

45 Why was that change made?---The main reason was to ensure that there was a consistency across the – the whole country in the manner in which these decisions were made. So previously, Ms Orr, the decision was made by the relevant authority holders on a particular file. What this change does is those people are still the initiators or the recommenders of those actions, but then it comes up to somebody

like me to then apply another lens over the decision-making process and ensure it's the right decision for both the bank and the customer.

5 And decisions made by lending services are now informed by something you've referred to multiple times in your evidence, which is the ANZ lending services purpose. Is that right? And you've exhibited that to your statement?---That's right.

10 Exhibit 22 to your general statement. I just ask you to have a look at that, ANZ.800.552.2654?---Yes.

15 Now, could you explain how this document and the lending services purpose informs decisions that are now made by lending services in ANZ?---Yes. So, first of all, we – we try and make this a integral part of – of our culture and of the way that we act and behave on a day-to-day basis. I, as the leader of this business, talk to my staff regularly about the lending services purpose and what it means and how it should drive the way that we analyse the – the matters that come to our attention, and how we decision them, as well as how we then communicate them on to our customers. In my opinion, this has become a very important piece of change in our lending services area.

20 And we see there the four pillars. I think you were struggling to remember the fourth before. Here is your chance, Mr Steinberg?---Yes. So the four pillars - - -

25 Can you see it there now?---The customer experience, which we brought – brought up – as our first. And then the staff experience, and then well-managed, and trusted adviser.

30 So is it the case that now ANZ attempts to ensure that it takes into account considerations like the emotional and personal impacts of recovery and enforcement on customers in its decision-making process?---Yes.

And that's something that we saw was lacking in relation to both the Cheesmans and the Harleys?---I think so, yes.

35 And you've accepted it was lacking in ANZs handling of other cases that you've described in your statements?---Yes.

Can I take you to one last document, Mr Steinberg, ANZ.800 - - -

40 THE COMMISSIONER: Before we leave this document. Mr Steinberg, under Customer Experience, the second bullet point:

We act with fairness and honesty.

45 And the third bullet point:

We do what is right.

The fairness that is spoken of there is fairness to two sides of the equation, isn't it?---And which two sides - - -

5 Bank and customer?---I actually think that it's actually speaking to the customer side, but I – I accept that when we do make our decisions, we are – we are looking for fairness on – on bank side as well as customer side.

10 And when we speak of community standards and expectations, do you think it is right to say that the community expects fairness of that kind, that is, fairness to customer and to bank?---Yes, I do.

15 And in your view, when the Code of Banking Practice speaks, as it does, of fairly, reasonably, consistently, in ethical manner – so fair, reasonable, consistent, ethical – is that adding anything of real substance to the notion of fair to both bank and customer? That is, is it just a longer way of saying that the community expects that banks will act fairly – fairly to their customers – but the community accepts also that banks have got to act fairly for the bank?---I think that's right, Commissioner. You know, one of the things that I take into account when I do the work that I do is the fact that the money that we are managing belongs to people, it belongs to our
20 depositors, and it belongs to the – the people who we borrow money from, and it belongs to our shareholders. But the – the stakeholders that I have the most concern about amongst those three are our depositors, and our depositors expect that every single day when we deal with their money, that we deal with their money in the way that I would want my money dealt with, and I want to be sure that every day when I
25 turn up to my bank to withdraw money as a depositor that my bank is able to meet those commitments. And one of the ways the bank ensures it can meet those commitments is by managing its loan portfolio which is where the role that people like me play. Now, I don't mean to overemphasise, you know, our importance in the world, but I'm just trying to give you a – an insight as to how a person like me
30 thinks.

And the notion of “We do what is right” can perhaps be captured by the question, “Should we?” Would you accept that?---As in should we do things - - -

35 Should we do this?---Yes, I - - -

40 And the distinction I'm drawing is the distinction between can we do this, have we got power to do this, and should we do this?---Yes, I agree. And the question that I often put to my people now is – and it might be driving at the same thing but it's a slightly different question – and it is is this the right thing to do. So I know what our legal obligations are, but is this the right thing to do.

45 MS ORR: I said I had one more document that I wished to show to you, Mr Steinberg. It's ANZ.800.076.0761. And this is a Landmark portfolio update for the ANZ board on 28 October 2016?---Yes.

And could I ask you to turn to 0763, which sets out the key outcomes from the review of the Landmark files?---Yes.

Taskforce review process undertaken highlighted the following:

5

(1) no systemic issues – customer concerns dealt with on a case-by-case basis.

Do you agree with that, Mr Steinberg, there were no systemic issues?---Yes, yes, I do.

10

Well, why then, Mr Steinberg, did fixing those problems that occurred with ANZs handling of the former Landmark customers require significant changes to the culture of lending services and to its governance and policy?---So the – the way I make my analysis on whether there were systemic issues is slightly different to the way that you've just put it to me. I would be – I would be looking at this and saying are these systemic across the entire portfolio of – of customer, and in – in coming to that particular view, we had 4500 Landmark customers constituting over 7000 accounts. And so what that comment is responding to is that this didn't apply to all 4500 or to 4000 or 3800 of them, it was a smaller number. So it wasn't systemic in that particular sense of the word. I think the point that you raise is why did we then go and – and change – make all of these changes. And I have to come back to what I said earlier on, that the genesis for these changes was in March 2014, and I know I haven't annexed it, but there is a lot of documentation around this restructuring that was done. So there will be evidence in the bank's records of all of this work occurring in March, April, May, June, July up to August 2014. But you're also right to say, as you asked me before, what other things impacted it, and as you pointed out, we had some negative publicity, which – which we didn't like, and which we didn't want to have continue, and so we continued to understand what we could learn from that and how we could change, and what changes we had to make to make sure that what we were doing that was causing the distress to our customers, that was in turn causing the negative publicity, and that's what has driven the changes.

15

20

25

30

Well, you see on this same page under the heading Culture, Governance and Policy:

35

Both lending services and frontline have made a number of changes to culture, governance and policy to ensure no repetition of these issues occur.

?---That's right.

40

These are the issues that occurred with the former Landmark customers?---Yes.

And one of the cultural changes, the first one we see on the page there, is the:

45

Introduction of the lending services purpose.

That we've just discussed?---Yes.

And what I want to put to you squarely is that all of these changes indicate that there were systemic issues with the culture of lending services at ANZ before it embarked on these changes?---Yes. I don't agree with that.

5 You don't agree with that?---No, I don't.

So why were these changes made then, Mr Steinberg?---Well, as I said earlier, we are constantly looking at ways that we can change, Ms Orr. I hope that this isn't the end of the change. You know, to the extent that we've got it right now, if we have,
10 I'm sure it will be different again in 12 months' time. Yes.

I just want to be clear, after the many hours of evidence that you've given so far, and the cases that I've taken you to - - -?---Yes.

15 - - - demonstrating the way lending services handled multiple cases, you don't accept that there were systemic issues within the culture of lending services at ANZ?---That's right. I don't accept that.

I see. And you see all of these changes as not being driven by those
20 problems?---Again, what I – what I said earlier is that it started in 2014 and I – I have accepted that some of these issues that caused the media publicity, which started with distress in our customers, contributed to it. Can you please also, Ms Orr, take into account that in my part of lending services, we have – I don't know the number, but we have seven or eight hundred accounts at any one point in time. And every year I
25 have approximately 400, 500 new accounts coming in, and four or five hundred accounts going out, approximately. So there are a large number of customers that are coming through what I will call the lending services experience. And so when you talk about the customers that we've spoken about, which are – which I have
30 acknowledged there are issues with, I don't see that as being systemic when you consider that we have thousands – in the time that I've been in lending services, there have been thousands of customers that have come in and out. And I think that's how I'm assessing that question that you ask.

How many of the cases that the Landmark taskforce reviewed resulted in a settlement for a Landmark customer?---There is a number available in – number of customers. I
35 just don't know that number.

Well, can you give a rough proportion? Half? More than half?---I – acknowledging that I'm uncomfortable with the question, I – I would guess in the order of 40, 50,
40 something like that.

And you - - -

THE COMMISSIONER: Per cent or cases?---Sorry, what was your first?
45

Per cent or cases?---Cases.

MS ORR: Cases. And how much roughly was paid?---40 million dollars.

40 million dollars was paid - - -?---Can I just define paid for you?

5 Yes, please?---So we have – we tracked the cost of this exercise to – to the bank, and that cost is defined – includes areas where we had debt forgiveness, as well as some areas where we refunded interest or – or paid compensation.

10 And finally, Mr Steinberg, do you think that ANZs policies and processes for dealing with agribusiness customers now reflect the community's expectations about how a bank will treat customers in financial difficulty?--- Yes, I do.

Thank you, Mr Steinberg. I have no further questions, Commissioner. I'm sorry, I need to tender the last document.

15

THE COMMISSIONER: Landmark Portfolio Upgrade Board Paper, 28 October '16, ANZ.800.076.0761, exhibit 4.24.

20 **EXHIBIT #4.24 LANDMARK PORTFOLIO UPGRADE BOARD PAPER DATED 28/10/2016 (ANZ.800.076.0761)**

25 THE COMMISSIONER: Now, should we take a break at this point, Ms Orr?

MS ORR: Yes, thank you, Commissioner.

THE COMMISSIONER: If I come back at, say, 5 to midday.

30 MS ORR: Thank you.

ADJOURNED

[11.47 am]

35

RESUMED

[11.54 am]

40 THE COMMISSIONER: Now, Mr Molesworth. You have an application You have no witness. Apart from that we can do well.

DR COLLINS: I am told he is in the bathroom, I'm sorry, Commissioner.

45 THE COMMISSIONER: I think he's entitled to do that, Dr Collins. I hope he is. Have I come back sooner than I should have? Probably.

DR COLLINS: A matter of seconds.

THE COMMISSIONER: Old habits die very hard, Dr Collins. Let him have a chance to settle down. Now, Mr Molesworth, you have an application.

5 MR MOLESWORTH: Commissioner, Lachlan Molesworth. I appear for Mr and Mrs Hirst who have leave to appear today.

THE COMMISSIONER: Yes.

10 MR MOLESWORTH: Who have been the subject of Mr Steinberg's evidence. I seek leave to cross-examine Mr Steinberg in relation to three discrete issues raised in his evidence. I should say upfront, being very cognisant of the time of the Commission, I propose to limit questioning to not more than 10 or 15 minutes or so. I am happy to talk to the issues - - -

15 THE COMMISSIONER: It's not so much time as subject matter, Mr Molesworth. If you're going off into new matters, that's one thing. If we're rehearsing old matters that we've heard about and dealt with enough, then I might cut you off. So don't fix it by time, fix it by subject matter.

20 MR MOLESWORTH: Thank you, Commissioner.

THE COMMISSIONER: You may go ahead.

25 MR MOLESWORTH: Thank you.

<CROSS-EXAMINATION BY MR MOLESWORTH [11.56 am]

30 MR MOLESWORTH: Mr Steinberg, if I might take you to your witness statement, Rubric 4-01, page 17, which is ANZ.999.010.0085?---17, did you say?

Yes. It's document 999.010.0085?---You don't have a tab number for me, do you?

35 I don't have a tab number. It's your statement 4-01, page 17.

THE COMMISSIONER: The general statement, page 17, Mr Steinberg, is what we're looking for.

40 MR MOLESWORTH: Are we able to get that on screen?---I don't have that first folder for 4-17.

Thank you.

45 THE COMMISSIONER: 4-01 you are looking for. Your general statement?---That's 4-01, is it?

4-01, your general statement - - -?---Yes.

- - - page 17. I'm sorry, I'm rushing obviously?---Page 17. Yes.

5 THE COMMISSIONER: Yes.

MR MOLESWORTH: Looking in the bottom right-hand cell, you note that:

10 *In October 2015 ANZ offered the Hirsts to participate in an independent valuation process.*

Before this time, had the bank provided any options to have their case independently reviewed, or advice on external assistance available?---Mr Molesworth, is it?

15 Yes?---While I was working to work out where we are, I missed the beginning of your question. So you have put up the table - - -

The third document?---So you have put up - - -

20 The cell in the bottom right:

In October 2015, ANZ offered to participate in an independent evaluation process.

25 ?---Yes, that's right. ANZ offered to participate in an evaluation process, yes.

And prior to that - - -?---Yes.

30 - - - were options made available, or information made available on other review processes which would be available to the Hirsts?---So my understanding, Mr Molesworth, is that the Hirsts were dealing with our customer advocates office, which is, I guess, the third line of dispute resolution that we have available in the – in the bank, the first being the relationship manager, the second being our customer resolution centre, and for anything that can't be resolved at that level, then gets
35 elevated to the customer advocate. And that's where, I understand, the Hirsts' matter was being looked after.

In the four years, though, between August 2011, which is when the bank froze their accounts and their financial troubles first started, and then, would advice have been
40 provided on other sorts of external assistance that might be available; mediation, FOS?---Yes. So my understanding is that the Hirsts were retaining external legal and accounting advice at that time. I can't think of anything that I've seen where we specifically directed them to go and get that advice. That's not to say it didn't
45 happen, I just can't - - -

Would you have likely have volunteered it, though, ordinarily in the course of your processes or procedures with which you adhere?---In our current practice we – we

certainly encourage our customers to obtain legal and financial advice. I can't say from my recollection of the file right now whether we did that in the – in the case of the Hirsts in that period between 2011 and 2015, but – but what I do know is that there was quite a lot of engagement between ANZ and the Hirsts, you know,
5 including after the transfer to lending services. I just can't recall any specific diary notes that answer the question that you're asking me.

You would presumably – and you noted you thought they might have been receiving external advice. Given that they had had their accounts frozen, and then over a
10 period of years ANZ brought about the sale of all of their properties, it would be a pretty reasonable assumption that they would have had no financial resources with which to seek external advice?---So a couple of things behind that. First of all, I'm not aware of the Hirsts' account actually being frozen. I know that there is a reference to that in the materials. But when I looked into that particular matter, I
15 actually don't see any evidence of the account being frozen. In terms of the financial side, the Hirsts' business was – I guess there was two sides to it, as I understand from reading the file. One was the – the farming side which was cropping and livestock, and then the second part was the property development and the MIS side of the business. And so looking at their – or recalling their cash flow forecast, as I recall it
20 now, there was a cash flow forecast that demonstrated with property sales that they would be able to reduce their – their debt significantly through the – the sale of their properties. And – and in that particular scenario, retain Entally Forest. When I then strip out from that cash flow forecast the capital side of the equation – in other words, the property sales to then try and come to an answer to your question, there
25 was a – a surplus of trading funds. So taking out the capital side, there was a surplus of trading funds. So what that's communicating to me is that – is that on the analysis of that document, there was some funds available. I just want to, you know, obviously be cautious in how I say that, because I understand that I'm interpreting an accounting document, but that's the only reference I have to go to to answer that
30 question.

All right. But is – can I ask this question then: is it accurate that the bank only offered a review of what had happened – a review process once the Hirsts actually wrote to the bank, some years after all this started, and well after the properties have
35 been disposed of, pleading about conduct which they had experienced and seeking compensation?---Yes, you are right. That is when the evaluation process was offered.

Do you think that there is an imbalance of power in understanding what options are available for a review and resolution when these sort of serious cases or disputes
40 arise?---Mr Molesworth, I think there's a potential for that. In the case of the Hirsts, my recollection is that they appointed Cor Cordis to represent them in their discussions with the bank. Cor Cordis are a reputable insolvency practice. So I feel comfortable in this particular case to the extent there could have been any inequality
45 that could have been addressed by the fact that Cor Cordis were representing them.

Given that they rely entirely on the bank for the home they live in - - -?---Yes.

- - - for their income, their livelihood from the farm, as the bank moves to actually remove both from them, do you think that there is a community expectation that the bank would take more of a role in informing clients as to what review alternatives would be available?---Again, for me, it's going to come down to an analysis of the individual circumstance, and in – and in this particular circumstance, because the Hirsts were being advised by what I considered to be a reputable insolvency firm, I believe that they had that – that opportunity of learning about any review mechanisms that were available.

10 When the review process was offered and there were negotiations commenced on the terms of reference for it - - -?---Yes.

- - - did the bank fight the Hirsts on those terms of reference? Did they act in an adversarial manner?---So I will qualify that by saying I was not involved in setting up the evaluation process, but – but my – the – it – as I understand it in the manner it was described to me when it was happening, and on my read of the file, I – I don't see that coming out.

20 Just referring to your statement, I will give you the document number first – ANZ.999.010.0089, which is the same document, 4-01, page 22, paragraph 29. I am not sure this is the right document. Sorry, the next page. Thank you, that page. You gave evidence that ANZ has introduced new procedures including dispute resolution mediation processes. Do you think that the Hirsts' case would be done differently now and the Hirsts would get a better result under the new rules?---So, Mr
25 Molesworth, I think we need to have a look at what has happened, you know, in the – in the – in the history of the Hirsts' file. So as we know, they were involved in the MIS industry, and as we know, in 2009 and - - -

30 A portion of their business?---That's right. And as we know, during the course of 2009 and 2010, that industry went through significant structural change with the collapse of Timbercorp, Great Southern, FEA and Gunns. That had a – you know, a material impact on their business. When I can see the dealings with the Hirsts through the course of 2010, after the acquisition, the bank is of the understanding that the Hirsts' strategy is to sell property in order to repay debt, and specifically the
35 Entally Forest property. And their – their mode of sale of the Entally Forest property is by sale to a relative for two and a half million dollars, and this becomes quite a strong theme in the file from probably about September 2010. In addition to that, there were representations that the Hirsts were looking at selling – I can't quite remember whether it was Glen Rowan or Parkleigh but the analysis on the file at that
40 time was that by the sale of those two properties, the expectation was that all of the bank debt would be repaid.

I guess my question was more directed to the dispute options that are available. You refer – you refer for instance to farm debt mediation, and you acknowledge in the
45 same document, in the same statement, the table we looked at previously, that they should have been referred to mediation earlier?---Yes.

My question is: under those procedures which you say have now been introduced, would they be more likely to get a better outcome? Given that you have acknowledged that they should have been referred to mediation earlier?---Yes, as a – as a general philosophy, I agree with the notion that farm debt mediation generally
5 produces better outcomes. As you know, there was no requirement in Tasmania, there’s no legislative requirement in Tasmania for this to occur, but I agree it would be better. What I see from the Hirsts’ file, though, is – and it’s not to suggest it still wouldn’t be better – but there was regular engagement with the Hirsts and – and the bank. And there seems to be a relatively cooperative relationship, as far as I can see
10 through the file. So whether farm debt mediation would have produced something materially different, that I can’t say, but I think, philosophically, I think it’s always better.

THE COMMISSIONER: Is that better because you’re tackling the problem sooner or better because the outcomes are likely to be better? Better in what way do you say, Mr Steinberg?---So I think that, first of all, there’s potentially a better disclosure of information at farm debt mediation, so hopefully there’s representation. So that’s the first thing. The second thing is you have that independent mediator that takes out some of the tension that might otherwise be there. And third, the structure. The fact that it’s a more structured way that lands – that completes in an agreement.
15
20

MR MOLESWORTH: My question is this on procedure then: in your statement where you were asked questions about what has ANZ changed in order to address the issues which were faced by a lot of the Landmark customers, you said:
25

The use of farm debt mediation on a greater range of agribusiness files. This change in practice was introduced in August 2015.

That was over a year before the Hirsts were actually offered any form of dispute resolution. So weren’t they subject to these new rules?---So my response to that, Mr Molesworth, is that, in fact, the Hirsts’ properties were sold by – and I am struggling here, but I think January, February 2014.
30

’15?---’15.
35

The last two occurred after that?---The last two. So by the time we had implemented this change, the Hirst enforcement process had already occurred. So had – had it predated, then I accept it would have been subject to – to the benefits of that change, if any, in this particular case, but in the Hirsts’ case we had already sold the properties by the time this change was made.
40

Turning to valuations, and impact on lending behaviour?---Yes.

Do you believe that the ANZ acted below community standards and expectations in respect of how it used and undertook valuations in respect of the Hirsts’ case?---In the way it used and - - -
45

The way it used the valuations which it had?---Yes.

And the way it undertook the evaluations?---Yes.

5 And they are two discrete questions, so you can answer them separately, if the
answer is not the same?---So, again, the background, Mr Molesworth, is that there
were valuations undertaken by the Landmark manager prior to the acquisition, and
under Landmark's policies, processes and procedures, valuations were undertaken by
their – by their Landmark relationship managers. When the account came across to
10 ANZ, after the acquisition, ANZ – I don't know what the terminology – I guess we
adopted those valuations. We took them over. I think what your question is getting
to is whether ANZ should have undertaken its own valuations in order to meet
community standards at that point, and my answer to that question is that I believe
that we did meet community standards, and the reason I say that is because ANZs
15 policy around valuations of a property of this type is that we undertake valuations
every 36 months. The two – the valuations that we relied upon from Landmark were
done in late 2008 and 2009. So under our policy we were able to rely on those
valuations until 2011 and 2012. So the question for me then is did ANZ act in
accordance with its policies and procedures. The answer for me is yes, we did.
20 Therefore, I reach a conclusion that we have operated within community standards.

Sure. So part of the questioning is around understanding, well, how you use them. If
I could refer to document ANZ.017.004.7252 [Erratum: ANZ.017.004.7244]?---Is
this still 4-1, Mr Molesworth?

25 I beg your pardon?---Is it 4-1?

No, it's not. This is a credit memorandum prepared by the bank. You might just like
to go to page 1 for Mr Steinberg or put it up next to it. I just want you to confirm,
30 Mr Steinberg, that on the date this credit memorandum was signed which was 2
August 2011 – and if you go to the last page you will see it was signed on 2 August
2011 – 2 August 2011. And going back to that first page which I brought up, you
will see that ANZ has signed off on the value of the properties at \$7.75 million. And
it's at page 7252. You would agree with that, Mr Steinberg?---What was your
35 question, I'm sorry?

That in this credit memorandum which has been signed by the relevant relationship
officer, they have relied on a valuation of 7.75 million?---For all of the securities that
were held by the bank?

40 Correct. Land securities?---Yes. So you – you're using the word "relied". I agree –
this is a credit memorandum that's documenting the securities that we are holding at
the time, and what this is recording is that we were holding \$7.7 million worth of
property as valued at that time, yes.

45 Sure. And then if we just go back up now to page 7249 in the same document. You
will see that based on that value – that valuation, there seems to be a

recommendation of increasing leverage from 4.86 million to 5.1 million. That recommendation would be based on the information – or the – or of that valuation itself. Correct?--Mr Molesworth, this document is not telling me what you are saying but I'm prepared to accept your proposition that – or the bank was looking at increasing lending, and – yes.

Thank you. I tender that document, if I may.

THE COMMISSIONER: Exhibit 4.25 will be credit memorandum concerning Hirsts, 2 August 2011, ANZ.017.004.7244.

EXHIBIT #4.25 CREDIT MEMORANDUM CONCERNING HIRSTS DATED 02/08/2011 (ANZ.017.004.7244)

MR MOLESWORTH: Thank you.

THE COMMISSIONER: And 4.25.

MR MOLESWORTH: Without recommending an increase, if I could go to ANZ.017.004.8175. On the same day, that letter went out, 2 August 2011 which, can you confirm, is a letter of offer for a new increased debt facility?--Yes, I'm not sure the amount had increased by looking at that. I would need to see the previous letter of offer.

Or that figure, the 5.1, which is the total of those, does agree with the memorandum of the same day which proposed an increase to the 5.1 million?--Yes.

Now, can I just refer to two more documents, and that will be it. ANZ – actually, I tender that document, if I may.

THE COMMISSIONER: Exhibit 4.26 letter of offer to Hirsts, 2 August 2011, ANZ.017.004.8175.

EXHIBIT #4.26 LETTER OF OFFER TO HIRSTS DATED 02/08/2011 (ANZ.017.004.8175)

MR MOLESWORTH: ANZ.017.004.8154 [Erratum: ANZ.017.004.8153]. This document, which is a diary note, is 12 days later. Could you confirm for us the valuation of all the Hirsts' securities is 12 days later from the past valuation?--Yes, so Mr Molesworth, this is a diary note that's prepared by the new relationship manager for the Hirsts, and what he has done there is he has listed the properties that we hold in security, and what he has put alongside each of the – the – the properties is what he calls an estimate of their values.

The estimate of value. Which is?---\$4.7 million.

5 Which is 40 per cent less than what the valuation was 12 days before which was part of increasing their credit facility?---The estimates are less than what was in the credit memorandum, yes.

And the last document I refer to – I tender that document as well, sorry.

10 THE COMMISSIONER: Exhibit 4.27, diary note 15 August 2011, ANZ.017.004.8154 [Erratum: ANZ.017.004.8153].

EXHIBIT #4.27 DIARY NOTE DATED 15/08/2011 (ANZ.017.004.8153)

15 MR MOLESWORTH: If I could refer now to ANZ.017.004.8923. This is an email which was sent on 23 August, 21 days after the letter of offer to increase the credit facility. If we go down to the last page – second last page, it appears to note that the accounts of the Hirsts are now frozen, 21 days after being granted a letter of offer to
20 increase their credit?---Can you show me which line to go to, please, Mr Molesworth?

Continuing:

25 *At this stage ANZ cannot allow unarranged excesses to continue and we cannot advance further moneys.*

?---Can you tell me what line? I just can't see that.

30 The third last paragraph at the bottom.

THE COMMISSIONER: Ten lines up from the bottom, Mr Steinberg?---Yes, yes.

Under “at this stage”.

35 MR MOLESWORTH: All I want to confirm is that having had that increase - - -?---Yes.

40 - - - three weeks before, they now have no more access to funds from ANZ?---No, that's not how I read that document, Mr Molesworth. What's that's saying is that we – that the bank won't allow unarranged excesses. So they can utilise their facilities up to the limits that the letter of offer that you have put to me allowed them to.

45 So you're confident after the date of that letter they still had access to funds?---Well, this certainly doesn't tell me that they did not.

Do you think the original valuation was inflated, the seven and a half million dollar valuation, \$7.75 million valuation?---So, again, that question needs a little bit of consideration because those valuations were done at a particular point in time. And – and what I’m prepared to accept is that a couple of years later when a formal
5 valuation was done, that the values came in materially less. That, to me, appears explainable by the change in the industry and the real estate values in that market at that time.

10 Would a relationship manager have any incentive to inflate a valuation in order to lend more against securities?---Not at – under ANZs processes, procedures, policies, no.

15 So in no way would his remuneration would in any way be linked to the success or ability to provide debt funding?---I mean, that – you’re asking me a question about the way that our frontline works, which is why I’m hesitating a little bit before I answer. So – but my – my instinctive reaction to that is no.

20 Would I be right in saying that if the properties had not been as over-valued – I think it’s evident they probably were at that time – the bank would not have been prepared to lend as much in the first place?---No, I – I don’t agree with – with that. Again, I’ve had a look at the additional lending that was provided by ANZ post the Landmark acquisition, and my assessment is that the additional lending that was
25 made by Landmark was – was fair and reasonable in the circumstances, based on the business model that the Hirsts had, which was to buy and sell properties, based on the belief that the Entally Road property was going to be sold to their brother-in-law for two and a half million dollars, and based on the cash flow analysis that I saw on
30 the file that indicated that after stripping out asset sales, there would be a surplus after paying interest. So on – on my analysis of the facts that are on the file, I consider the lending to be fair and reasonable.

35 Despite the fact that it seemed to – the valuation relied upon seems to have dropped down 40 per cent in 12 days?---So, again, we’ve just got to come back to those – the document you referred me to before was an estimate by a relationship manager, but I otherwise accept the fact that as a result of what happened in the industry and at that time that there was a – a significant decline in – in values.

40 Sure?---But, as I said, there was a representation to the bank that two and a half million dollars worth of debt reduction was going to come from one transaction, and the file records this on quite a number of occasions, and, as I can see it, was – was clearly in the mind of the decision-makers as they were working through this file to give that transaction an opportunity to complete.

45 And just a final couple of questions just on admission of wrongdoing. Can I take you to your statement ANZ.999.011.0069 which is annexure E to Rubric 4-20, page 24. This was tendered into evidence on Monday by you. And at paragraph 123, it starts with:

It is difficult to answer the question whether ANZs conduct in relation to the Hirsts fell below community standards and expectation.

5 We've heard over the course of the last two days that there has been admission that
there were a lot of – there was a lot of conduct which was below community
standards and expectation in respect of this case. My question is around the
reluctance of the banks to want to acknowledge wrongdoing. Why is it so difficult
for the bank to come out and say, "We got it wrong."?---So Mr Molesworth, the – the
10 first sentence in my paragraph 123 is not intended to convey a difficulty in admitting
to getting things wrong. What that is conveying is that in deciding whether in the
Hirsts' case our conduct breached community standards, we found it difficult to
reach that conclusion one way or the other. It was – I found it a very complicated
exercise. In terms of your question, I think I have admitted on behalf of my bank
quite some behaviour here that has been short of community standards, so – and –
15 and some misconduct. So what I hope I'm communicating by being here today is a –
a preparedness to acknowledge wrongdoing when – when we commit it.

20 Do you think it is important for victims, and do you think the community expects, an
apology to be provided to – by banks when wrongdoing has occurred?---Yes, I do.

Are you aware that after five years of the Hirsts being left financially destitute –
which even former High Court judge Susan Crennan who reviewed the case said was
a case involving bank unconscionability or likely bank unconscionability – the bank
to this day has never apologised to them?---I didn't deal with the Hirsts' matter so I
25 am not aware whether or not an apology was made. May I take that opportunity now
to offer the Hirsts that apology.

Thank you. No further questions.

30 THE COMMISSIONER: I am not sure, Mr Molesworth, whether I marked that
chain of emails as an exhibit. If I have, so be it, but emails 23 August 2011 ANZ to
Hirsts, ANZ.017.004.8923 is exhibit 4.28.

35 **EXHIBIT #4.28 EMAIL CHAIN ANZ TO HIRSTS DATED 23/08/2011
(ANZ.017.004.8923)**

40 THE COMMISSIONER: Dr Collins.

DR COLLINS: We have no questions for Mr Steinberg.

45 THE COMMISSIONER: Yes, thank you very much, Mr Steinberg. You may step
down. You are excused?---Thank you.

<THE WITNESS WITHDREW

[12.31 pm]

THE COMMISSIONER: Now – yes, Mr Molesworth.

MR MOLESWORTH: Commissioner, I would like to make an application for leave to briefly lead evidence from Mr Michael Hirst in response to some of the evidence
5 that we have heard from the ANZ. Mr Hirst has already been provided with a summons to attend. And he has indicated he would like to have the opportunity to provide some additional evidence on a couple of very narrow and discrete issues, addressed in the evidence from the bank.

10 THE COMMISSIONER: Well, again, Mr Molesworth, the question is not time, it's difference.

MR MOLESWORTH: Indeed.

15 THE COMMISSIONER: And addition. But, yes, is Mr Hirst in the hearing room?

MR MOLESWORTH: He is, Commissioner.

THE COMMISSIONER: Yes, if Mr Hirst would be good enough to come forward.
20

MR MOLESWORTH: Thank you, Commissioner. I call Michael Hirst.

THE COMMISSIONER: If you would go into what we're using as the witness box, please, Mr Hirst.
25

<MICHAEL GEORGE HUGILL HIRST, SWORN [12.32 pm]

30 <EXAMINATION-IN-CHIEF BY MR MOLESWORTH

THE COMMISSIONER: Thank you very much, Mr Hirst. Do sit down. Yes, Mr Molesworth.
35

MR MOLESWORTH: Thank you, Commissioner.

THE COMMISSIONER: I will just let Mr Hirst sit down.

40 MR MOLESWORTH: Mr Hirst, can you please state your full name for the Commission?---It's Michael George Hugill Hirst.

And your address is still currently [REDACTED]?---Yes, we rent that property.

45 You have received a summons to attend here today?---Yes, I have.

You have that summons with you here?---Yes.

I tender that.

THE COMMISSIONER: Exhibit 4.29, the summons to Mr Hirst.

5

EXHIBIT #4.29 SUMMONS TO MR HIRST

10 MR MOLESWORTH: Mr Hirst, before you fell into financial hardship in 2011, can you give us a very brief overview of what your farming business was and how long you had been in it for?---Yes. So our family has been – we were farming for some 30 years, so in beef, sheep trading, and – and timber production.

15 And can you briefly, again in the interests of time, just summarise when your relationship with Landmark commenced, and then when your relationship with ANZ started?---Yes. So at some point in about 2005, our family property went up for – went up for auction, and we – we – we needed to try and finance that. And we met [REDACTED] from Landmark, our relationship manager, and he financed us to 8.2 million unsecured, but we were losing on that property.

20

You don't need to refer to relationship managers by name. Throughout your relationship with Landmark, what was your experience with being offered debt. Was Landmark generally supportive when you sought further debt?---Yes. So I think our first experience with the relationship manager followed on, and then we – we began to do quite well in the forestry market, and the debt increased with the opportunities that came up and he was very, very supportive.

25

30 And what was your experience with ANZ and, again, on the same question with regards to being lent more or being offered more?---So we were a Landmark customer. We had a letter in the mail to say that ANZ were purchasing the loan book. The experience, it said, would not change, nothing would change. It would just go on as normal. We would have the same relationship manager, in which case that was correct, up until early 2011 when ANZ took us out to a decent restaurant in our local town, and said "We're a very good business and we want to see more of you", and, basically, pumped us up.

35

40 Can you explain that a little bit more?---So they – they seemed to think our business model was quite good. And we had made some good deals previous – in the previous years, so they tended to single out those and pretty much said, "Just keep going."

40

When was the last offer to increase your loans made by the bank?---So the last offer to increase our loans was on 2 August 2011.

45

And when do you find that your accounts were frozen and you could not withdraw money?---We had an ANZ relationship manager come out on 15 August and it was then that he said, "Put the chequebook away."

And when in your mind were your accounts actually frozen or no longer available for access for you?---I believe that the accounts were frozen on the 24 October – 23 August, sorry. 23 August.

5 Did the terms of your financing agreement between Landmark and ANZ
change?---Yes, they did. And that was one of the major points that we have always
felt we were very badly done by was that in a meeting on 24 October, the regional
manager and the – and our relationship manager hauled us into Launceston to tell us
that we were to be sent to asset lending in Melbourne, and the explanation was that
10 ANZ doesn't do business like you do. We do not lend on the thought of – I can't
exactly – because I haven't got the document here – but “We do not lend on the basis
of capital sales. We lend on a solid cash flow basis.” And that really blew us away
because right up until that point we had been supported to the hilt and they had
groomed us to that point, and then they just turned and then we were just smacked to
15 bits.

Once you got to the position in late 2011 that you couldn't access funds any more,
were you able to seek advice or external services?---So – so the – the thing is we –
we didn't have any money, and we – we didn't feel like we should – we weren't
20 asking ANZ for any money at that point because we realised the situation we were in
at that point, because the valuations had dropped enormously at that point. We – we
were using an accountant who put us on to this crowd in Melbourne who, in our – in
our terms was purely there to sell us up. There was no support whatsoever. Every –
everything in our view that ANZ wanted, they did. And so to this day, we – we
25 haven't been – we haven't remunerated that company for what they did.

Were you aware of any way you could challenge what the bank were
doing - - -?---There is no way we could challenge what the bank did. We had no
resources. So I was working – working quite hard. So – so I had managed to get a
30 job driving a truck, and my wife was in bed. So it was tough. So we really – we
really couldn't find any resources to fund a – a legal team to challenge what ANZ
was doing, and Mr Steinberg was correct. We were very compliant, okay, right
through this process, because originally we had a feeling that it was all our fault.
But, of course, as information came forward later on in years, that, of course,
35 changed.

So were you provided with any information at all from the bank in relation to review
services available or external advice that you might be able to receive?---There may
40 have been reference to seek legal advice but we had no money. There may have
been reference to seek a – a rural counsellor, but I don't – I don't remember it.

Financial Ombudsman?---I had never heard of FOS until I came up here to Brisbane.

When were you first offered a valuation or initial evaluation process?---So – so as we
45 went through the process of – of them picking our carcass to bits, a few stories
started to emerge from the mainland about potential problems in this Landmark/ANZ

takeover business, and we started to engage with a few people. Then on 8 September, Mr Phillott had a 60 Minutes story and the CEO went up and saw him,

and at that point I think we started to realise that maybe everything wasn't quite right. And I had refused to sign a statutory declaration with Mr Wormald because I asked him previous – probably six months previously to that, he was – he had a lot of pressure on me to sign this stat dec. I said, “Mr Wormald, I will sign it if you’ve done nothing wrong, okay?” And he would just go all silent on the phone and he would never answer that question. So I would just say, “Mr Wormald, I will not be signing that statutory declaration until you can guarantee to me that you’ve done nothing wrong.” So I never signed it. And then the story came on 60 Minutes. We wrote an email that following morning, me and my good wife, and it was outlining most of our grievances. And you wouldn’t believe it, I had a phone call that week. Just – just like that.

Until that time, there had been no communication or offer by ANZ in terms of any review of your case?---There was not.

When did you first see terms of reference for this review which they then agreed to do - - -?---So – so Mr Wormald and a – and a customer advocate lawyer came down, and they sat at our table for – I don’t know – two or three hours. Never admitted any wrongdoing. Just basically said, “We’ve done nothing wrong.” They went home. We said, you know, “Come back with something.” They went home. And then we got a phone call from customer advocacy in October 2016 – ’15 – ’15. She said that we want to do this process with an eminent judge, so an evaluation. It wasn’t until April 2016 we actually got the terms of reference. They looked all right to me, but we – ANZ offered \$1000 to get legal advice and that. So we took it to – we found legal advice, took it to them. They – she said, “You just can’t sign that. It’s ridiculous – it’s absolutely ridiculous.” I can’t tell you why because I haven’t got a legal mind but she refused to have us sign it and then there was protracted negotiations until, I think, January the – January 2017.

What were the risks if you didn’t sign the agreement?---We had no option but to sign the agreement, make no mistake.

And when did you - - -?---There was no other option to us.

When did you finally get a resolution?---We got a resolution on February 28 in 2017.

So one year, three months later?---That is correct.

And what was the experience like for you for that year?---Well, you see we had been belted to bits for, what, five years previous to that, and apparently they had done nothing wrong. And then we were on a bit of a high when Mr Phillott went up and we could see that – that there were issues. And even then they wouldn’t – wouldn’t have any culpability at all. But, you know, so we were quite buoyant after that program, as you can imagine. And then – then there is – then in the meeting they just said, “Well, we’ve done nothing wrong” again so, you know, we were on this emotional roller coaster, and all the time, you know, you’ve got to remember, everybody, we still had to – we still had to live. We’ve got four beautiful girls, and –

and we're dealing with all this stuff, you know, for what is it, eight years now? Eight years we've been dealing with this. And – and so it was tough. That – that last – that last 18 months was tough because we – we had an emotional high, and then it all got taken away, in a way, through the protracted negotiations, just to sort out what we were going to talk about. I mean, how hard is it? Tell me, how hard is it to talk about – talk about what we need to talk about. I mean, it was all in black and white. So what was the issue? I – I just do not understand.

Once you had obtained your resolution after the evaluation report had been handed down, are you satisfied that the bank played a role in you losing everything?---There's no doubt. There's no doubt.

Have the bank ever apologised for the misconduct you experienced and that helped bring about your family's ruin?---They have never once ever shown any empathy. They have never shown any compassion. And they have never apologised. And where I'm from, where I'm from, if you do something wrong, there's nothing wrong with apologising. But these guys refuse to.

Thank you. No further questions.

THE COMMISSIONER: Yes, just before I call on you, Ms Orr, apparently your address is subject to a non-publication direction. You were carefully asked where you lived and you promptly answered that, Mr Hirst. We've been very careful not to reveal where you are living?---Tasmania is a small place and they probably all know anyway.

Everyone knows everyone. So we had said no disclosure of where you lived, Mr Hirst. The other thing is you mentioned the manager's name. We had made a non-publication direction about the manager's name, too?---I apologise for that.

I just raise those matters. Now, Ms Orr.

MS ORR: I have no questions, Commissioner.

THE COMMISSIONER: Yes, Dr Collins.

DR COLLINS: I have no questions, Commissioner.

THE COMMISSIONER: Yes. Thank you very much, Mr Hirst, for coming and telling me what you have. Yes, you may step down. You're excused.

<THE WITNESS WITHDREW

[12.48 pm]

THE COMMISSIONER: Ms Orr.

MS ORR: Commissioner, we're moving now to a different case study. I wonder if we might adjourn now and reconvene early. Would it be possible - - -

THE COMMISSIONER: Come back at 1.50?

5

MS ORR: Yes, if that's convenient to the Commissioner.

THE COMMISSIONER: 12.50, and if we resume at 1.50. Very well.

10 MS ORR: Thank you, Commissioner.

ADJOURNED [12.48 pm]

15

RESUMED [1.50 pm]

THE COMMISSIONER: Yes, Ms Orr.

20

MS ORR: Commissioner, we move now to a case study concerning Rabobank, and the first witness in that case study is Wendy Brauer.

THE COMMISSIONER: Yes.

25

<WENDY JOLENE BRAUER, SWORN [1.51 pm]

30 **<EXAMINATION-IN-CHIEF BY MS ORR**

THE COMMISSIONER: Thank you very much. Do sit down.

35 MS ORR: Mrs Brauer, your full name is Wendy Jolene Brauer?---Yes.

And you live at an address known to the Commission in Theodore in Queensland?---Yes.

40 What is your occupation, Mrs Brauer?---I'm a farmer, a grazier.

Mrs Brauer, you have been served with a summons to attend and give evidence?---Yes.

45 Do you have that summons there with you?---Yes.

I tender that summons.

THE COMMISSIONER: Exhibit 4.30, the summons to Mrs Brauer.

EXHIBIT #4.30 SUMMONS TO MRS BRAUER

5

MS ORR: Mrs Brauer, you have made a statement dated 21 June 2018?---Yes.

10 Are the contents of that statement true and correct?---To the best of my knowledge, yes.

Thank you, I tender that statement.

15 THE COMMISSIONER: Exhibit 4.31, the statement of Mrs Brauer, 21 June '18.

EXHIBIT #4.31 STATEMENT OF MRS BRAUER DATED 21/06/2018

20 MS ORR: Mrs Brauer, we hear your accent. Where were you born?---I was born in the United States.

And when did you move to Australia?---When I was married in 1993.

25 And do you and your husband have children?---Yes, we have three.

And do you and your husband own a farm?---Yes, we do.

30 What's the name of that farm, Mrs Brauer?---Kia-Ora.

Kia-Ora?---Yes.

And where is Kia-Ora?---It's south-west of Rockhampton in Central Queensland.

35 How far from Rockhampton, roughly?---280 k.

Thank you. And what sort of farm is it?---We have beef cattle and we make various types of hay.

40 And how big is the property?---It's 2149 hectares.

Any houses on the property?---There are two.

45 Any other buildings on the property?---Yes. There are two sheds – three sheds.

Three sheds. And you breed and background cattle on the property. Is that right?---Yes.

Could you explain what backgrounding cattle means?---Backgrounding is a one-word explanation for growing and putting weight on cattle to get them into feedlot weight.

5 And how many cattle do you tend to run on Kia-Ora?---900-1000.

And you sell most of your cattle to feedlots. Is that right?---Yes.

10 And how long has Kia-Ora been in your family?---My husband and his parents moved there in 1974.

And did you and your husband buy the farm from your husband's parents?---Yes, when they retired, we took over the farm in 2002.

15 And when you took over the farm, did you take over the liabilities of the farm as well?---Yes.

20 And were the farm's operations at that time financed by the Commonwealth Bank?---Yes.

Okay. Now, in 2005, did you and your husband refinance the Commonwealth Bank facilities?---Yes, we did.

25 And who did you refinance with?---Rabobank.

30 And why did you move across to Rabobank?---Well, we wanted a fresh start on our own, but we were really happy to go with the philosophy that Rabobank was a rural bank so we thought that they would understand the ebbs and flows and the ups and downs and the uncontrollable factors that we face as farmers and graziers. And we paid a bit more for that. Their interest rate was dearer than the big four banks and we were happy to do that.

35 And was your refinance arranged through a rural bank manager from Rabobank who worked at the Dalby office?---Yes, it was.

Now, there is a non-publication order in place in relation to that bank manager's name. So I will just refer to him as the bank manager?---Okay.

40 Now, in April of 2005 did you enter into a facility with Rabobank?---Yes.

And that facility was for \$700,000?---Yes.

And it had a term of 15 years?---Yes.

45 And you refinanced two existing Commonwealth Bank facilities. Is that right?---Yes.

And you borrowed an additional amount for working capital?---Yes.

All to make up the single \$700,000 facility. Is that right?---That's right.

5 And do you recall why you needed working capital at that time?---We were rebuilding our cattle yards. They were old wooden yards, and we made nice new steel safer yards, and by trading cattle or backgrounding cattle, they come and go and so we needed cash to keep buying cattle and get that rolling around properly.

10 Yes. Now, you've annexed the letter of offer that you got from Rabobank offering you that \$700,000 facility to your statement. Is that right?---Yes.

And then a few months later in late August 2005, did Rabobank offer you a second facility for \$200,000?---Yes, they did.

15 And that also had a 15 year term?---Yes.

And why did you seek that additional amount of \$200,000?---It gave us a little bit more working capital, but we were going to buy an investment property.

20 And you've annexed the letter of offer for that facility to your witness statement as well?---Yes.

25 And then about a year later, in July 2006, did you increase the amount of the first facility from 700,000 to 800,000?---Yes, we did.

And did the expiry date on the facility remain the same?---As the original facility?

30 Yes?---Yes.

Okay. And you've annexed your application for that increase to your statement as well?---Yes.

35 Then in 2007, did you and your husband decide that you would temporarily relocate to the United States?---Yes, we did.

40 And why did you do that?---Adrian told me that he had always wanted to live in America, and we thought that it was a good time to move our family. Our kids were still young enough. They didn't have those kind of lifelong relationships like boyfriends or girlfriends, or they weren't already in boarding school. We thought it would be a great opportunity for them to be able to spend an extended period of time with my family.

45 And how long did you plan to relocate for?---Two years.

Okay. And having made that decision in 2007, in 2008 did you apply for another extension to the facility, taking it from 800,000 to 1 million?---Yes, we did.

And the 200,000 that you got under that increased facility, do you recall what you used that for?---I'm fairly certain that we used it to buy the house we lived in in America.

5 Yes. And again, you've annexed the application for the extension of that facility to your statement?---Yes.

And the expiry date on the facility, did it remain the same original expiry date?---Yes.

10

Yes. Then early in 2008, did you lease Kia-Ora out to another farming family in the region?---Yes, we did.

And did you seek and obtain Rabobank's consent to that lease?---Of course.

15

And how long was the term of the lease?---Three years.

And was there any option to renew?---Yes, there was a two year option to renegotiate and renew at the end.

20

And did you or your husband have any discussions with the lessee about whether that option was likely to be taken up?---Yes, we did. We spoke to them at great length about what they would like to do and what their plans might be, and they definitely were interested in an option.

25

And did the lessee bring their cattle on to Kia-Ora?---Yes.

And what did you do with your cattle?---We sold them.

30 And when did you then move to the United States?---We left on 15 March 2009.

Okay. And once you had left, did the lessee and his family move into one of the houses on Kia-Ora?---The lessee's daughter and her husband did, yes.

35 Now, a few months after you moved to the United States in March 2009, did you receive an email from your bank manager at Rabobank about a farming property that had come on to the market?---Yes, we did.

40 You've annexed that email to your statement, and I would like to take you to it. If you have a copy of your statement there, it's annexure 5, RAL.0002.0003.3219.

This is an email you received from the bank manager on 26 June 2009?---Yes.

45 Having moved to the United States in March 2009?---Correct.

We see that the bank manager says to you:

Adrian and Wendy, hope all is well in the land of the free. Have just heard that Jamberoo is on the market. This is Tom Campbell's property on the southern boundary of Paul and Marina's property Nankeen so not that far from Kia-Ora. 7049 hectares all up consisting of 5515 FH –

5

FH?---Freehold.

Continuing –

10

and 1534 forestry lease. Not sure of a price at this stage but would imagine around the \$4 million mark, possibly less. Should run about 1000 breeders. Can obtain a little more detail if you think you might be interested.

That was the email you received?---Yes.

15

Were you looking to buy another farming property at this time?---No, we weren't.

What did you think when you got this email?---Well, I thought it was bad timing.

20

We had just moved to America, the kids were just settling in. You know, we were just catching up with family. But it was an interesting prospect. Adrian knows the country there.

And did you discuss the prospect with your husband?---Yes.

25

And was he interested?---Yes.

And why was he interested?---He knows the country, for one. So he knew what it was capable of, that it would be good for what we wanted it for. In our expansion plans, we would like a cow block. So one that will just run cows that we can wean cows off of.

30

Can you explain what a cow block?---Well, a cow block is a bit rougher block. In my terms, a cow block is a block that's a bit rougher, probably just got a lot of native grass, could have too many trees. It's something that's just going to maintain the condition of your cows. Once they're mature they don't need to get any fatter, they just need to maintain and incubate well.

35

What sort of cows do you put - - -?---Mature ones.

40

To breed?---Yes, breeding cows.

Breeding cows on a cow block. Is that right?---Yes.

45

Okay. Now, did you decide to seek more information about the property from the bank manager?---Yes.

Now, we see your response to the bank manager in your sixth exhibit, RAL.0002.0003.3216. And we see your email on 29 June at the bottom of the page. You say:

5 *More information would definitely be helpful and I will give this email to Adrian. Thanks so much for keeping us informed. Adrian is great mates with Marina. I'm sure he must have told you. She is keeping a horse for him while we are here. Look forward to the details.*

10 That was your response to the bank manager?---Yes.

And we see his response to you in the email at the top of the page on 30 June. We see that he attaches some maps and some property details. And he tells you:

15 *Very confidentially at this stage, I have spoken to Paul Wright and he and Marina are interested in a portion of the property and the vendor is not interested in selling a portion. Paul is interested in approximately 5000 acres of the freehold which would leave approximately 8600 freehold plus the 3800 leasehold. Vendor is apparently looking for somewhere around \$350 an acre (too much?) for the freehold... I would expect minimal value apportioned to the*
20 *leasehold. That would make your purchase price around \$3 million and you could carry six to seven hundred breeders.*

25 *Paul seemed to think that the portion he is not looking to buy contains the better country and also all infrastructure. You probably already know but Paul used to own Jamberoo. The offer is currently with Paul at the moment. Property is not yet listed with an agent. I just think there might be a mutual agreement that would suit all three parties (Wright, Brauer and Campbell here). It would appear to fit your price range and at least you know you would*
30 *have one good neighbour with knowledge of the country. If you are interested I might get you to email Paul and Marina direct to discuss as I will be out of the office for the next couple of days.*

35 *I'm going up with Paul tomorrow to have a look at the property and have also been over the property previously. Apparently there are a number of other interested parties but at the moment it would appear that Paul still holds the offer possibly jointly with you. The property would need to be surveyed and split but should not be an issue.*

40 That was the response from the manager to you?---Yes.

So the Wrights were another farming family who you knew, and they were interested in purchasing a part of this property called Jamberoo. Is that right?---Yes.

45 And we see that the bank manager says to you in this email that the remaining part, he thinks you could get for around \$3 million. Is that right?---Yes.

Okay. Now, a few weeks after this, on 22 July, you got a further email from the bank manager about financing the purchase of Jamberoo, which you've annexed at exhibit 7 to your statement. RAL.0002.0003.3211. We will just wait while that comes up on the screen, Mrs Brauer?---That's okay.

5

Here we are. Perhaps we could have that page and the following page on the screen together so we can see the entirety of the email. So this is 22 July. We can see there that the bank manager says firstly:

10 *Expect to see Adrian tomorrow morning on his way to Brisbane to fly out.*

So by this time, your husband Adrian had made the decision to travel back to Australia to have a look at the property. Is that right?---Yes.

15 Yes. And we see that in this email, the bank manager says he has done a few quick figures with regard to income and loan serviceability. And do you see there that he deals firstly with your existing facility limits?---Yes.

20 And they are \$1.2 million. At that time you had the original facility, which was now at \$1 million, and the second facility which was 200,000. Is that right?---Yes.

So existing limits of 1.2, and he's talking about an increase of \$3 million, which would give you a new total limit of \$4.2 million. Is that right?---Yes, it is.

25 And in the next part of the email, do we see that he does some calculations about the interest that would be payable if you took up the new facility. And in the final line of that part, he estimates that:

30 *The interest you would have to pay would be \$315,000 a year.*

?---Yes.

35 And we then see his analysis of your income. Now, were you and your husband working in the United States at this time?---Part-time.

And what sort of part-time work were you doing?---At this time, I think I was working in a bead shop.

40 And your husband?---He would do odd jobs, like drive a truck, or work with a carpenter, or something like that.

So how were you funding your lifestyle in the United States?---We transferred money from our income here to there.

45 And your income here was lease income from Kia-Ora. Is that right?---Yes, that's right.

And is that what we see referred to as Simmons \$200,000?---Yes.

So the Simmons were the farming family who you had leased Kia-Ora to?---Yes.

5 For \$200,000 a year?---Yes.

Then we see a reference to Campbell, \$170,000. What was that a reference to?---That was reference to the leaseback of Jamberoo by the vendor.

10 So by this point, you had discussed that if you bought Jamberoo, you would want to lease it back to the vendor. Is that right?---Yes.

And you hoped to get \$170,000 a year from the vendor leasing back the property?---Yes.

15

And that gave you, according to the bank manager, a total income of \$370,000 a year?---Yes.

Then we see the bank manager dealing with your expenses. And he says to you:

20

Only expenses are rates, insurance and water, so there is potential to allow for capital expenditure on regrowth control, etcetera, each year.

Do you see that?---Yes.

25

And then he says that his figures:

30

... don't take into consideration that the \$200,000 loan is serviced from rental income and not the rural enterprise. If this is the case then that's an additional \$15,000.

What did you understand him to be referring to there?---The \$200,000 limit loan that we had with Rabobank.

35 Okay?---And that our rental properties were paying the interest.

Paying the interest on your \$200,000 loan?---That's what I take it to mean, yes.

And then the bank manager looked at funds that you currently had available to you.

40

Is that right - - -?---Yes.

- - - in the next part of the email. And he says FMD 147,000 question mark, question mark. What was that?---That was our – the combined total of our farm management deposits.

45

I see. So you had 147,000 in farm management deposits?---Yes.

And then he refers to your million dollar loan and tells you that you have 260,000 undrawn on the million dollar loan. Is that right?---Yes.

And your \$200,000 loan, you had 67,000 undrawn on?---Yes.

5

And then we see there's a reference to stamp duty, which he tells you will be around 120,000?---Yes.

And he tells you he's:

10

... not sure what the deposit would be yet, but you should be able to handle this from current available funds.

Is that right?---Yes.

15

Okay. So these were the calculations that the bank manager sent to you to assess whether you would be able to service this loan?---Yes.

Okay. And you responded to this email the following day, and we have your response as annexure 8 to your statement, RAL.0002.0003.3018. Now, am I right in understanding that to respond to the bank manager, you inserted some text in black in the body of his email?---Yes.

20

So we can see that in the part dealing with interest, towards halfway down the page, you said to the bank manager:

25

What will our current interest rate be? What will the current interest payment be? I've got to get these figures working in my head. Do we refinance the current 1 million line of credit into the trust's name as well but leave the fixed portion of 350,000 in the current set-up? The new loan will be in the name of Tim Shay Grazing Trust. Hoping to keep the current Shay Tim Proprietary Limited as trustee for Tim Shay Grazing Trust chequing account. It would be so much easier.

30

Then in relation to expenses, in response to the bank manager's statement that the only expenses would be rates, insurance and water, what did you say in response to that?---I told him not to forget our living expenses.

35

Yes. And then in response to the assessment of funds that were available to you, can you read what you wrote there?---

40

Do we have to cash these in? It is probably better if we can leave this alone so that we can have some cash to work with.

Yes. So was it your position that you didn't want to disturb the money that you had in the farm management deposits accounts?---Yes, very much so.

45

Yes. All right. So around this time, your husband Adrian had travelled to Australia to look at the property, to look at Jamberoo?---Yes.

5 And when Adrian returned to the United States, did you discuss his visit to the property?---Yes, we did.

10 And what did he tell you about that?---Look, he really liked the block. He was really comfortable with it. He knew and was very, very confident in its capabilities to run cows and cows to weaning, and, yes, he was really – really keen. He was very nervous about the cash flow situation and how the business part of it would all work. When we got back, as we were basically starting from scratch, we had no cattle, we were basically depending on the lease income.

15 Did he tell you that he had discussed the cash flow situation that he felt nervous about with the bank manager?---Yes, at length.

20 And what had the bank manager's response to that been?---Our bank manager suggested that we seek a loan that was more than what we needed so that when we came back to Australia to begin our business again, that we had funds to draw on.

25 And what was the idea about what you would use those funds for when you came back to Australia?---Our plan at that point was to – as when we came back from America the first property Kia-Ora would be coming off lease. We expected that option to be renegotiated. So we would keep a few paddocks and start stocking Kia-Ora. The lease on Jamberoo would have had around 15 months, or something, still to go. So we would be able to then use the money to stock Jamberoo as well.

To use which money?---The – the undrawn loan amount.

30 The money left on the loan?---Yes.

35 Yes. Okay. And what did you and Adrian ultimately decide about the purchase of this block?---We decided that our bank manager had come up with reasonable options, and was happy to back us, and to help us out, and we decided to do it.

And when you say happy to back you and help you out, in what way did you understand that he was backing you and helping you out?---By providing the extra money in the loan to enable us to buy cattle when we returned.

40 Yes. And did you plan to buy cattle all at once, or progressively when you returned?---Progressively.

45 Yes. Now, having made the decision to purchase the block, did you and Adrian then sign a contract of sale for the portion of the block that's discussed in these emails?---Yes, we did.

And when did you sign that contract?---I believe it was around the end of August.

So that's in 2009?---Yes.

Yes. And was the contract subject to finance?---It was.

5 And can you recall what the purchase price was?---Not exactly, but it ended up being around \$2.8 million, was the settlement cost.

Yes. And after you signed that contract of sale, you had more email exchanges with the bank manager about finance for the purchase. Is that right?---Yes.

10

And you've annexed one of those emails as annexure 10 to your statement, RAL.0002.0003.3198. Is this an email that you received from the bank manager on 17 September 2009?---Yes.

15 And do we see there in the first paragraph that the bank manager said to you:

Sydney have come back to me with a few questions, mainly to do with the rental properties and to your living expenses whilst overseas.

20 Who did you understand Sydney to be, Mrs Brauer?---The bank manager's bosses.

Yes. And he then said to you:

25 *I know you're both working and I didn't include this income in the figures whilst you're OS. Could you let me know approximately what you're earning as this will cover off your living expenses whilst there.*

And he then went on to ask you a series of questions about the investment properties that you had. Is that right?---Yes.

30

And he asked you at the end:

...how easy it would be to offload the USA house given the depressed market over there and for how much.

35

Do you see that?---Yes.

And then he said:

40 *I think they –*

Who did you understand him to be referring to there?---Sydney.

Yes:

45

I think they just need to confirm that the rental properties look after themselves and don't rely on the property for serviceability. Also try to determine the total extent of your individual liabilities.

5 Now, you responded to this email and to the questions that the bank manager had asked you, and you've annexed that response to your statement as annexure 11, RAL.0002.0003.3020. Now, in this email you answered the bank manager's questions about your income and living expenses in the United States?---Yes.

10 And you asked the questions about the investment properties?---Yes.

And then the bank manager responded to this email a few days later in your annexure 12, RAL.0002.0003.1645. So having received your answers, he said to you:

15 *There's been a bit of back and forth discussion with Sydney but it would appear that we will get an approval for the property purchase, although not officially approved as yet. Sydney are of the opinion that we should reassess the initial*
20 *limit of the loan and look to utilise some of the available funds now rather than retain them for livestock purchases when you are looking to return to full*
25 *control of Kia-Ora, so on that basis they would provide a facility of 3.7 million (refinance the main loan at approximately 800,000 balance with an additional 2.9 million for the property purchase) at this stage. The 200,000 facility remains in place making 3.7 million plus 200,000, total facilities of 3.9. Then in March 2011 when the lease expires, provide an increase for livestock purchases based on your plans and the cattle market at that time.*

Then he goes on to assess whether you have sufficient cash reserves to allow for the settlement. And says:

30 *Until the lease expires there will be a loan limit of 3.7 million.*

Do you see that?---Yes.

Continuing:

35 *Let me know how you feel about this proposal. Sydney actually suggested a limit of 3.6 million but that is cutting it too fine.*

40 Now, based on this email, what was your understanding of what the situation would be when you returned to Australia and wanted to restock Kia-Ora and start stocking Jamberoo with breeders?---That there was \$300,000 available to us. All we need do was ask.

45 Now, did you think that without that \$300,000 you would be able to execute your plan of stocking Kia-Ora and stocking Jamberoo?---No.

In your mind, what did the deal to purchase Jamberoo hinge on?---It hinged on the bank providing another \$300,000 to stock it.

5 Okay. Now, in January 2010, did you sign a letter of offer from Rabobank for \$3.7 million?---Yes.

And you've annexed that letter of offer to your statement?---Yes.

10 And when did you settle on the property?---August 2010.

And why the delay?---There was – they had to split it, take Paul's portion off, and then the council insisted that we have some emergency services road, or an easement, or something, and they take a long time to get their paperwork together.

15 And in the lead-up to the settlement, did the bank manager talk to you about there being a shortfall in the funds?---Yes, he did.

20 What did he say to you?---He said that we would have to provide about \$60,000 of our own funds for settlement because the new facility didn't account for it.

And what did you think about that?---Well, I wasn't very impressed. I thought that we had borrowed enough money to cover all the costs associated with buying this property. So we had our cash to begin again with.

25 And did you find money for the shortfall?---Yes, we used our own.

And where did you find that from?---Farm management deposits.

30 And once the property settled, did you enter into a leaseback with the vendor?---Yes.

And what was the term of that lease?---Two years.

And the annual rent?---170,000.

35 Okay. And at that point, having settled in August 2010, what was your intention about when you would move back to Australia?---We had been talking about moving back in around June of 2011. The children would have finished their school year, and been on summer vacation then. We could have all packed up, said goodbye, that sort of thing. Yes, so that's when we planned.

40 And what did you anticipate the position with the Kia-Ora lease would be at the time that you were coming back in June 2011?---That we would renegotiate for the further two years.

45 Then in December 2010, having settled in August 2010, was there flooding in the area where Kia-Ora is located?---Yes, in December and January of 2010 and '11 there was severe flooding there.

What do you remember about that flooding?---I've got some fantastic photos. They evacuated the whole town for about 14 days. The water was higher than it has ever been. They jetskied from our cattle towns clear to town without incurring – without running into a fence. So it was fairly severe. It – you know, they were out of power.
5 A bit catastrophic, really. It wrecked the fellow's crops.

Did it affect the lessee at Kia-Ora?---It did. That portion that he was farming on, he – he had lost two crops on it and he decided it wasn't viable to keep going.

10 So did he decide to stop the lease?---Yes, he wasn't going to renew.

And from when?---March.

And what position did that put you in?---Tough.

15

Were you able to service the repayments on the loan without that lease income?---We did. It wasn't easy, but we did.

And when you learned that the lessee would not continue with the lease, did you tell
20 the bank manager?---Yes, as soon as we learned of it.

And you've annexed your email to him as annexure 14 to your statement,
RAL.0002.0003.2644. This is your email to the bank manager on 12 January 2011:

25 *Hi, I would love to say happy new year but you might not be thinking like that
at the moment. We have been keeping up with the happenings over there
through friends, Facebook and the news stations websites. Our thoughts and
prayers are continually on the people at home and hope you are all coping with
the mess that is unfolding. Adrian and I hope you and your family are safe and
30 dry. We are astounded by the events that have occurred in the last two weeks.
We are saddened and disheartened but aren't missing the sand flies. I am
writing in regard to money as well. We have received news that the lessee on
Kia-Ora isn't renewing his lease. He is struggling to find enough cattle to
stock his places and with the road messed up he is feeding cattle that should
35 have been gone long ago. So we are finding ourselves with quite a question.
How to make ends meet without the income of our lease. I just wanted you to
know what we are up against and ask for your suggestions for our options. We
are happy to put someone's cattle on Kia-Ora. In fact, we are feeling fairly
desperate at this very moment. I'm sure there is an answer out there and we
40 will be looking for it. As we just found this out, we are still a bit stunned and
confused but we will be talking with you as soon as possible. I'm sure that you
have plenty to think about right now. Stay dry and safe.*

That was your email to the bank manager, Mrs Brauer?---Yes.

45

After this, how quickly did you return to Australia?---We left America on 15 March
and arrived on the 17th.

And after your return, the lessee moved off Kia-Ora?---Yes.

And your financial situation at that time, what was it like?---Pretty dire. There wasn't a lot of money there.

5

And in the weeks after your return, did the bank manager come to Kia-Ora to visit you?---Yes, he did.

And did he come with another person from the bank?---He did.

10

Who was that?---Greg Brady.

And what do you remember about that visit?---It was tense. Our bank manager was tense but he told us that he was no longer going to be in the Dalby branch and that Greg was taking over.

15

Now, around this time, either in this visit or around the visit did you ask Mr Brady for access to the \$300,000?---Yes.

20

And what was his response?---He told us that we would have to sell a property in order to get the 3000 – 300,000.

All right. Now, you say he told you that you had to sell a property. Was there an amount of money that he told you you had to pay – agree to pay in order to get the \$300,000?---Three million.

25

All right. So you could have the \$300,000 on condition that you agreed to pay \$3 million by when?---The end of June 2013, I think.

30

So within about two years?---Yes.

Was that the basis on which you had originally understood that you would be given the \$300,000?---Absolutely not. Why – why would we have borrowed \$3 million if we had it to just give it back to them in two years.

35

And how did you feel about this when Mr Brady told you this was the position?---I was frightened, panicked. How were we going to do this? And then I was mad, because we're farmers. Our business is farming. That's what we're good at. Their business is money. And I trusted them. I put them out there to other people. I recommended them. That isn't what I had come to expect from them.

40

And do you remember signing a document by which you agreed that you would receive the \$300,000 only on condition that you would pay back 3 million in two years?---Yes, I do.

45

And did you feel you had a choice as to whether to sign that document?---No. I think we had \$5 or something in our working account. It wasn't very much. We just

were – we felt desperate. I felt desperate that, you know, we – we had kids in boarding school, or going to boarding school. They had to eat as well. Yes, we had really nothing to go on.

5 And by this time, were there also other external factors that were impacting on your financial situation?---Yes.

10 What were they?---The flood definitely put the skids under what we considered a fixed income for a little while. Not long – not far into 2011 there was a ban on live export of cattle to Indonesia. So those cattle that were traditionally getting on a boat and going across were then coming into our traditional markets. So prices were going lower. And the feedlots were – had increased the – their bottom weight into entry to the feedlot. So we were having to put more weight on the cattle, which takes more time.

15 Did you have any discussions with Mr Brady about whether you could have access to any hardship arrangement?---I asked, yes.

20 And what was his response?---He told me he didn't know anything about them and he didn't know why a bank would enter into such an arrangement.

25 Now, at some point after this did Mr Brady tell you that someone else from the bank would also now be involved in the management of your file?---Yes, some time later, yes.

And who was that?---Bob Ole.

And did you ever meet Mr Ole?---Yes.

30 And where did you meet him?---At my house.

Okay. And how many times did he come to your house?---Twice.

35 And what do you recall of those visits, Mrs Brauer?---That I was surprised he wasn't carrying a baseball bat.

40 Can you tell us a bit about the discussions you had with Mr Ole in these meetings?---Mr Ole didn't say a lot. Greg was usually the speaker, it was like he was the speaker and Mr Ole was the enforcer. So they brought along their bully. All he ever said when we questioned him – and we asked him point blank “Why are you doing this, what's going on, what has changed?” There was no beating around the bush as to, please give us more time, do this, do that. We asked straight out, “What's going on, just tell us”. And all he said was “You need to get professional advice”.

45 So as the deadline approached of June 2013 for you to make the payment of \$3 million, were you able to make the payment?---No.

Did you ask for an extension?---Yes.

And did the bank give you an extension?---Yes, until the following June.

5 And were you continuing to make your interest payments through this time?---Yes, we were.

And then by June 2014 had you by then been able to raise the \$3 million?---No.

10 And what happened after you didn't meet that deadline?---Our account was frozen. So anyone that we had written cheques to for the end of the financial year, any money that was coming in, was – any – well, the money didn't go out and the money that went in didn't come back to us either.

15 And what were the consequences of that for you and your husband?---Well, we left a lot of people swinging for quite a – quite a long time, which wasn't – which didn't sit well with us, and obviously it's a small town. We knew what was going on. We weren't the only people in our town that this was happening to by the same bank. So with flooding and all that sort of stuff, there were a lot of bills that weren't getting
20 paid in town, so it was really hard on the whole community.

And at some point around this time did Rabobank begin applying default interest to your facility?---Yes. I believe immediately.

25 Do you recall what the interest rate was?---I believe it was 10 per cent.

Okay. And then early the following year, in 2015, did Rabobank ask you to attend a farm debt mediation?---No, they didn't ask us. They invited us.

30 And what – what do you mean? What's the distinction that you draw there?---It's the only thing that we were ever invited to that we really didn't want to go to. It was – it was a nice way for them to say, "Come and meet with us so we can take what you have."

35 Did you agree to go?---Yes, we did.

Did you get a lawyer?---We had a Legal Aid solicitor.

40 And do you recall did the lawyer request documents and information from Rabobank in the lead-up to the mediation?---Yes, and so did our farm agribusiness strategist ask for documents to prepare our case.

Did Rabobank provides those documents and that information?---No.

45 Did you attend the farm debt mediation in May 2015?---Yes, I did.

Did you have to pay for the mediator?---Yes.

Do you remember how much you paid?---I think we paid around \$1500 for him.

And where was the mediation held?---Toowoomba.

5 Did you travel to Toowoomba?---Yes.

Did you need to stay in Toowoomba?---Yes.

And you paid for accommodation?---Yes.

10

And - - -?---Meals.

I'm sorry?---And meals, yes.

15 And what do you recall about the day, the day of the farm debt mediation?---It was cold and grey, and I didn't feel well. We were asked to arrive at 8 o'clock. We spent the whole previous day from 8 o'clock till 5 o'clock with the Legal Aid solicitor and our agribusiness strategist. We were asked to arrive at 8 and that the bank would be arriving shortly thereafter and we would get into it. We arrived at 8
20 o'clock. We were put in a room with a big long table like this. We sat on one side. And when the bank got there about 9 o'clock, they sat on the other side. We weren't allowed to leave. If we wanted a drink of water, someone would bring it into us. They brought us coffee, they brought us morning tea, they brought us lunch, they brought us afternoon tea. When I suggested can we just go for a walk and get out of
25 here and have a think about this, no, no, we don't really want you to leave because we would really like to get this wrapped up. Like, it was really stressful. It – it felt like that we had to give up everything in order – in order to get out unscathed. But that wasn't going to happen. We knew we would have to compromise, and we were prepared for that. We were prepared to accept our responsibility in what was going
30 on.

And did you, by the end of the day, reach an agreement with Rabobank?---Yes, we did.

35 And what was that agreement?---It was that we would sell the Jamberoo property for not less than \$2 million by the end of 2015.

So that was – just pausing there – this is in May 2015?---Yes.

40 So you agreed to sell it for not less than \$2 million by the end of 2015?---Yes. And we agreed to be refinanced to the sum of \$4 million by June of the next year.

And when you say you agreed to be refinanced, do you mean by that that you agreed to pay the bank \$4 million by the middle of next year?---Yes.

45

So just so that I understand, you agreed to sell Jamberoo for not less than \$2 million by the end of the year, and give the proceeds of sale to the bank?---Yes, we gave

them the net proceeds. So minus the solicitors and agency fees and things like that, that went to the bank. They took that from the \$4 million. So we still had a million and something.

5 To go?---To go, yes.

And that had to be paid by the middle of the next year?---Yes.

Is that right?---Yes.

10

And what about the default interest that you were being charged. What happened with that?---We asked that it be reimbursed.

15

And what did they say to that?---They said yes, as long as we would continue to pay – continue to pay the interest. And I think it was an adjusted amount of interest, but I can't remember.

And after the mediation, did you sell Jamberoo?---Yes, we did.

20

And how much did you sell it for?---2.4.

And did those proceeds go to Rabobank?---Yes.

25

And did you then attempt to refinance with another bank?---Yes, we did.

How did you go with that?---Not very good.

30

Did you manage to refinance with a non-bank institution?---We did. We refinanced with a private lender to bridge the gap.

And was that a short or a long-term loan?---It was a short-term. It was a six-month contract.

35

And do you recall the interest rate on that?---Nine per cent.

And did you subsequently refinance with another bank?---Yes, with NAB.

40

Okay. Now, Mrs Brauer, what has been the financial impact on you and your family of purchasing Jamberoo and the events that followed your purchase of Jamberoo?---We would be probably at least a million dollars in the red to where we were when we started. Yes, it has been a great financial and emotional cost.

45

You mentioned emotional. What has the non-financial impact of all of this been on you?---It nearly wrecked us. We didn't talk to each other much, there was nothing good to talk about. We had kids away at school. We didn't have the money to go and visit them. They were two and a half hours away from us and we didn't get – we didn't watch football, we didn't go to debating, we didn't bring them home as often

as they probably needed. Our kids were very understanding but we talked to them and we would tell them what we're doing and what's happening, but we tried to shield them from the real nasty stuff. But we couldn't understand it. So we couldn't answer their questions very well. I was depressed, clinically so. I was mad. I still
5 am. I'm really mad. You – like I said before, we trusted these people because that's their business. They're there to help us. Their paraphernalia still to this day on their websites and their brochures say they're here to help you, they're in it with you, let's get on and make a good business and all this warm and fluffy stuff. But when it came right down to it, they weren't. Greg Brady said exactly that. When I said,
10 "You are in this with us, the bank is in this with us." And he said, "I'm not in business with you."

So how - - -?---So, yes, I was really angry.

15 Having gone to Rabobank as a bank specialising in agricultural finance, how do you feel about your experience with Rabobank?---I'm really sad. I recommended those jerks to other people and said what a great experience they were and how understanding they were. But that's – they've ruined – I trusted them. And I'm – yes. They put us backwards. They came hunting for us. They came looking for us
20 to buy this block. And 12 months later they wanted us to pay them back more than we had borrowed. I don't understand. I don't understand.

Thank you, Mrs Brauer. I have no further questions, Commissioner.

25 THE COMMISSIONER: Thank you. Mr McGrath.

MR McGRATH: No questions, Commissioner.

30 THE COMMISSIONER: Yes. Thank you very much, Mrs Brauer. You may step down.

<THE WITNESS WITHDREW [2.43 pm]

35 THE COMMISSIONER: Ms Orr.

MS ORR: Commissioner, the next witness is Mr Bradley James from Rabobank.

40 <BRADLEY MARK JAMES, AFFIRMED [2.44 pm]

45 <EXAMINATION-IN-CHIEF BY MR McGRATH

THE COMMISSIONER: Thank you very much, Mr James. Do sit down. Yes, Mr McGrath.

5 MR McGRATH: Please state your full name?---My full name is Bradley Mark James.

And your business address?---Is 74 Victoria Parade in Rockhampton.

10 And you are the regional manager for southern Queensland and northern New South Wales for Rabobank Australia Limited?---Yes, I am.

You have received a summons to appear before the Commission, haven't you?---Yes, I have.

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

Commissioner, I tender that summons.

20 THE COMMISSIONER: Exhibit 4.32, the summons to Mr James.

EXHIBIT #4.32 SUMMONS TO MR JAMES

25 MR McGRATH: Mr James, you have made two witness statements for the purposes of the Commission, case study number 4-16?---That's correct.

And the first of those is dated 15 June 2018?---That's correct.

30 And do you have that statement with you in the witness box?---I do.

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

35 Commissioner, I tender that statement.

THE COMMISSIONER: Exhibit 4.33, the statement of Mr James dated 15 June '18.

40 **EXHIBIT #4.33 STATEMENT OF MR JAMES DATED 15/06/2018**

MR McGRATH: Your second witness statement is dated 22 June 2018?---That's correct.

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

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

Commissioner, I tender that statement.

5 THE COMMISSIONER: Exhibit 4.34, statement of Mr James, dated 22 June '18.

EXHIBIT #4.34 STATEMENT OF MR JAMES DATED 22/06/2018

10

MR McGRATH: Thank you, Commissioner. Nothing further.

THE COMMISSIONER: Yes, thank you. Yes, Ms Orr.

15

<CROSS-EXAMINATION BY MS ORR

[2.46 pm]

20

MS ORR: Mr James, we've just heard that you're Rabobank's regional manager for southern Queensland and northern New South Wales?---That's correct.

25

And you've been put forward by Rabobank to answer questions about Rabobank's agricultural banking operations, and about Rabobank's interactions with Wendy and Adrian Brauer?---That's correct.

You tell us in your statement that you're responsible for the overall commercial and prudential oversight and human resources management of your region?---That's correct.

30

And how far north and south does your area of responsibility extend?---The northernmost branch is Rockhampton, and the southernmost branch is Armidale in northern New South Wales.

35

You've been either a state or regional manager with Rabobank since November 2011?---That's correct.

And what did you do before that?---I was a regional manager under an old structure with Rabobank also.

40

Now, Rabobank is a subsidiary of a Dutch multinational bank?---That's correct.

And historically, it has focused on agricultural lending?---Correct.

45

And is agricultural lending Rabobank's primary focus in Australia?---Sole focus.

And Rabobank aims to be the leading rural lender in Australia?---That is what we aspire to.

And do you agree with me that Rabobank seeks to achieve that goal by focusing specifically on food and agribusiness by proactively managing client relationships by employing staff with knowledge of agribusiness and implementing strong credit processes to maintain a quality portfolio?---Yes, we do.

5

Now Rabobank currently has 61 rural branches in Australia. Is that right?---That's correct.

And how many of those branches are in your region?---Nine.

10

And in your statement, you categorise Rabobank's agricultural or country clients in two ways: rural banking clients who are primary producers and major agri clients who are middle market clients whose operations go beyond the farm gate and include processing and manufacture. Is that right?---That's correct.

15

What's the range of the size of loans held by Rabobank rural banking clients in your region?---They range from \$500,000 to upwards of \$140 million.

20

And you tell us in your statement that as at the end of last year, Rabobank had approximately 34,000 agricultural clients?---That's correct.

And approximately 11,000 of them had loans with Rabobank?---That's correct.

25

And Rabobank's greatest lending exposure is in broadacre farming, beef, sheep, and grain?---That's correct.

Okay. Now, in the course of preparing to give evidence, you've reviewed Rabobank's records in respect of the Brauers?---Yes, I have.

30

And you were here when Mrs Brauer gave evidence then?---Yes, I was.

Thank you. Now, the Brauers became clients of Rabobank in May 2005?---Yes.

35

And at the time their account was managed by a relationship manager who you've heard his name is the subject of a non-publication direction?---Yes.

How long had the relationship manager – or the bank manager, as I will call him, how long had he been with Rabobank at that time?---I think two to three years.

40

Okay. Now, you heard Mrs Brauer's evidence that at the time she and her husband became clients of Rabobank, they entered into a facility with a limit of 700,000, and a 15 year term?---Yes.

45

It was an all-in-one facility, is that right?---Yes.

What's an all-in-one facility?---The core component of the funding which is the property purchase aspect of the loan as well as the working capital requirement is bundled into one loan.

5 I see. And at the time of the original facility, the bank took security over the Brauer's property, Kia-Ora?---Yes.

And that mortgage would have amply secured a facility of 700,000?---Certainly.

10 Yes. And the bank also took security over a water allocation?---Yes.

And then in September 2005 – August or September 2005 the Brauers enter into the second facility for 200,000?---Yes.

15 Is that right? Also with a 15 year term?---I believe the term would have been concurrent with the existing term.

Yes, I see?---Yes.

20 So a few months shorter than 15 years because we're a few months later. Yes, I see. And that second facility was also secured over Kia-Ora?---Yes.

And you heard the evidence that the limit of the first facility was increased firstly to 800,000, and secondly to one million?---That's correct.

25 Okay. And the term remained the same?---Yes.

And is it usual to increase a facility limit without changing the facility's expiry term?---Unless it has an imminent expiry term, yes.

30 Okay. Now, you heard Mrs Brauer's evidence that in March 2009 she and her family moved to the United States with the intention of staying for a few years?---Yes.

35 And you heard her evidence that before they left they sold all of their cattle and they leased Kia-Ora to another family – farming family for three years with a two-year option to renew?---Yes.

You heard the evidence that shortly after they had settled in America in June 2009, the bank manager emailed them about Jamberoo?---Yes.

40 And you saw the email that was on the screen before that came from the bank manager on 26 June 2009?---Yes, I have seen that.

45 And you heard that in that email, the bank manager told the Brauers that Jamberoo was for sale, he told them the size of the block, he estimated the price of the property to be four million, he estimated the number of breeders that could be run on the property, and he offered to obtain more information about it for them?---Yes. Yes.

Now, is that type of unsolicited contact from a bank manager about a potential real estate opportunity common in your experience?---I don't know that it was entirely unsolicited, but the answer is it varies depending on the manager and the level of proactivity that that manager undertakes. From reviewing the file, I understand that
5 Mr and Mrs Brauer had expressed some interest of acquiring a property at some stage in the future. I don't know if the timing of that, as Ms Brauer points out, it may not have been the correct timing but I do understand from reviewing the file that there had been a conversation on expansion.

10 So at some point in the past the Brauers had expressed an interest in buying another property in the future?---As the – as the file would indicate.

Yes, I see. Now, is that sort of contact from a bank manager about a potential real estate opportunity something that Rabobank would encourage its bank managers to do?---It's not something that I would encourage, no.
15

Why not?---In this particular circumstance, I believe that it gave rise for some conflict between the three parties involved.

20 All right. I want to come back to that conflict - - -?---Yes.

- - - between the three parties involved?---I understand.

But let's assume for now that there was no conflict?---Okay.
25

What's the situation then. Is this something that Rabobank would encourage, to have its bank managers send emails to its customers about potential real estate opportunities?---I think it's something that we would do with caution. No, not in the general practice, I would not encourage it.
30

And why is that? Why would you not encourage it?---It could go towards advice and we're very much a non-advice model.

I want to put to you that an email like this is sent because it's the start of a process that might enable the bank to write a new loan with the client?---That would be the outcome.
35

Yes. And this bank manager, and other bank managers at Rabobank, had KPIs that required him to achieve financial results, didn't he?---He does.
40

And his KPIs required him to achieve a certain volume of gross lending and a certain volume of gross lending for rural loans?---Yes, they do.

They did?---Yes, they did, yes.
45

Yes. And could I ask you to look at a document which is RAL.0004.0004.0188. Now, this is a performance appraisal form for the bank manager for the 2009 year?---Yes.

5 And we see on this page the second box down is Financial Management?---Yes.

These are the objectives for the bank manager. So one of the objectives related to financial management?---Yes.

10 And we see the measures or KPIs in the fourth column across?---Yes.

Yes. I'm sorry, it might be difficult to read on the screen. Perhaps we could - - -?---I can read it, I'm sorry.

15 You can read it?---Yes, sorry.

It's that second row. That's easier for the rest of us, thank you. Now, the KPIs for the financial management objective were (1):

20 *Achieve gross lending for rural loans of \$15 million.*

?---Yes.

And (2):

25

Achieve net lending of \$12 million.

?---That's correct.

30 So this bank manager who dealt with Mr and Mrs Brauer had financial targets he had to meet of bringing in rural loans of \$15 million a year?---Yes, he did.

So he was incentivised by the bank to try and find opportunities to set up loans?---Yes.

35

And that's what he was doing here, isn't it?---Yes.

And we see in this document that his mid-year achievement is recorded in the next column over. Now that we have it blown up we can't see the headings, but the column next to achieve gross lending to the right is a column headed Mid-Year Achievement. Now, his mid-year achievement records that for the first six months of 2009, they had been slower for him than past years, and he was working hard to increase his new business contribution to the branch and to convert all opportunities?---That's correct.

45

Does Rabobank still set KPIs for its bank managers that have lending targets?---Yes, we do.

And why do you do that?---Because it enable to – to enable us to grow our business through increased lending.

5 Do you see any difficulties with that from a customer perspective, Mr James?---Absolutely not.

No difficulties?---None whatsoever.

10 Do you see any difficulties having heard the evidence of Mrs Brauer about her experience?---I do understand the difficulties that Mr and Mrs Brauer experienced as a result of how those actions may have come about, but in terms of us having objectives for managers to lend to increase the business, I have absolutely no problems with that whatsoever.

15 So does Rabobank take some responsibility for creating a system that incentivises its bank managers to go out and sell as much volume of loans as they can so that they can meet their KPIs?---If it was unqualified I would have a problem but it's not unqualified.

20 In what way is it qualified, Mr James?---We have a requirement for our managers to lend sustainably in terms of the risk in those KPIs as well.

Where do I see that here, Mr James?---The next page.

25 01 – do you have – on the next page is 0189. I will have that brought up on the screen?---Did you want me to talk to that? Sorry.

30 Yes, could you point out where in the document we see that?---So under portfolio maintenance.

35 Yes?---So the internal audit items are significant 1 issues could relate to – could relate to and would relate to quality of lending. The items of reviews could also relate to quality of lending and ensuring that the quality of lending was being maintained. The items of – there were several but not all – adherence to policy generally would refer to credit policies also where a manager is brought to account if they aren't lending in terms of the bank's credit policies. The BIS II ratings refers to a – the metrics that the bank uses to look at the quality of a loan and they are to be maintained as well. And the rest of it – of that would not relate to matters that I'm speaking to.

40 So you have internal measures that could relate to the quality of the loan?---Definitely.

45 Is that right?---Definitely.

I see. But at the same time, you incentivise your bank managers to go out and bring in as many loans as they can?---Within the – within the confines of that credit quality, yes.

5 I see. I tender this document, Commissioner.

THE COMMISSIONER: 2009 appraisal form, manager Dalby branch, Rabobank RAL.0004.0004.0188, exhibit 4.35.

10

EXHIBIT #4.35 2009 APPRAISAL FORM, MANAGER DALBY BRANCH, RABOBANK (RAL.0004.0004.0188)

15 MS ORR: Mr James, what's the consequence of meeting your KPIs?---The consequence of meeting them? So we have – at that stage we had a – what I would refer to and the bank refers to as a discretionary bonus system.

20 A bonus system?---In line with a review of salary, what we refer to as TEC, total employment cost, and that alignment of that salary is in terms also of the performance of a staff member, not just a manager.

So if you met your KPIs you were eligible for a bonus?---That's correct.

25 And if you didn't meet these lending targets, you wouldn't be eligible for your bonus?---If you didn't – well, no, it's not just the lending targets. So if you met the lending targets and you didn't meet the risk aspect of it - - -

Yes?--- - - - you may not apply – achieve a lending target.

30

I see?---Because it's – it's assessed as a total contribution.

But one element that you had to satisfy was meeting your lending targets. Is that right?---Yes, that's correct.

35

If you didn't meet your lending targets, it didn't matter about the rest of it, you wouldn't be eligible for a bonus?---No, that's not correct.

40 Okay. Could you explain that?---Because it's discretionary we look at the seasonal conditions that may exist at the time. So in any given year we've had managers that have achieved a bonus who haven't met their lending targets because of circumstances beyond their control.

45 I see?---It is rare that we would pay – and in my personal experience would not pay a bonus to a manager who has achieved those lending targets but did not achieve the risk targets.

Yes. So the discretion is applied in a way that means where lending targets are not met because of seasonal conditions, recognition is given to that factor?---Among other things.

5 Yes. Okay. Now, when the bank manager sent the email to the Brauers on 26 June 2009, he had recently inspected Kia-Ora for the purposes of conducting a valuation. Is that right?---Yes, that's correct.

10 He had inspected Kia-Ora on 19 June 2009, and he produced a report, a valuation report on 30 July 2009?---That's correct.

So why was he doing a valuation of Kia-Ora a week before he sent this email to the Brauers?---That date – the coincidence of that date is not apparent to me.

15 So why would he have been valuing Kia-Ora at that point in the bank's relationship with the Brauers? They've gone to the United States?---Mmm.

They weren't seeking any additional facilities?---Mmm.

20 What would have caused him to go and inspect Kia-Ora for the purposes of producing a valuation?---I – I can't answer that, I'm sorry. If – do you want a circumstances when that could exist? I don't know what the circumstance was that did exist. I'm not sure, I'm sorry.

25 I am not interested – you don't know why he did that?---No, I'm sorry.

Okay. All right. Now, you saw the email sent by Mrs Brauer in response to the bank manager's email on 29 June 2009?---Yes, I did.

30 And you've seen the bank manager's response to that on 30 June 2009?---Yes, I did.

And you saw that he referred in that email to his discussions with Mr Wright who owned a property that shared a boundary with Jamberoo, and who was interested in purchasing part of Jamberoo?---Yes.

35 And you saw in that email that he set out what he understood the vendor's price expectations would be as well?---Yes, I did.

40 Now, he estimated in that email the purchase price for the available portion of land, and told Mrs Brauer that there were a number of other interested parties in the property?---Yes, he did.

45 Now, again, I just want to understand if that's the sort of email that Rabobank would encourage its bank managers to send to its clients?---Not given the parties involved.

Well, again, I want to come to this issue - - -?---I understand.

- - - of conflict that I think is underpinning some of your answers but I firstly want to understand whether Rabobank's position is that a relationship manager, a bank manager should be inserting himself in a potential purchase of property in this way?---It is something that I would encourage our managers to exercise caution with.
5 So it's not something that I would do.

So it should not have been done by this bank manager?---There is not a hard and fast rule on it. It's one of discretion.

10 Yes, and you've looked at this file. Should this bank manager have done it in this situation?---In this circumstance, no.

Okay. Now, you've referred to the conflict a number of times?---I'm sorry.

15 No, no, I want to come to that now. The bank manager wasn't just assisting the Brauers with this potential purchase, was he?---No, he wasn't.

He was also assisting the Wrights, the people who were interested in purchasing the other portion of land?---That's correct.
20

So the Wrights were also his clients?---Not at that point.

Whose clients were they at that point?---I'm not sure. Of Rabobank I'm referring, so I'm not sure - - -
25

They were Rabobank clients. Is that what you're saying?---I'm saying I'm not sure that the Wrights were Rabobank clients at that time. The people who acquired the property.

30 So were they prospective clients?---Yes, yes.

All right. They were clients that the bank manager was looking to bring across. Is that right?---That's correct.

35 Okay. And Tom Campbell, the vendor of the property, he was also a client of Rabobank?---He was a client.

And was Tom Campbell one of the bank manager's clients?---Yes, he was.

40 Right. So of the three parties to this potential transaction, the bank manager was representing the Brauers, he was trying to represent the Wrights, and he was also representing the Campbells?---That's correct. Can I qualify something I've just said.

Yes?---Clarify something I've just said.
45

Yes?---I think the ultimate acquirers of the property, their parents were clients of the bank.

I see?---And I believe that the children had bought the property but I'm not sure that the children at that time – they weren't children, I'm sorry – the adult children were clients.

5 So Paul and Marina who we saw referred to in some of the emails?---I believe they're the parents.

They're the parents?---I believe they were clients.

10 They were the clients of the bank manager?---Yes.

And they were purchasing the property for their son and his wife?---I don't think they were purchasing it for them. I think they actually – the son and the wife purchased it themselves.

15

So the parents were assisting in the purchase, is that - - -?---I understand so.

Yes?---Yes.

20 Yes, I see?---I just wanted to clarify that.

So the bank manager is involved for every party in the transaction. Was that an acceptable position?---No.

25 Why not?---It gives rise to conflict.

It was a potential conflict of interest, wasn't it?---I believe so.

30 And what did Rabobank's policies at that time say about the handling of that sort of situation?---The policies at the time were – were broad. There was a general policy on those conflicts being reported to the manager of – of the conflicted person.

You say the policy at the time was to report it to the manager?---Correct.

35 All right. Now, could I show you a document which is RAL.0005.0007.0162. Now, is this Rabobank's policy about conflicts of interest at the time?---I don't have a date on that document, I'm sorry.

Could I show you at page 0164?---Yes, November 2006.

40

It's dated November 2006. And if we turn to 0178, we see that section 9 in the document deals with conflicts of interest and duty. Do you see that?---I can.

45 Do you see towards the bottom of the page there are three main categories of conflicts, examples of which are as follows:

Conflicts of duty between two or more customers, where transactions are being arranged between two or more customers, the bank must ensure that all parties are being treated evenly and appropriate disclosures are made, and when the bank wishes to advise on both sides of a transaction or on behalf of two different parties on the same transaction, for this to be able to occur, generally express written consent with full disclosure must be obtained from those parties.

5
10 ?---That's correct.

Did that happen here?---No, it didn't.

Why not?---I believe it was overlooked.

15 Overlooked?---Well, that's the only reason I could give.

Now, are you able to point to any part of this document, which I think you've been provided with prior to giving evidence today, that establishes that there was any system at this time for reporting a potential conflict up the line?---Without reviewing the entire document, my understanding of the policy in 2006 was that the – the item should be referred to the account manager's manager. And then ultimately reported through to compliance in Sydney, in our head office.

20
25 Well, I can see no reference to that in this document?---Yes, that was my understanding, but I haven't seen that in this document here.

No?---Yes.

30 So it's not in that document?---Not that I can see in front of me, no.

Okay.

MR McGRATH: Can I just object in relation to the fairness aspect of that question. There is potential material in there to which the witness hasn't been directed.

35 THE COMMISSIONER: He was asked I thought about whether there was anything in this document that spoke to it and I thought his answer was no.

40 MR McGRATH: And I thought the follow-up question was that I can see nothing in this document that does refer to that.

THE COMMISSIONER: Yes.

45 MR McGRATH: And as a matter of fairness, I think it should be put to the witness not in those terms, if in fact there is material.

THE COMMISSIONER: You've lost me, sorry.

MR McGRATH: The - - -

THE COMMISSIONER: Go back a stage. I'm obviously playing a lap behind where the game is. So it's unfair because?

5

MR McGRATH: An assertion has been made that there is nothing in that document that does in fact refer to a reference of a conflict to a manager or a compliance.

THE COMMISSIONER: And I thought the witness had agreed with that. Am I wrong in that for a start?

10

MR McGRATH: The witness had agreed to it, yes.

THE COMMISSIONER: Right. So where is the unfairness?

15

MR McGRATH: In making the further assertion that, "I can see nothing in that document." The question was, "I can see nothing in that document that does refer to that." So that doesn't depend on the witness's answer at all. It is a further independent assessment made by the questioner.

20

THE COMMISSIONER: The document will speak for itself, I think, won't it, Mr McGrath. Yes, thank you. Yes. Go on, Ms Orr.

MS ORR: I will tender the document, Commissioner, which will allow submissions to be made about whether there is a part of the document. I understand the witness is not able to identify a part, but if his counsel are able to.

25

THE COMMISSIONER: Exhibit 4.36, Rabobank Worldwide Compliance Standards November '06, RAL.0005.0007.0162.

30

**EXHIBIT #4.36 RABOBANK WORLDWIDE COMPLIANCE STANDARDS
NOVEMBER '06 (RAL.0005.0007.0162)**

35

MS ORR: Now, Mr James, what do Rabobank's current policies require in this sort of situation?---Current policy is a lot clearer.

Yes?---And more concise.

40

Yes?---So we have a – a far more steely focus on compliance on matters of conflict. The current policy is – is clear in that if a conflicted person, staff member, identifies a situation where they may be conflicted, that that is reported to their account manager. Their account manager will report that to the – what we call our risk champions, and in our region that is a risk and compliance officer with a dedicated role. A further assessment is done, and then it is reported through to our compliance department in Sydney and maintained in a register.

45

Now, you've exhibited the current conflicts policy to your statement as exhibit 57, RAL.0005.0006.0763. I just want to ask you about one part of that document, Mr James?---Mmm.

5 At 0774. Under the heading Disclosure of a Conflict to a Client or Third Party, if we could have that blown up, we see:

10 *In exceptional circumstances, and with the prior approval of Compliance and Legal, it may be appropriate to disclose a conflict of interest to a client or third party as a proactive management tool.*

?---Yes.

15 So I just want to understand what constitute the exceptional circumstances that permit disclosure of a conflict to a client?---I will just read that again, if you don't mind.

Yes?---

20 *In exceptional circumstances, prior approval of compliance –*

I think what that is saying – my interpretation of that is it's saying that with the express approval of the client, if we've identified a conflict and the client is – is cognisant of that conflict and comfortable with it, then we can proceed providing
25 we've got oversight from legal and compliance.

I think this is more about whether the client is told?---Absolutely.

30 Of the conflict. So I'm sorry, I'm struggling to understand your answer. If the client is comfortable with the conflict?---If the client has been informed.

But this is about the circumstances in which the client is permitted to be informed?---It's saying that it is appropriate to disclose a conflict of interest to a client.
35

In exceptional circumstances?---Yes, I understand. Yes.

40 So I just want to understand - - -?---That's a little different from what I said, I'm sorry, yes.

Yes. Why is it only exceptional circumstances that would permit disclosure of a conflict of interest to a client?---I'm trying to – I'm trying to understand what would give rise to an exceptional circumstance.

45 Yes?---And I'm wondering if that applies in discretionary – as a discretionary line. I'm not – I'm not entirely sure what exceptional circumstance would exist for that to happen.

So does that mean generally the position is that the conflict is not disclosed to the client?---I see. I would – I would think so. Particularly if the conflict – yes, I would think so.

5 You think it would not be disclosed?---If it would not be disclosed. So do you mind if I give the example of this circumstance for my interpretation?

10 Yes?---I would – I would think that if a manager identified something that could potentially be a conflict and didn't proceed with that transaction and reported it through the appropriate channel, and – and removed themselves from that transaction, there then wouldn't need to be disclosure to the client because there's no consequence because the conflict has been resolved or the conflict didn't exist because they've been removed from the transaction. A further example?

15 Well, yes, I'm still struggling to reconcile that with the direction given to employees by this statement, because I read this statement – and you can tell me if you disagree - - -?---Please.

20 - - - with my reading of it, to suggest that your bank managers are only allowed to tell their clients about a potential conflict of interest in exceptional circumstances?---I see.

25 And when they've got the approval of compliance and legal to do so?---Yes, I see – I see what you're saying. It's not – it's not – I believe – I don't believe that's how it is intended.

30 I see?---The intention of the policy is to not have our managers conflicted. If they are, then it's reported beforehand. And if it's appropriate to proceed, that that should be disclosed with the client. That's my interpretation.

And do you accept that that's not - - -?---That's a little ambiguous.

35 - - - the way this works, the way this sentence works?---Yes, I understand, yes. Yes. I'm explaining my understanding of the intention of the policy.

I see?---But I do understand your reference there. I'm not clear.

40 Yes. If that's the intention, do you accept that that's not consistent with the way the policy is expressed?---Yes.

45 Okay. Thank you. Now, can I take you back into the chronology of the Brauers. And we had been in July 2009 with these email exchanges that were passing between the bank manager and the Brauers while they were in America. And we saw that there was an email earlier where the banker told the Brauers that he had spoken with Mr Wright, and there's a conversation about Mr Brauer coming back to Australia to look at the property. Do you recall that?---Yes, that's correct, yes. I've read that.

Yes. Now, on 19 July 2009, the relationship manager, the bank manager, inspected Jamberoo for the purpose of conducting a valuation. Is that right?---That's correct.

5 Now, could I ask you to look at RAL.0002.0001.2804. Now, is this the valuation report that the bank manager produced for Jamberoo on 19 July 2009? I'm sorry, the inspection is on 19 July 2009. And if we have page 2806 brought up, we will see that the valuation date is 30 July 2009?---Yes.

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

So this is the valuation report produced by the bank manager?---That's correct.

15 And we see at 2806 on the screen at the moment, that the bank manager valued Jamberoo at \$2.9 million?---That's correct.

Now, was it usual for the bank manager who was responsible for writing the loan to conduct the valuation of the property that was under consideration for the loan?---At that time it was.

20 And at that time, in what circumstances were bank managers permitted to conduct valuations in respect of security properties for their loans?---So recalling the policy at that time, for amounts under – for loans under a million dollars, they could value, inspect and value the property for internal purposes. For amounts over that, they needed the co-signature of a senior manager known at the time as a C signatory or
25 their branch manager.

All right. I want to look at the policy that embodies what you described but before I do that I tender the valuation report, Commissioner.

30 THE COMMISSIONER: Exhibit 4.37 is property inspection/valuation report, Jamberoo. 30 July '09 RAL.0002.0001.2804.

35 **EXHIBIT #4.37 PROPERTY INSPECTION/VALUATION REPORT,
JAMBEROO. DATED 30/07/2009 (RAL.0002.0001.2804)**

40 MS ORR: I will take you to RAL.0004.0002.0015, which is the Rabobank valuation policy as at 19 February 2007. So applicable at this time. And do you see there the heading Internal Valuations?---Yes, I do.

And in clause 1.1 tells us that Rabobank's position was that:

45 *Where valuation reports are completed internally, they are undertaken by account managers. Such valuations are for the bank's use only and must not be released to any other party unless authorised by legal.*

?---Yes.

Now, just pausing there, why not release the valuation reports to the client?---Our valuations are for internal purposes to value the extent of values – valuations on collateral, and they're conducted by account managers who aren't necessarily valuers for external purposes.

Who aren't necessarily?---Valuers.

10 So the person conducting the valuation is not necessarily a valuer?---No.

Well, what are their qualifications to conduct valuations?---For internal assessment purposes at that time, the training was incorporated in credit training of a general nature. No specific training course set aside for valuations.

15 So how did you expect them to have the necessary skills to conduct property valuations?---Yes. So – which is why our policy at that time looked for the oversight and sign-off by an experienced manager to double-check the valuation that had been adopted.

20 But the person with the oversight wasn't a valuer either, were they, Mr James?---No, they weren't.

25 So that didn't help much?---Well it does because that person, as I mentioned earlier, was a C signatory who was a senior person within the bank who had years of experience to ensure that they had sufficient to experience to oversight that valuation.

Years of experience of valuing properties?---Of banking.

30 Right. Okay. So if we turn to clause 1.3, we see that:

Valuations for residential securities where the value is 1 million or less may be undertaken by the account manager subject to –

35 What you have already referred to –

C signatory endorsement. Where the value is in excess of 1 million, the valuation is to be referred to an external valuer.

40 Now, was Jamberoo a residential security?---No, it wasn't.

Right. So this clause didn't apply?---No, it didn't.

And then we see clause 1.4:

45 *Unless otherwise agreed by credit, all security properties must be inspected, the inspection report and valuation in the CMS completed and submitted to*

Credit with commentary and recommendation in the following situation: for all new loans (irrespective of amount) and for loan increases in excess of \$1 million.

5 ?---That's correct.

So does that mean that for non-residential security properties, they could all be valued by an account manager?---Yes.

10 With no valuer skills or training?---That's correct. Mr [REDACTED] did have accreditations, Ms Orr.

We will just need to deal with - - -

15 THE COMMISSIONER: Cut the name.

MS ORR: - - - the non-publication direction.

THE WITNESS: I understand.

20

THE COMMISSIONER: Yes.

THE WITNESS: Understood.

25 MS ORR: All right. Now, so this is 2007. This is Rabobank's policy in relation to internal valuations, and external valuations because in some circumstances there could be an external valuation. Is that right?---That's correct.

30 But your account managers were permitted to conduct internal valuations for all non-residential securities?---Correct.

Okay. I tender that document, Commissioner.

35 THE COMMISSIONER: Exhibit 4.38 Rabobank valuation policy 19 February '07, RAL.0004.0002.0015.

**EXHIBIT #4.38 RABOBANK VALUATION POLICY DATED 19/02/2007
(RAL.0004.0002.0015)**

40

MS ORR: Now, around this time in 2007 – I'm sorry, in 2009 the policy is 2007, the events we're talking about are in 2009. So around that time I want to put to you that issues with Rabobank's approach to valuations were emerging. Do you agree with that?---Yes.

45

And APRA had required Rabobank to review its rural valuation policy to clarify and tighten requirements regarding internal valuations?---Yes.

5 And Rabobank had agreed to do that, and said that it would introduce control measures by late 2010?---That's correct.

10 And then in 2011, in an internal audit report, Rabobank identified a number of deficiencies with its internal valuation processes, including deficiencies in the way the valuations were being completed?---That's correct.

And later in 2011, APRA conducted a targeted review of collateral and foreclosure management, and Rabobank was one of 13 banks who participated in that review?---That's correct.

15 And Ernst & Young conducted the assessment for Rabobank?---That's correct.

And they produced a report?---I understand so.

20 Yes. Well, I will show you that report. It's RAL.0005.0005.0085. So this is a copy of the report produced by Ernst & Young for the APRA Targeted Review of Collateral and Foreclosure Management?---Yes.

25 Yes. And if we turn to 0092, we see a summary of results of this work, and about halfway down the page we see that the report dealt with the extent. Do you see that :

The extent to which collateral management systems and processes are independent of the business origination function.

30 ?---Yes, I see.

Continuing:

And independently reviewed by the risk management and internal audit functions.

35 ?---Yes, I see that.

And we see that was given an orange rating. Do you see that?---Yes, I do.

40 And if we turn to the page before, 0091, we see that orange is:

Suggested improvement opportunities.

45 ?---Yes.

Now, I want to deal a bit more with the content of this report but it's usefully summarised in another document which I will take you to. So I will tender the report.

5 THE COMMISSIONER: Exhibit 4.39, EY report APRA targeted review 30 June '11, RAL.0005.0005.0085.

10 **EXHIBIT #4.39 EY REPORT APRA TARGETED REVIEW DATED 30/06/2011 (RAL.0005.0005.0085)**

MS ORR: And can I take you now to RAL.0005.0005.0308. And we see that this is a letter from APRA to Rabobank dated 2 December 2011?---Yes.

15 And we see in the first paragraph that there's reference to the review involving external auditors assessing Rabobank's compliance – sorry, you will see this reference further down the page:

20 *For the 2010/2011 targeted review –*

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

25 Continuing:

30 *... external auditors were required to assess the strengths and weaknesses of the ADIs compliance with relevant prudential standards, collateral management governance framework, collateral management systems and reporting, valuation processes, custodial arrangements and foreclosure management.*

And we see that 13 banks participated in the review?---Yes.

35 Now, if we turn to 0311, we see some findings that Ernst & Young made summarised in this document. Finding 8 – if we could blow up Finding 8 and the three paragraphs underneath it:

40 *Valuations performed by the originator. Ernst & Young have noted that in the majority of cases, the loan originator also values the collateral, and although the loan is reviewed every three years, the valuation is updated by the same individual. It is perceived that in this regard, collateral management systems are not independent of the business origination function. There is a risk the collateral may be overvalued by the originator either intentionally or in error.*

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

Now, APRA asked Rabobank – you see in the third paragraph there – to:

Provide details on the policy or procedural changes –

That had been made to:

5 .. now ensure there is sufficient independence between the collateral valuation process and the credit origination function.

?---Yes.

10 I tender that letter, Commissioner.

THE COMMISSIONER: Exhibit 4.40, letter 2 December 2011, APRA to Rabobank, RAL.0005.0005.0308.

15

EXHIBIT #4.40 LETTER APRA TO RABOBANK DATED 02/12/2011 (RAL.0005.0005.0308)

20 MS ORR: So that letter was 2 December to Rabobank. 2 December 2011. Can I take you to a letter from Rabobank to APRA dated 16 December 2011, RAL.0005.0005.0056?---Yes.

25 Do you see there under the heading finding 8, if we could blow that up that Rabobank told APRA that:

30 *It was cognisant of the significance of accurate valuations and has implemented a range of additional controls during 2011 to ensure an appropriate balance is maintained between collateral risk and business considerations.*

?---Yes.

35 And Rabobank referred to the release of an updated valuation policy?---Yes.

And that updated policy still permitted loan originators to value a property at the time of origination, didn't it?---Yes, it did.

40 And it still permitted the – did it still permit the loan originator to conduct the subsequent reviews of that valuation?---Yes, it did.

Okay. So there remained a lack of independence between the collateral valuation process and the credit origination function?---Yes, it did.

45 And the bank came back to look at that issue in 2014. I will take you to that but I will tender this letter.

THE COMMISSIONER: Exhibit 4.41 - - -

THE WITNESS: Ms Orr, I'm sorry.

5 THE COMMISSIONER: - - - letter 16 December '11, Rabobank to APRA,
RAL.0005.0005.0056.

10 **EXHIBIT #4.41 LETTER RABOBANK TO APRA DATED 16/12/2011
(RAL.0005.0005.0056)**

MS ORR: Yes, Mr James?---Sorry. There was one other recommendation in there
15 that did make a difference to the oversight on valuations that wasn't mentioned. Is it
appropriate I mention that?

Yes, I'm happy for you to mention that, Mr James?---Thank you. So as part of that
20 recommendation, it was decided that we would have a head of valuations appointed
to the role of doing hindsight valuations. That was after the event, I appreciate.

Yes?---But it was certainly something in there that acted as a further mitigant to the
concerns that you've raised.

25 Okay. But still, the originators were performing the valuations?---Yes.

Yes. Now, as I said, I understand that the bank came back to look at this issue in
2014. And the trigger for that was the release of draft regulations from the European
Central Bank. Is that right?---Yes, it was.

30 Can I take you to RAL.0005.0003.0041. This is an internal memo at Rabobank
dated 22 July 2014. Do you see under the heading Background, if we could have
that blown up, that there is reference there to:

35 *Draft regulations from the European Central Bank. And following those draft
regulations, a group-wide policy in respect to the monitoring of collateral has
been issued. Whilst neither APRA or the RBNZ are yet to adopt similar
regulation, it appears possible (probable) local regulators will adopt similar
measures in the future. To comply with the regulations, the following policy
40 setting has been established for all Rabobank entities: "when real estate is
part of the collateral base, the value should be properly assessed before
granting the credit. An independent, qualified appraisal of the market value is
required. Independent in this context means independent from the client and
from the commercial department that maintains the relationship with the
client."*

45 ?---Yes.

And we see a reference further down to the current model, which was that account managers prepared valuations for non-specialist rural land?---Yes.

And we see within that paragraph, a few lines down:

5

The advantage of this model is that account managers are well versed in land values in their regions and this expertise and knowledge is highly valued by our client base. The disadvantage is that the appraisal is not independent of the front office and it could be perceived and is possible that account managers are inflating values to assist in the provision of credit to clients, that the second line of defence lacks intimacy with the property and the local market exacerbates the risk. To date, empirical evidence, actual sales compared to the RAGNZ appraisal, support the conservatism of our appraisals.

10

15 ?---That was my experience also.

Thank you. I tender that document, Commissioner.

20 THE COMMISSIONER: Exhibit 4.42, memo 22 July '14 to executive committee Rabobank, RAL.0005.0003.0041.

**EXHIBIT #4.42 MEMO TO EXECUTIVE COMMITTEE RABOBANK
DATED 22/07/2014 (RAL.0005.0003.0041)**

25

MS ORR: And following this in response to these European Central Bank regulations, Rabobank created the Asset Quality Management Department?---Yes, we did.

30

And that's a separate operating unit of your risk division that is established, we see from documents, because of changes to the regulatory environment that require a separation of the property appraisal and collateral inspection function from the credit approval function?---Yes.

35

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

So Rabobank moved to a new model which no longer permits loan originators to conduct valuations?---That's correct.

40

So valuations are now conducted only by internal appraisers or external valuers?---That's correct.

45 So what is an internal appraiser?---So the asset quality team – asset quality management team employs managers who are seconded across to that division to attend to the valuations of all properties that we hold as collateral.

And what are their qualifications?---They vary. They are typically experienced bankers, not all – in fact most wouldn't be valuers. It's headed by someone and oversighted by somebody who is a registered valuer.

5 So they're typically experienced bankers and you said they're oversighted by a person who's a valuer?---That's correct.

So they aren't valuers either?---No.

10 All right. So when was the change to that model made?---Two thousand – 2015, to the best of my recollection.

2015. So Rabobank, from the documents that I've just taken you through, was on notice of problems with its valuation model from at least 2009 when concerns were raised by APRA?---That's correct.

15 And it was on notice of APRA's view that it needed to ensure sufficient independence between the collateral valuation process and the credit origination function since at least 2011?---That's correct.

20 But it didn't implement changes that prevented bank managers from conducting valuations for their loans until 2015?---Those changes were impact – in fact – rather, yes, in 2015, correct.

25 Was that acceptable that it took so long to deal with those issues, Mr James?---I think in the context of the problem as it existed from an internal point of view of whether or not we had a significant problem with properties being valued accurately, I don't think it was. In terms of our speed to delivery of the requirements, it probably wasn't.

30 And your internal appraisers are still not valuers?---No, no, they are not valuers but we do have far more rigorous internal training specifically in that regard.

But not valuation training?---Centred on valuations.

35 Right. But I just want to be clear. I want to make sure I understand this. They are not all qualified valuers?---They are not all qualified valuers, no, to be clear.

40 APRA conducted a review in relation to Rabobank's processes last year, didn't it?---Yes.

And APRA identified continuing issues with valuations at Rabobank?---Yes.

45 Okay. Could we have a look at RAL.0005.0003.0072. This is a letter from APRA to Rabobank on 10 November last year. And it relates to a review of Rabobank that APRA conducted in September last year?---Yes.

And if we turn to 0074, we see that there were three key findings from the review. And a third of those related to the valuation policy. If we could blow that up. See:

5 *APRA is aware that Rabobank has recently undertaken a review of its valuation policy. APRA supports this review, noting that there appears to have been weaknesses in Rabobank's valuation policy over the review period. Valuation concerns was a recurring theme in the problem loan files reviewed. Rabobank also reported a very high rate of overrides against its loan-to-security ratio policy.*

10

Can you explain that policy, Mr James?---So the loan to security valuation – ratio policy relates to a lending value ratio which is a percentage portion of the total assumed market value of a property. And it's within our policy. And in the – in the case of a grazing enterprise, that lending value ratio may be 50 per cent, and the
15 override would relate to an instance where we approved a loan where that lending value ratio was at, say, 55 per cent or in excess of the 50 per cent.

So APRA noted that you had a very high rate of those overrides at Rabobank?---That's correct.

20

I see. Now, APRA made some observations at 0075 of this document about the need for Rabobank to improve its lessons learned process. Can you explain what that lessons learned process is?---So lessons learned process involves hindsight reviews of outcomes from various – in this case, valuations, or certain circumstances that
25 have evolved to see – to ensure that we look back in hindsight to ensure that we've acted appropriately, or take our learnings away from it to correct going forward.

And we see there that APRA said that as part of its review it had examined six lessons learned memos prepared by Rabobank over the period since March
30 2015?---Yes.

And its assessment was that there remained scope for improvement?---Yes, I've read that.

35 There were inadequate action points in response to identified weaknesses in origination practices?---Ms Orr, are you referring to the – to the – so there was – there was two lots of six lessons learned. There were one that had six files and there was one that had six valuation assessments. Are we talking about the valuation assessments?

40

No, I am referring to the six lessons learned memos that were prepared by Rabobank. There's a footnote in this document which shows you what they are. Footnote 2, if you look at it, tells you which matters those lessons learned memos related
45 to?---Could I please have a moment to read that?

45

Yes?---Thank you. Yes, thank you.

And APRA noted, can you see in that paragraph, that there were inadequate action points in response to the weaknesses that were identified in those lessons learned processes?---Yes.

5 And that across all of the reviews, there was little evidence of recommendations for changes to lending policies or practices, risk appetite, or staff training?---Yes, I see.

And APRA also noted that there were several recurring issues in the lessons learned reviews, including valuation issues?---That's correct.

10

And APRA requested, we see at 0076, that by 30 March this year Rabobank provide a copy of its review of valuations – this is the last paragraph and in that response clearly:

15 *Outline how this review addresses the issues that were identified in the six lessons learned memos and how any changes to policy or practices may impact LSR overrides.*

I tender that document, Commissioner.

20

THE COMMISSIONER: Exhibit 4.43, letter 10 November '17, APRA to Rabobank re Prudential Review Report, RAL.0005.0003.0072.

25 **EXHIBIT #4.43 LETTER, APRA TO RABOBANK RE PRUDENTIAL REVIEW REPORT DATED 10/11/2017 (RAL.0005.0003.0072)**

30

THE WITNESS: There was a change, Ms Orr, to – to our policy in regards to that.

MS ORR: In response to this?---Yes.

Yes. I just want to take you to that now?---Thank you. Thank you.

35

So could I take you to the letter that Rabobank sent to APRA in response to this one, which is RAL.0005.0003.0078. So this is your letter back to APRA on 28 November last year. And if we turn to the second page, 0079, we see that Rabobank told APRA that it had established a new independent asset management team. Is that what you were referring to, Mr James?---In part.

40

And a new framework around valuations, which is independent of the first line and the second line?---Yes.

45

Is that what you were referring to?---In part.

There's also a reference to a new valuation of real estate policy which prescribed, among other things, that only internal appraisers could inform internal appraisals.

Those were the things that you told APRA about. Is there something else you want to tell the Commission about?---Only in relation to the last sentence in the final paragraph on page 1.

5 THE COMMISSIONER: The document has gone down. I'm sorry, do go on. Finish your sentence?---I'm sorry.

No, you finish your answer?---In relation to the LSR, we reviewed that very carefully.

10

MS ORR: I see?---Because of the exceptions that were within our 50 per cent LSR policy.

I see. The overrides?---Yes, yes.

15

And what did you do in response to that?---We looked at the occurrence of LSRs that were outside of that policy, and – and whether or not it was prudent to bring them to back within policy or whether or not there was sufficient cash flow in those businesses to be able to sustain higher LSRs. And this largely relates to strengthening of cash flows.

20

I see?---So the decision was made by the bank to review the LSR policy, and – and we did, and in the instance of the cattle sector, for argument's sake, it has been increased to 60 per cent.

25

I see?---But with a lower tolerance to overrides.

Yes, I see. Now, could I tender this letter to APRA.

30 THE COMMISSIONER: Letter 28 November '17, Rabobank to APRA, RAL.0005.0003.0078, exhibit 4.44.

35 **EXHIBIT #4.44 LETTER RABOBANK TO APRA DATED 28/11/2017 (RAL.0005.0003.0078)**

MS ORR: Now, I want to come back to the Brauers and their circumstances, but there's one last document on these topics that I want to show to you before I do that, Mr James, which is an exhibit to your statement. It's exhibit 51, which is your current valuation policy?---Yes.

40

RAL.0005.0006.0340. Now, this is the current policy, Mr James?---February 2018, yes, it is.

45

Now, if we turn to 0344, we see the types of appraisals that an internal appraiser can now do. Do you see there they can do a desktop appraisal which doesn't involve a physical inspection of the property?---That's correct.

5 A joint appraisal, which is based on an inspection that's carried out by the account manager, and the value adoption by the internal appraiser?---Yes.

And a full appraisal which is where the inspection and the value adoption are carried out by the internal appraiser?---That's correct.

10

So what are the circumstances in which a desktop appraisal of an agricultural property are carried out?---So they're – they are triggered by amounts of exposure that a client would have with us, and typically, desktop valuation, in the first instance, would adopt a Valuer-General figure. Where the line security ratio as a result of adopting that conservative figure exceeds 70 per cent we would look to source two comparable sales and – and apply that valuation to that property.

15

And what are the circumstances where a joint appraisal with the physical inspection being the account managers and then the value adoption happening by the internal appraiser?---That is exposure triggered as well. So above \$1 million I am just trying to recall the top end – it would be in our policy here – I believe it's 16 million but I would need to refer to the policy, please. Sorry, it may be 8 million, I'm sorry.

20

You're correct, it's 16 million?---Yes. Okay.

25

0345?---Recently changed. So in that instance, we have the account manager inspect the property and the valuation is always – is applied by the internal appraiser.

What does it mean to say that the value is adopted by the internal appraiser following the inspection by the account manager?---So – so in the process of valuing a property it's obviously done on – following an inspection. To assume – to assess what the nature of the country is, the product capacity of the property is, and from that we assume a value compared to peer properties, and the peer properties are comparable sales of other places that have sold in that district, ideally, and the valuer, the internal appraisal staff member actually applies the valuation figure based on the assessment – based on the inspection, I should say, that the manager has done in the field.

30

35

So does the account manager provide a figure that is adopted?---No, the account manager never provides a figure, Ms Orr.

40

So where does the figure come from?---The figure comes from the review of the inspection and the comparable data that's put together by the – and that comparable data is critically assessed and – and looked over very carefully for aberrations that may appear where a sale has been of an extraordinarily high or low figure for a certain reason.

45

And what are the circumstances where a full appraisal of an agricultural property is done?---And the trigger amount again, I will need to verify because it has recently changed.

5 0345, if we can bring it up on the screen, I think suggests that it's in excess of 16 million?---In excess of 16 million is a full appraisal. And that – on that assessment – do you mind if we go down – if we go down one page for 4.3, please.

To the following page?---Yes, please.

10

The page after this? 0346?---So that is when – that is when the internal appraisal manager actually attends the property and undertakes the inspection, and that can be done with or without the account manager.

15 And the policy contains a process for dealing with disagreement by the account manager with the internal appraisal, doesn't it?---Yes, it does.

20 So the account manager is permitted to provide the internal appraiser with additional data to support an increase of the adopted property value. Is that right?---If they believe – yes, it is, yes, if they believe the figure is too low, yes.

And if the value remains the same after they have done that, it goes to the appraiser's manager for review?---In the asset quality management team, yes.

25 And if the account manager is still dissatisfied, it can go to the senior manager of quality assurance for review?---That's correct.

So the relationship managers don't conduct the valuations any more?---In most circumstances.

30

But they remain heavily involved in the valuation process?---Very importantly.

They do the inspection of the property for the joint appraisals?---Yes.

35 And they can dispute the valuation of the internal appraiser?---Through the internal appraisal stream, correct.

Thank you. All right. Now, I want to return to the Brauers - - -?---Yes.

40 - - - Mr James. And we had left the Brauers' story at the point where the bank manager had inspected Jamberoo for the purposes of a valuation on 19 July 2009, and he had valued it at \$2.1 million. Do you recall that?---At \$2.1 million?

45 Yes. That's my note, but Mr Costello will check that I've got that right?---Yes, the figure doesn't reconcile with me, I'm sorry.

What's the figure that you recall?---Are you referring to Jamberoo?

Jamberoo?---\$2.9 million.

2.9. All right. I will double-check that but we will move on and I will come back if I need to correct that. Now, at the same time that Mr – at the same time that the bank
5 manager was valuing the portion of Jamberoo that he was discussing with the Brauers, he was also valuing the portion of Jamberoo that he was discussing with the Wrights?---That's correct.

10 Now, if I could show you – and can I say before I show you the next document, you are correct, 2.9 million – I apologise for misleading you – was the valuation assigned by the bank manager for the Brauers' portion of Jamberoo?---Yes.

15 Could I show you now RAL.0005.0004.0061. This is the valuation report produced by the bank manager which you will see from page 0064 is dated 29 July 2009 that he produced for the other part of Jamberoo that he was discussing with the Wrights?---Yes.

20 And you can see here that the bank manager valued that portion of the property at \$1.1 million?---That's correct.

So with the 1.1 million valuation for the portion that the Wrights were looking at, and the \$2.9 million valuation for the portion that the Brauers were looking at, he valued Jamberoo in total at \$4 million?---That's correct.

25 And that was precisely the figure that he had told Mrs Brauer in his email on 26 June as the price that he thought the property would go for?---That's correct.

30 That was the price that he thought Mr Campbell, another client of his, would want for the property?---That's correct.

All right. Now, there were further email exchanges between Mrs Brauer and the bank manager in July 2009 about the structure of any facility and the ability of the Brauers to service that facility. Do you recall one of the emails that I took Mrs Brauer to in her evidence?---Yes. Could you please refer to it again?

35 Yes. Now, exhibit 29 to your statement, RAL.0002.0003.3211 is a copy of the email exchange on 22 and 23 July. Do you see there – 22 July, thank you – do you see there the email that I took Mrs Brauer through earlier today?---Yes.

40 Where the bank manager refers to the existing limits of 1.2 million with an increase of 3 million taking the total limits to 4.2?---Yes.

You see the discussion about interest rates?---Yes.

45 The bank manager has calculated that the total annual interest payable is 315,000?---Yes.

You see the reference to income, the two leases and the income that they would generate which was \$370,000 a year?---Yes.

5 And you see the analysis that the bank manager has done of expenses and of available funds for the Brauers?---Yes.

10 Now, can I ask you to look at RAL.0002.0003.3213. We see that this is a further email sent by the bank manager to the Brauers on 23 July 2009, in a similar form to the previous email?---Yes.

15 Again proposing a loan of 4.2. And you see a response here by the bank manager to a question from Mrs Brauer about the farm management deposits. So about halfway down:

20 *Do we have to cash these in? It's probably better if we can leave this alone so that we have some cash to do some work with?*

?---Yes.

25 And here we see the bank manager's response:

Don't really need to cash these in, just thought you might want to pay the stamp duty and keep the additional loan down as much as possible.

?---Yes.

I tender that document, Commissioner.

30 THE COMMISSIONER: Just before we deal with that, is the property inspection report of 29 July '09 to go in or not?

MS ORR: I'm sorry, it is to go in, I apologise if I didn't tender that.

35 THE COMMISSIONER: Exhibit 4.45 is property inspection and valuation report, 29 July 2009, RAL.0005.0004.0061.

**EXHIBIT #4.45 PROPERTY INSPECTION AND VALUATION REPORT
DATED 29/07/2009 (RAL.0005.0004.0061)**

40

THE COMMISSIONER: Exhibit 4.46 will be email to Brauers, 23 July '09, RAL.0002.0003.3213.

45

**EXHIBIT #4.46 EMAIL TO BRAUERS DATED 23/07/2009
(RAL.0002.0003.3213)**

MS ORR: Thank you, Commissioner.

5 These emails we've been looking at are from July 2009. And in September 2009, the bank manager prepared a credit submission for the proposed loan to the Brauers to purchase Jamberoo?---Yes.

And credit submissions at Rabobank seem to be divided into two parts, part A and part B. Is that right?---That's correct.

10 What goes in each part?---In the part A is a summary of the advance and how much funding is required. Interest rates, loan grade, and – and collateral offered. And in part B, it was the detailed explanation of the funding requirement, cash flow analysis, risks, mitigants.

15 So you've annexed part B of the credit submission to your statement as exhibit 31. That's RAL.0002.0001.3556?---That's correct.

20 And I just want to take you through the bank manager's credit submission. So this was a submission, as I understand it, the frontline person, the bank manager needs to make a submission to the credit department for approval of the facility. Is that right?---That's correct.

And that's what this is for the Brauers?---Yes, it is.

25 And we see at 3556, about four paragraphs down that the bank manager says:

This is a well-managed facility with nil history of excess or TLI requirement.

30 What's TLI requirement?---Temporary limit increase.

And in the next paragraph he says:

The applicants are looking to purchase a portion of the property Jamberoo located –

35

At a particular location:

Property is currently owned by a previous client of the bank (THG Campbell) who currently retains a standalone EF facility with the bank.

40

?---Correct.

And EF facility?---Equipment finance.

45 I see?---A vehicle, a tractor.

Yes, I see. And at the last paragraph of the page, we see:

5 *Clients have been looking to add a breeder property to the existing operation for some time. Whilst the timing is not optimal, the location within easy distance of Kia-Ora and existing relationship with one of the neighbouring property owners and previous owner of the property makes this an excellent opportunity.*

Do you see that?---I do.

10 Okay. And then if we turn to 3557, we see that the first paragraph there explains that the Brauers have moved to the United States?---Yes.

And it also explains that:

15 *The existing property, Kia-Ora, is leased to the Simmons family of Theodore whom have been a strong target for the branch for some time. This relationship may provide us with a foot in the door to that business. Branch in Sydney hold a copy of the lease agreement and it has previously been perused by legal.*

20 ?---Yes.

So in what way would the fact that the Brauers were leasing Kia-Ora to the Simmons give Rabobank a foot in the door with the Simmons' business?---I'm not sure.

25 Not sure what that means?---I don't have a clear answer to that. I don't know what he was thinking when he wrote that, so I'm unsure.

I see?---If I could suppose?

30 Yes?---It – it may be that he becomes familiar with them through a property inspection, or something of the like. That would be the only thing that I could understand that to mean.

35 Because he has got his KPIs and he's always looking for loan opportunities?---Yes, he is.

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

40 Yes. Then at 355 further down the page we see the proposal which is, in effect, to retain the existing \$1 million and \$200,000 facility, and to refinance the \$1 million facility into the trust name. And further funds to allow for the settlement of purchase of part Jamberoo for \$3 million. Therefore, a new facility with a limit of \$4 million?---That's correct.

45 So \$4 million plus the existing \$200,000 facility?---That's correct.

And we see further down the page, under the heading Personal Factor and Ability:

Applicant's family has owned the property Kia-Ora for three generations.

?---Yes.

5 And over the page under the heading Property and Production at 3558, we see the bank owner's description of production on the property, the future direction of the property, the capacity of the property and down the bottom:

10 *The properties are approximately 80 kilometres apart and would appear to constitute an excellent mix of breeding and fattening production capacity.*

?---Yes.

15 Over the page at 3559, we see the assets and liabilities balance sheet at the top of the page. We see the list of assets and liabilities as at 31 August. And then post-purchase of Jamberoo?---Yes.

20 So pre-purchase, gearing of 24 per cent. So that's a very modest level of gearing?---Yes, it is.

Moving to a still modest level of gearing of 44 per cent?---I wouldn't consider 44 per cent modest.

25 You wouldn't?---Not modest. It's not unacceptable but I wouldn't consider it modest.

30 Okay. I understand. Now, there's then consideration later down this page of the historic trading figures. I will just wait until you're able to see that, Mr James. And if we go over the page to 3560, we see that for – so the bank manager goes through this year by year, and for the 2009 year he notes that the Brauers departed for the US in March, that they sold all their remaining cattle, and they were earning 211,000 from agistment and lease income?---Yes.

35 So the bank manager knew that upon their return to Australia, the Brauers would need to purchase the cattle to restock Kia-Ora and to commence stocking Jamberoo?---That's correct.

And then for 2010, he notes that:

40 *Kia-Ora will continue to be leased at 200,000 a year and Jamberoo will be agisted back to the current owner until he sources an alternative property and can relocate livestock. Agreed rate is 175,000 a year.*

45 ?---That's correct.

He also notes that:

The lessee of Kia-Ora has expressed an interest in agisting on Jamberoo if the existing owner vacates.

?---That's correct.

5

And he accounts for no livestock income in 2010?---Yes.

And then over the page 3561, he looks at 2011, and he notes that there's going to be a significant projected operating loss due to the need to spend approximately
10 \$660,000 on purchasing cattle?---That's correct.

Now, that makes sense when the next bullet point is read because it indicates a possible return date for the Brauers of October 2011. I think it should be 2011 there rather than 2010?---I believe so, yes.

15

And the lease for Kia-Ora expires on 31 March 2011, and there's an intention that the lessee would continue to lease 50 per cent of the property with the Brauers using the other half for the cattle that they've purchased?---That's correct.

20 So the bank manager assumes that after the expiry of the lease, the lessee is going to continue to lease 50 per cent of the property?---Yes, that's my understanding.

With the consequence that the lease income will continue, but it will be reduced down to 100,000 a year?---That's my understanding too, yes.

25

And he says that the cattle are going to be purchased using farm management deposits and income from the sale of the property they're living in in the US?---Yes.

30 So it follows that if they're going to purchase \$660,000 of cattle, even if they use the entirety of their farm management deposits, they were going to need a further \$513,000 for that purchase?---On those calculations, yes.

And there's no agistment income from Jamberoo included in the 2011 projection?---No, there's not.

35

And then for - - -?---

Yes?---Not for the entire period. I would need to check. I recall reading a cash flow where it was included for a portion of that period.

40

But in the credit submission it is not?---In the credit submission, I'm sorry, no, it's not.

45 And then for 2012 he says that the income from the lease of half of Kia-Ora is going to be maintained, but general expenditure is going to be 150 per cent of the previous year?---That's correct.

And there's no mention of any income earned that year from agistment on Jamberoo?---Not according to this.

5 And then in 2013 he notes that livestock will be at carrying capacity, being approximately 650 breeders and 1000 feeder cattle?---Yes.

Continuing:

10 *Purchase and sale routine in full swing with monthly turnoff of trade and own bred cattle.*

?---That's correct.

And then the last dot point:

15 *Sufficient working capital is available.*

?---That's correct.

20 And over the page at 3562, under the heading Security and Valuation we see that he tells the credit department that security is going to be in the form of a mortgage over Kia-Ora and Jamberoo and over a water allocation?---That's correct.

25 And over the page from that at 3563, do we see that that section concludes by the bank manager noting a group LSR –

Is that a loan security ratio?---Yes, it is.

Continuing:

30 *Of 43 per cent.*

?---That's correct.

35 Was that loan security ratio within Rabobank's guidelines?---Yes, it was.

What was the guideline at the time?---50 per cent.

40 50 per cent. Now, rating 12 we see at the bottom of this page. What does that mean?---Rabobank uses a risk rating model to assess the strength of the creditworthiness and the strength of a file in the operational book of between R7 being the best – strongest, I should say, not the best, the strongest, and the rating of R15 within the productive advances of being the weakest. So it would be weakest cash flow and collateral coverage so R12.

45 So what did R12 mean then?---It would indicate a strong position.

A strong position?---Based on the historical results.

And finally under the general comments at 3564, the bank manager says:

5 *Applicants are in a very solid financial position. Past financial results are sound. Properties are well located and production is of a diverse and highly productive nature.*

?---Yes.

10

So having been through that credit submission, is it fair to say that the bank manager thought that this was a strong proposal?---The bank manager would have thought this was a strong proposal, yes.

15

He had confidence in the ability of the Brauers?---Undoubtedly.

He thought that Jamberoo represented a good opportunity for expansion?---Yes.

He thought that the debt levels were acceptable?---Yes.

20

He thought they had the ability to service the loan?---He did.

And although he recognised that a significant operating loss would be incurred in 2011, he didn't think that affected the viability of the proposal?---Not according to his calculations, no.

25

And the credit submission was assessed by someone called Mark Gray within Rabobank, wasn't it?---That's correct. That's correct.

30

Was he in the credit department?---Yes.

And Mr Gray emailed the bank manager on 17 September 2009?---Yes, he did.

And we see his email at RAL.0002.0001.3772. We see the first sentence:

35

While on the surface, the LSR is okay for this request (albeit some subjectivity re the mining lease obviously continues on) –

Now, I didn't take you to that but do you recall from the credit submission that there was a reference to a mining lease on the property?---On Kia-Ora.

40

On Kia-Ora. Thank you:

45 *While on the surface the LSR is okay for this request... gearing is high and serviceability is very hard to get a grip on. Perhaps they are in a pretty good frame of mind in the US and maybe that frame of mind has not had them fully consider the implications two years down the track.*

?---Yes.

Do you see that?---Yes.

5 Continuing:

From now until 2012 this request does not work and most of the 2013 assessment is hypothetical. A lot can change between now and then.

10 ?---Yes.

Mr Gray then requested information from the bank manager and asked him a large number of questions, including questions about how the sale price on the American property was going to be determined?---Yes.

15

And also he wanted specific details of lease arrangements and what assumptions there are behind substitution agistment income if the vendor moves off shortly?---Yes.

20 And he also asked for information about the investment properties owned by the Brauers?---Yes, he does.

He queried a number of the assumptions made by the bank manager about cattle numbers and price?---Yes.

25

He queried assumptions about living expenses?---Yes, he did.

And you will have seen earlier that was something that Mrs Brauer had reminded the bank manager not to forget in one of her earlier emails?---Yes, I recall.

30

So given that Mr Gray, in the credit department, says in this email that from now, late 2009 until 2012, this request does not work, would it be fair to say that there was a real risk that credit approval for the loan to the Brauers to purchase Jamberoo was not forthcoming at this time?---On the basis it was submitted, yes.

35

Yes. I tender that email, Commissioner.

THE COMMISSIONER: Email from Gray 17 September 2009, RAL.0002.0001.3772 will be exhibit 4.47.

40

**EXHIBIT #4.47 EMAIL FROM GRAY DATED 17/09/2009
(RAL.0002.0001.3772)**

45

MS ORR: Now, there is a continuing email chain between Mr Gray and the relationship manager, the bank manager, which I will come to next, but I see the time, Commissioner, and perhaps that is an appropriate time.

5 THE COMMISSIONER: How are we travelling, Ms Orr?

MS ORR: I think if we start at 9.45 again tomorrow, that would be helpful, Commissioner.

10 THE COMMISSIONER: 9.45 or 9.30 was my nasty thought, Ms Orr.

MS ORR: We think 9.45 is okay. We think we're tracking fairly well, Commissioner.

15 THE COMMISSIONER: There is a transcript, Ms Orr. 9.45 it will be.

<THE WITNESS WITHDREW

[4.16 pm]

20

MATTER ADJOURNED at 4.16 pm UNTIL THURSDAY, 28 JUNE 2018

Index of Witness Events

BENJAMIN WILLIAM STEINBERG, ON FORMER AFFIRMATION	P-3266
CROSS-EXAMINATION BY MS ORR	P-3266
CROSS-EXAMINATION BY MR MOLESWORTH	P-3304
THE WITNESS WITHDREW	P-3313
MICHAEL GEORGE HUGILL HIRST, SWORN	P-3314
EXAMINATION-IN-CHIEF BY MR MOLESWORTH	P-3314
THE WITNESS WITHDREW	P-3318
WENDY JOLENE BRAUER, SWORN	P-3319
EXAMINATION-IN-CHIEF BY MS ORR	P-3319
THE WITNESS WITHDREW	P-3339
BRADLEY MARK JAMES, AFFIRMED	P-3339
EXAMINATION-IN-CHIEF BY MR McGRATH	P-3339
CROSS-EXAMINATION BY MS ORR	P-3341
THE WITNESS WITHDREW	P-3378

Index of Exhibits and MFIs

EXHIBIT #4.22 GROUP WHOLESALE PORTFOLIO MANAGEMENT STRATEGY 2015 (ANZ.800.766.2348)	P-3275
EXHIBIT #4.23 FARMING SEGMENT SUPPORT STRATEGY BOARD PAPER DATED 06/08/2015 (ANZ.800.075.4956)	P-3298
EXHIBIT #4.24 LANDMARK PORTFOLIO UPGRADE BOARD PAPER	P-3303
EXHIBIT #4.25 CREDIT MEMORANDUM CONCERNING HIRSTS DATED 02/08/2011 (ANZ.017.004.7244)	P-3310
EXHIBIT #4.26 LETTER OF OFFER TO HIRSTS DATED 02/08/2011 (ANZ.017.004.8175)	P-3310
EXHIBIT #4.27 DIARY NOTE DATED 15/08/2011 (ANZ.017.004.8153)	P-3311
EXHIBIT #4.28 EMAIL CHAIN ANZ TO HIRSTS DATED 23/08/2011 (ANZ.017.004.8923)	P-3313
EXHIBIT #4.29 SUMMONS TO MR HIRST	P-3315
EXHIBIT #4.30 SUMMONS TO MRS BRAUER	P-3320

EXHIBIT #4.31 STATEMENT OF MRS BRAUER DATED 21/06/2018	P-3320
EXHIBIT #4.32 SUMMONS TO MR JAMES	P-3340
EXHIBIT #4.33 STATEMENT OF MR JAMES DATED 15/06/2018	P-3340
EXHIBIT #4.34 STATEMENT OF MR JAMES DATED 22/06/2018	P-3341
EXHIBIT #4.35 2009 APPRAISAL FORM, MANAGER DALBY BRANCH, RABOBANK (RAL.0004.0004.0188)	P-3347
EXHIBIT #4.36 RABOBANK WORLDWIDE COMPLIANCE STANDARDS NOVEMBER '06 (RAL.0005.0007.0162)	P-3352
EXHIBIT #4.37 PROPERTY INSPECTION/VALUATION REPORT, JAMBEROO. DATED 30/07/2009 (RAL.0002.0001.2804)	P-3355
EXHIBIT #4.38 RABOBANK VALUATION POLICY DATED 19/02/2007 (RAL.0004.0002.0015)	P-3357
EXHIBIT #4.39 EY REPORT APRA TARGETED REVIEW DATED 30/06/2011 (RAL.0005.0005.0085)	P-3359
EXHIBIT #4.40 LETTER APRA TO RABOBANK DATED 02/12/2011 (RAL.0005.0005.0308)	P-3360
EXHIBIT #4.41 LETTER RABOBANK TO APRA DATED 16/12/2011 (RAL.0005.0005.0056)	P-3361
EXHIBIT #4.42 MEMO TO EXECUTIVE COMMITTEE RABOBANK DATED 22/07/2014 (RAL.0005.0003.0041)	P-3362
EXHIBIT #4.43 LETTER, APRA TO RABOBANK RE PRUDENTIAL REVIEW REPORT DATED 10/11/2017 (RAL.0005.0003.0072)	P-3365
EXHIBIT #4.44 LETTER RABOBANK TO APRA DATED 28/11/2017 (RAL.0005.0003.0078)	P-3366
EXHIBIT #4.45 PROPERTY INSPECTION AND VALUATION REPORT DATED 29/07/2009 (RAL.0005.0004.0061)	P-3370
EXHIBIT #4.46 EMAIL TO BRAUERS DATED 23/07/2009 (RAL.0002.0003.3213)	P-3370
EXHIBIT #4.47 EMAIL FROM GRAY DATED 17/09/2009 (RAL.0002.0001.3772)	P-3377