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TRANSCRIPT OF PROCEEDINGS

O/N H-896301

THE HONOURABLE K. HAYNE AC QC, Commissioner

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

MELBOURNE

9.45 AM, MONDAY, 28 MAY 2018

Continued from 25.5.18

DAY 25

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

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

MR D. HUME appears for Suncorp

**MR C. SCERRI QC appears with MR P. JAMMY, MR J. FOLEY, MS E. COLLINS
and MR P. MEAGHER for CBA**

**MR M. WISE QC appears with MR T. GOODWIN for Financial Ombudsman's
Service**

THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Commissioner, the final witness in relation to the Suncorp study is Mr Philip field from the Financial Ombudsman Service.

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THE COMMISSIONER: Yes, Mr Field, do come into the witness box.

<PHILIP ANDREW FIELD, AFFIRMED

[9.45 am]

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<EXAMINATION-IN-CHIEF BY MR WISE

15 THE COMMISSIONER: Yes.

MR WISE: Please take a seat, Mr Field. Mr Field, your full name is Philip Field?---Philip Andrew Field.

20 Philip Andrew Field. Now, Mr Field, you're here pursuant to a summons from the Commission?---Yes.

Have you got the original of the summons with you?---Yes, I do.

25 I tender that, Commissioner.

THE COMMISSIONER: I think we are at exhibit 3.83. Will be the summons to Mr Field.

30

EXHIBIT #3.83 SUMMONS TO MR FIELD

35 MR WISE: Now, Mr Field, you've made two witness statements in response to rubric 3-27. The first one is in response to section A and the second is in response to section B. Have you got the originals of those with you?---I do.

Okay. Just turning to the first one in response to section A, it's undated, but it was signed on 18 May; is that correct?---That's correct.

40

And there are no corrections you wish to make to that?---No.

And are the contents of it true and correct?---Yes.

45 I tender that?---The witness statement of Mr Field part A, 18 May '18 is exhibit 3.84.

MR WISE: And - - -?---Do you – sorry, wish me to date it? Because it - - -

Commissioner?

5 THE COMMISSIONER: It's probably as well to date it the date on which it was signed, Mr Field?---Thank you.

MR WISE: Thank you, I tender that, Commissioner.

10 THE COMMISSIONER: Yes, 3.84.

**EXHIBIT #3.84 WITNESS STATEMENT OF MR FIELD PART A DATED
18/05/2018**

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MR WISE: Mr Field, do you have the original of the witness statement in response to section B?---Yes.

20 And that was also signed on 18 May?---Yes.

Would you please just go to the back of it and put the date that it was signed, 18 May. Are its contents true and correct?---Yes.

25 Any corrections you want to make to it?---No.

I tender that?

30 THE COMMISSIONER: Exhibit 3.85, witness statement of Mr Field part B, 18 May '18.

**EXHIBIT #3.85 WITNESS STATEMENT OF MR FIELD PART B DATED
18/05/2018**

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MR WISE: Thank you, your Honour.

40 THE COMMISSIONER: Thank you very much, Mr Wise. Yes, Ms Orr.

<CROSS-EXAMINATION BY MS ORR

[9.48 am]

45 MS ORR: Mr Field, you are the lead ombudsman, banking and finance, of the Financial Ombudsman Service; is that right?---That's right.

And you have been put forward by the Financial Ombudsman Service, or FOS as it is commonly known, to give evidence about two complaints made to FOS by Mr Rien Low on behalf of his mother, Jennifer Low?---That's correct.

5 Were you present for the evidence of Mr Rien Low, Mr Field?---Yes, I was.

And were you present for the evidence of Mr Carter from Suncorp?---Yes, I was.

10 Thank you. Now I want to start with some more general questions about FOS
--?---Yes.

-- before moving to the below complaints. FOS is authorised by ASIC to be an external dispute resolution service for financial service providers; is that right?---That's right.

15 And financial service providers are required by their licensing conditions to be members of an EDR scheme such as that provided by FOS?---That's correct.

And FOS is free for applicants to use?---Yes.

20 But financial service providers have to pay a membership fee?---A membership fee and a levy and case fees. It's a mixture of a funding model.

A levy in case fees, did you say?---So there's a – there's a membership fee.

25 Yes?---And then there are case fees based on the individual cases that come to us.

Yes?---And then there is another levy based on their case experience in the previous year.

30 Is that based on the number of cases that they have been involved in, in the previous year?---I believe so, yes.

35 Okay. And from 1 November this year a new body will provide the EDR scheme to deal with complaints from consumers in the financial system, that's the Australian Financial Complaints Authority or AFCA?---That's correct.

And AFCA will replace FOS?---Yes.

40 And the other schemes that currently exist, which are the Credit and Investments Ombudsman and the Superannuation Complaints Tribunal?---That's correct.

And FOS has terms of reference which outline how it deals with disputes?---Yes.

45 And you have annexed those to your statement as exhibit 2. They require FOS to act in an efficient, timely and fair manner?---Yes, that's correct.

And when making a determination, the terms of reference tell us that FOS is to have regards to the legal principles, industry codes or guidance, good industry practice, and relevant FOS decisions?---It's fair in all the circumstances having regard to those matters, yes.

5

Now, there are detailed manuals and procedures at FOS to ensure staff and the Ombudsman apply a consistent approach; is that right?---Yes.

10 And you say in your statement that the specific process in any given case will depend on the circumstances and what the FOS case worker decides is the most appropriate way for that particular dispute to be resolved?---That's correct. So it might involve some shuttle negotiation or a telephone conciliation to see if the matter can be resolved but ultimately, if it doesn't, it would proceed to a decision on the merits.

15 And you tell us in your statement that most financial services providers are very familiar with the FOS process?---I – yes, I suppose – perhaps should clarify that. Most of the regular users, you know, the – the entities that have multiple complaints are familiar with the process. But there are, of course, members who only have one or two, who are less familiar with the process.

20

And what about Suncorp, the entity that Mr - - -?---Suncorp would be familiar with the process, yes.

25 And you also tell us in your statement that most applicants are not familiar with the FOS process?---That's correct, yes.

And most applicants don't have the assistance of a lawyer in the process?---No, that's – yes, that's correct.

30 And they're likely to have very limited resources in comparison to the financial services provider about whose conduct they're complaining?---That's correct, yes.

35 How does FOS assist applicants through the process?---We do it by explaining – so when we receive a complaint and it proceeds through to a case worker handling it, the case worker will have an initial telephone conversation with the applicant to discuss the issues in dispute, and to try and identify what sort of information we might need to help try and resolve that dispute. We will explain the process and then we will confirm that in writing so they will get a letter, usually in an email, but in a letter attached to an email that would set out our understanding of the dispute and
40 what further information we need from the applicant in order to get a better understanding of it.

45 And FOS can resolve disputes in a number of different ways?---Yes. Most disputes, about 80 per cent of disputes are resolved without the need for a decision. And so that will involve, as I said before, some telephone shuttle negotiation between the parties, or a telephone conciliation. We might provide a recommendation, which is a more formal document, or alternatively we might provide a preliminary view, which

is usually done over the telephone and, if necessary, it might be confirmed in writing. And if the matter isn't resolved through any of those stages then it would proceed to an ombudsman for a determination.

5 And a determination is a written decision?---Yes.

Setting out the Ombudsman's findings?---Yes.

10 And the details of any redress that's to be provided by the financial services provider?---Yes.

And a FOS determination of an Ombudsman is binding – excuse me – binding on the financial services provider if the applicant accepts it?---That's correct.

15 And the financial services provider doesn't have a choice whether to accept or reject a determination; that's a matter solely for the applicant?---That's correct.

20 Okay. Now, if the applicant does not accept the determination, the financial services provider is not bound?---That's correct, because the matter could proceed to court and be dealt with through that court process.

25 And if the applicant accepts the determination, they must provide the financial services provider with a binding release in relation to the matters resolved by the determination?---They can, if the financial services provider asks for it. So our usual process is if the customer accepts, we will get an email confirming their acceptance. That's usually acceptable, but in some cases a financial services provider might require a more formal document. And they're entitled to do that under the terms of reference.

30 And how often does that happen, Mr Field?---It happens often enough, but I would say in most cases it's not required, but it does happen.

35 And if it does happen, if the financial services provider asks for a binding release, the applicant has to give it under your terms of reference; is that right?---That's correct.

And the release is for the full value of the claim that's the subject of the dispute?---Yes. It's to resolve the dispute in full and final settlement.

40 Even if the amount of the claim exceeds the amount that FOS ordered?---Yes, that would be correct. That – yes.

45 And the release is effective from the date the financial services provider does what it's required to do under the determination; is that right?---That would be the effect of the deed, yes.

All right. Now, I want to ask you some questions about the remedies that FOS can award in a FOS determination. They're set out in your terms of reference, which are

exhibit 2 to part A of your statement. I would like to go to that. So that's
FOS.0033.0001.0002 and if we turn to – if we could have 0020 and 0021 both on the
screen, that would be helpful. So it's clause 9 of the terms of reference, 9.1 lists
types of remedies. And we see there that they include the payment of a sum of
5 money, the forgiveness or variation of a debt, the release of security for a debt,
repayment waiver or variation of a fee or other amount, reinstatement or rectification
of a contract, and variation of the terms of a credit contract in cases of financial
hardship. Now a credit contract is a contract regulated by the NCCPA, the National
Consumer Protection Act?---That's how that term is defined in the terms of
10 reference, yes.

Yes. Thank you. Now, this is an inclusive list of remedies we see from the chapeau
to that provision; is that right?---Yes, it is.

15 So it's not exhaustive?---Correct.

But there's no reference there to FOS voiding a contract?---No, there isn't.

20 And does FOS have power to void a contract?---That's an interesting question. It's
certainly not in the list, but – and it's – I don't think it's one I've turned my mind to.

Have you ever made an order attempting to void a contract, Mr Field?---Attempting
to void a contract – I think that perhaps I would probably release the applicant from
the obligation. I don't know whether that's the same as voiding it, but it would
25 probably have the same effect as far as that applicant is concerned.

What sort of obligation would you release the applicant from?---So if there's a loan
contract that they've entered into that I consider that they shouldn't be liable for. So
an example would be a situation where somebody has been made a co-borrower
30 when they should be a guarantor, and they haven't received the benefits of being a
guarantor. So in those circumstances we would say that they're not liable to repay
the amount due under the contract.

35 So releasing them from a particular obligation under the loan contract?---Yes.

Which is different from voiding the contract; do you accept that?---Yes.

40 All right. So you haven't, as far as you recall, ever made an order that voids a
contract?---I can't think of a circumstance, but there have been a lot of cases over the
years, yes.

But just to be clear, you can't recall - - ?---I can't recall one, no. No – no, I can't.

45 And there are limits on what FOS can award in compensation for direct financial loss
or damage; is that right?---That's correct.

And we see within these terms of reference that the cap is 323,500 for most disputes for direct financial loss; is that right?---That's right. And it increased this year from \$309,000.

5 It previously was 309 and is now 323,500?---Yes.

And once FOS has made its determination, there's no further appeal or review process within FOS?---Under the terms of reference, the determination is final, yes.

10 But an applicant can challenge a FOS determination in court?---If they choose to do so, yes.

And how often does that happen?---That an applicant challenges a determination, very rarely.

15

All right. Now, before we turn to the Low's case, as a general issue, can you please explain FOS's approach to assessing a complaint that there has been maladministration in respect of a small business loan?---In respect of a small business loan?

20

Yes?---So, when we look at – in a small business situation, we will look at whether or not we believe the bank has met what we believe is the standard of a diligent and prudent lender. We do that by, I guess, looking for what we call red flags. So is there information on the lending file which would indicate to a prudent lender that they should make further inquiries about what's being applied for and what's going on? And then, having formed that view, we will decide whether or not we believe the bank has met that particular obligation.

25

If there is a complaint of that nature, how does FOS approach a bank's assessment of serviceability of a small business loan?---So, we have, within our office, banking specialists which are people with experience in doing credit assessments. And we essentially get them to reassess the proposal and to look at the information received, go through the business case or other documents that were received and provide – and do an analysis of that and provide us with an opinion about whether or not, on that information, whether or not a diligent or prudent lender would have entered into that loan.

35

So how does FOS approach a bank's reliance on cash flow forecasts where there's evidence that the forecast was either not realistic or not accurate?---So our specialist will go through and make that assessment to see whether or not they would agree that that cash flow could lead a diligent and prudent banker to make – to come to that conclusion.

40

And if FOS finds that there has been maladministration, how does FOS assess the applicant's loss?---So, our approach in a small business situation is that the bank is responsible for the credit decisions, so we say that it shouldn't profit from that credit decision. So it doesn't receive the interest and the fees associated. But we say that

45

5 the customer is wearing the business risk, or the investment risk. So the bank is not there helping them running the business day by day, making decisions about cash flow and how to spend money. So the customer is responsible for that. So our assessment is that it's fair in all the circumstances that the customer be relieved of the interest liability.

FOS has published guidance in relation to responsible lending disputes?---Yes, we has.

10 And one paper in the responsible lending series published by FOS is a paper entitled How We Work Out a Consumer's Loss. Are you familiar with that paper?---Yes.

15 Could I ask you be shown that document, it's FOS.0006.0002.0407. Now, this is that document, is that right, Mr Field?---That's correct, yes.

Now, if we could turn to 0408 and have 0408 and 0409 on the screen together, we see there a reflection of the evidence that you've just given in the final paragraph on the first page:

20 *The FSP is liable for the credit risk of its lending decision. Generally it is not liable for the consumer's investment risk in how the consumer uses the loan funds. Therefore, if the consumer used the loan funds for investments such as shares or for their business, usually the consumer will have to repay at least the principal amount the FSP lent to them, even if the value of the investment*
25 *has gone down. In those cases the consumer's loss is usually only the interest and fees they paid to the FSP.*

?---Yes.

30 Thank you. Now, if we turn to 0410, we see under the heading The FOS Approach:

35 *If we decide that an FSP has not lent responsibly we will consider what amount of the loan the consumer is liable to repay. Consumers who believe their FSP did not make a responsible decision to lend to them often say their debt should be written off, which means that they would not have to repay the loan. However, we do not take that approach.*

40 That, again, I think is consistent with the evidence you've just given, Mr Field?---Correct.

Finally could we turn to 0414 in this document which relates to loans specifically used for business purposes. Do you see there under clause 2.7:

45 *When the FSP provides a loan to a consumer for the consumer's business, the consumer often decides how they will use the loan funds in their business. In those cases, the consumer will have to repay the loan and their loss is only the interest and fees they have paid to the FSP.*

?---Yes.

5 Now, there is nothing in this guidance, is there, about how quickly an applicant will have to repay a loan that is found by FOS to be irresponsible?---No, there isn't.

Now, I want to come to talking to you about what FOS's position on that is?---Yes.

But first I tender this document, Commissioner.

10 THE COMMISSIONER: Exhibit 3.86 will be FOS responsible lending series, how we assess customer loss, FOS.0006.0006.0407.

15 **EXHIBIT #3.86 FOS RESPONSIBLE LENDING SERIES, HOW WE ASSESS CUSTOMER LOSS (FOS.0006.0006.0407)**

20 MS ORR: Now, perhaps if I could ask you some questions by reference to the Low's complaints?---Yes.

Now, the original complaint from Mr Low on behalf of his mother was about maladministration in relation to five loans advanced by Suncorp?---Yes.

25 And you made the determination that one of the loans, a business loan that you referred to as business loan B, was affected by maladministration?---Yes.

Now, you found that Suncorp had acted irresponsibly when it approved that loan?---Yes.

30 And you heard the evidence on Friday when I referred to the parts of the determination that contained your reasons for that decision?---Yes. Yes.

35 Now, can I just take you back to that determination, which is exhibit 21 to your statement, FOS.0028.0001.3074. Now, could we go to 3076 in this document and we see there under the heading What is the Applicant's Loss:

40 *In keeping with FOSs published approach to loss, the applicant is not entitled to total debt forgiveness. I agree with the case manager's method of calculation of loss as set out in the recommendation section 2.4 which has been updated in this determination.*

Now, the published approach to loss referred to there is the document we have just looked at; is that right?---Yes.

45 And the case manager's method of calculation of loss was to forgive the interest that had been repaid?---Yes.

And not permit further charging of interest or fees on this loan?---Yes.

Thank you. Now, I want to go on now to what followed from that finding that you made under the heading Determination. Now, you heard my questions to Mr Carter
5 about this part of the determination?---Yes.

And can we start with me asking you to explain what you understand the effect of these paragraphs in the determination to be. And just before you answer that, could we have 3077 brought up on the other side of the screen so that you can see the
10 entirety of those paragraphs. So what is the effect of these paragraphs, Mr Field?---So the effect is that loan B was reduced, and that interest was no longer payable on that. Because we were now dealing with a customer in default, there needed to be some arrangement to repay the existing loans because the first four
15 loans, as you would recall, were okay and they still continued to accrue interest and needed to be – needed to have payments made. So essentially what it was saying was that the parties need to come to some arrangement to repay the loans. And it also referred to the FSP having obligations under the Code of Banking Practice to try and work with their customer to help overcome their financial difficulty.

20 Why do you say this was a customer in default?---Because the first four loans were in arrears, because – sorry, so default is probably not the correct phrase because a demand had not been served, sorry, but they were certainly in arrears. So there needed to be some arrangement made in order to clear those arrears so that there would not be a further default. Sorry, quite correct.

25 Does FOS take the view that a loan that's found to have been the subject of maladministration comes to an end?---No.

And are you aware of what Mr Carter described on Friday as an industry practice that
30 where FOS determines a loan to be affected by maladministration, the applicant will need to pay that loan back in its entirety in a short time frame such as six to 12 months?---I think he was referring to our approach in relation to the situation involving a home loan, rather than this particular instance. So the way we approach
35 loss on a home loan is that a customer who receives a loan – a customer who receives a loan that they shouldn't have got has acquired a property, and in order to put them back into the position that they would have been in had that not happened, they wouldn't have the loan, but they also wouldn't have the property. So we assess – we take into account the fact that they wouldn't have incurred the interest on that loan. So that comes off the debt. They wouldn't have incurred, if they had bought the
40 property after the loan was granted, the stamp duty and the associated legal costs with that, and they wouldn't have incurred the holding costs such as insurance and rates. We also then take into account the fact that they would have had to have lived somewhere else, if they didn't have that property. So we reduce the amount of compensation by a notional rent. And we arrive at a figure that we say their debt
45 should now be. And coming back to that starting point that – to put them in the position that they wouldn't have been in, they wouldn't have had the loan, but they

wouldn't have had the house, what we say is that the customer needs to take action to sell the house but if they choose to keep it they may wish to refinance it.

5 So do you say that you are not aware of any industry practice that where FOS determines a small business loan to be affected by maladministration, the applicant needs to pay it back in its entirety within a short period of time?---Well, it – it's going to depend on the particular circumstances of the case and the particular – particular applicant.

10 Well, that's a slightly different matter?---Yes.

I want to know whether you are aware of an industry practice - - -?---I couldn't say I'm aware of an industry practice, but I could understand that Suncorp might understand that there was coming out of our approach to that consumer housing
15 situation that I talked about.

But that's not what this situation was, was it?---No.

20 No. So, as far as you're aware, there wasn't an industry practice that warranted the action taken by Suncorp in relation to recovering this loan?---Not – not an industry practice, no.

25 What's the position of FOS on how quickly a loan that's affected by maladministration that's a small business loan should have to be paid back?---Well, it's going to depend on the customer's circumstances. So if the person is in financial difficulty, what we expect the financial services provider to do is to actually understand what the customer's situation is. Now, there may be assets that could be sold. They may have now got income from another source. So, really, it's a
30 question about understanding what the customer's position is and trying to work out what the best way forward. Now, as I said, that might involve the sale of assets and so the answer might be that the person requires time in order to get that property on the market and sell it. So it could vary between, you know, three or six months, as Suncorp said, but it could take longer, depending on the nature of the customer's individual circumstances.

35 Is the use of the loan funds by the applicant relevant to the approach of FOS to that question?---No, not at all. The customer has used the funds. That's why they're required, we say, to pay it back. But how they use them is really – really not relevant at all.

40 Why does FOS require an applicant who has received a loan that FOS has determined to be irresponsibly advanced to commence negotiations with the financial services provider about a repayment plan?---We've – we decide what their liability is, but they still maintain that banker customer relationship and they still have that
45 relationship with their bank. So, you know, we have resolved the dispute about maladministration. It's not readily apparent at that stage that there will be a dispute about financial difficulty. So we, you know, we basically say, "We have resolved

our dispute, now you go back and negotiate with your bank about how that ought to be repaid.”

5 But it’s not easy for applicants to negotiate with banks, is it, particularly when they rarely have a lawyers, as you recognised?---I understand that, but customers – so customers often negotiate with their banks, even before coming to FOS, about their financial difficulty, and banks have an obligation under the Code of Banking Practice to work with their customer. So there are lots of situations going on, even as we speak, where customers are negotiating with their banks trying to come to some sort of arrangement.
10

Why can’t FOS work out what a reasonable outcome is for the repayment of the debts?---We could. But, you know, there’s – it’s not readily apparent at that stage that there’s going to be a dispute about that. So as I said, it comes back to – you know, the customer and the bank working together, as the bank is required to do under the Code of Banking Practice, to come to some arrangement. If – if ultimately that arrangement falls over, or they don’t come to an arrangement, then there would be another dispute about their financial difficulty, if they are indeed in financial difficulty, as opposed to terms about how it ought to be repaid.
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Would a proposal by an applicant to repay the loan by continuing to make repayments of principal, not interest, for the life of the loan be reasonable?---Are you talking generally or in relation to the particular Low dispute?

25 I’m talking generally?---Well, again, it would depend on the circumstances and whether or not they were in arrears and whether or not that would – that situation would cover the arrears. You would have to assess it on an individual case.

30 So let’s assume no arrears and let’s assume an offer by the applicant to continue repaying the principal for the life of the loan, regular repayments of principal. Would that be a reasonable proposal?---I think – I think that it – it would be and it’s probably in accordance with the effect of the determination that has been made relieving them of that. Provided, of course, that that is the only loan that needs to be repaid because obviously, you know, there can be other loans that are required to be repaid with principal.
35

So FOSs position is that if it’s the only loan and an applicant who is not in arrears offers to make regular repayments of the principal for the life of the loan, that would be a reasonable payment proposal?---I think that’s something that ought to be considered, having regard to the customer’s ability to make those payments.
40

Is it a reasonable repayment proposal?---It’s – yes, I suppose it is.

45 Okay. And an applicant is told by these paragraphs of the determination – can I ask firstly, are these standard paragraphs or were these paragraphs that were created specifically for the Low - - -?---I think that that’s probably a standard. There are

probably a couple of standard paragraphs that get used, but that is probably one of them, yes.

5 So an applicant who gets these standard paragraphs is told that if they can't get the bank to agree to a reasonable arrangement to repay the debts, then the FSP may commence recovery action?---They may be able to.

10 And they're also told that they could lose their property, such as the land or a business towards which the loan went?---Yes.

And on what basis would the financial services provider be able to commence that recovery action?---If there was a default in the repayments of what was then outstanding.

15 And that's pursuant to the terms of the existing loan contract; is that right?---That's correct, yes.

20 Now, what is the situation when there are multiple loans, such as happened here, and only one or perhaps more than one, is found to have been irresponsibly lent. Does FOS take the position that a debt from a loan obtained through maladministration has to be repaid before the debts that were responsibly incurred? I'm sorry, I put a very long question?---No. I think what you're -- I think what you're suggesting is what's the order of repayment.

25 Yes?---Yes.

Does FOS have a position on that?---Yes. So - - -

30 Where there are multiple loans?---Yes.

Some of which were subject to maladministration and others were not?---Yes. So if there -- if there -- if there is a -- say, a lump sum payment made, that that lump sum payment should go to the interest-bearing loans before the interest-free loan.

35 Right. So FOS's information is that the financial service provider should apply money advanced from the applicant towards the repayment of the loans that were responsibly lent before the loan that was irresponsibly lent?---Yes. You may have an irresponsible -- the other scenario is where there's a refinance. So, you know, you already had that obligation beforehand, even though the next one was irresponsible. 40 Because there was, you know, it was replacing an obligation you already had, you would still have to pay it, but essentially that's -- that's correct. What you are saying is correct.

45 And why does FOS adopt that position?---Which position?

The position you have just articulated, which is that the money should be applied to the debts from the loans that - - -?---Yes.

- - - were responsibly lent and are interest-bearing before the interest-free, irresponsibly lent, loan?---Because the interest-bearing ones have the greatest burden, I suppose, on the consumer. So it seems appropriate to me that you would apply the funds to that loan which has the greatest burden.

5

And does FOS make that position known to financial services providers?---It's not in our current approach, but when we first started looking at maladministration, it was in – it was before FOS, it was at the Banking Ombudsman, we issued a bulletin in relation to the credit card scenario, where the approach we took was that if you were given a credit card that was inappropriate or above a limit that was appropriate, that we would reconstruct the account to say that the – perhaps I could start again. If you were given a credit card of, say, \$5000 and the bank made an unsolicited credit card limit offer to you without assessing your capacity to pay of \$7000, which was inappropriate, we have said that you have got to pay the \$5000 with interest but the 2000 is interest-free, and then we would recalculate the account so that all the payments that have been made were applied to the interest-bearing component first and leaving the interest free. So that informs our approach. That bulletin is still on our website, but hidden away in the archive section, so I'm not sure that FSPs know that that's the approach necessarily, but that's where we come from.

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And did you hear the evidence from Mr Carter on Friday that he understood that FOS had the opposite approach; that FOS required the debt that was the subject of the loan that was from maladministration to be paid off first?---I don't – I don't recall hearing him say that.

25

If that was his position, is that incorrect?---It would be, if he had asked me, yes.

Yes. And do you think FOS ought make clear in its guidance that its expectation is that debts from responsible lending are paid off before debts from irresponsible lending?---Yes – yes, I do.

30

Okay. Now, the FOS determination which was in Mrs Low's favour in relation to business loan B has essentially resulted, as you heard from Mr Carter and Mr Low's evidence, in an acceleration of Mrs Low's repayments on the loan?---Yes.

35

And is that fair to Mrs Low in circumstances where she appears to have gone into the FOS process with a loan with Suncorp with a remaining term of over 20 years?---This is an unusual case. So it's a situation where all of the interest-bearing loans have been repaid, leaving the interest-free one, and it's not one that I can readily recall coming up. So, you know, I think is it – is it – is it fair? Certainly the way the cards fell in this case, I think she would be entitled to do so.

40

Entitled to?---Pay it off by instalments, if she could afford to do so. My only concern is around the fact that there's a – you've got a person who is 62 who would be making payments until they're 80. And so I would have concerns about the sustainability of that. But provided that – you know, provided that she could afford to make the payments over that long period, I think she would be entitled to do so.

45

Is there any reason then why you conveyed to the Consumer Action Law Centre, when they contacted you to discuss this, that 17 years wasn't a reasonable time frame to repay the debt?---Well, what I had in mind was that situation where you had somebody who was in their 60s paying it until they're 80. And certainly, from my perspective, if a bank were to lend to somebody in that scenario, I would regard that as not reasonable. And that's – that was my frame of mind at that particular time.

But the solution to that, Mr Field, can't be to require Mrs Low to pay \$220,000 in six months, can it?---No, I don't – I wouldn't say that six months would be reasonable in that circumstance, no.

Well, you conveyed to the Consumer Action Law Centre and to Suncorp that 12 to 18 months to repay the loan would be reasonable?---Yes. And that five years would be the outer limit. And again my frame of mind was more around – more around a person in that situation making payments until they're 80 and whether or not that was sustainable.

Do you accept, Mr Field, that what you conveyed to the parties in relation to this second FOS complaint had a big impact on the way the parties conducted themselves thereafter?---Yes.

To resolve this dispute?---I do accept that, Ms Orr, yes.

And do you think it was the right thing to have done to have conveyed to the parties that 12 to 18 months was reasonable and five years was the outer limit?---In hindsight, I don't think that was the correct thing to do. I think I should have accepted what – that the CALC position was correct and then got on the phone to the bank then and there to try and resolve the matter. As it was, I said to CALC, "Continue the negotiations. If – you know, if you get closer, come back to me and I will call then." But in hindsight I should have called the bank earlier to have - - -

And what should you have said to the bank on that call?---I should have said that – well, if she – if she's entitled, she – once the arrears were cleared on – and the at the time of that call, it was – from the information I had, was that the interest-bearing loans would be cleared. But provided the arrears – any arrears on the interest-free loan were also cleared, then if she could make those payments, she was entitled to do so and it would be interest free until it was paid off.

You were aware, weren't you, that Mrs Low was offering to pay \$1111 a month for the life of the loan, which was more than the existing repayment schedule?---I was aware she was offering to repay that. I can't recall if it was more than the existing repayment schedule.

Yes. And you now accept, I think, that your response to that, which was that 12 to 18 months or five years was the outer limit of any repayments, was wrong?---Yes, I do.

Okay. What do you say to the proposition that if applicants knew that success in FOS looked like what Mrs Low experienced, they would be deterred from making a complaint to FOS?---Well, this is an unusual case. It's not one that I've seen. And, you know, we do try very hard to ensure that the outcome that the customer gets is fair in all the circumstances. And I would encourage them still to – to come and use our service, which as you said at the start, is free of charge to them and, you know, we have staff that try very, very hard to ensure that we get the right outcome.

But in this case, it resulted in an acceleration of Mrs Low's loan repayments in a way that was unfair to her?---It could have, because, as I understand from the evidence, the matter has not yet been resolved.

That's right?---But it could have, yes.

But you're aware that's the position the bank is taking with Mrs Low?---I'm aware that that's the position they're taking, but having – you know – reflected on the file, it's certainly not a position, I think, that they could continue to take.

I see. I see?---In my view.

I see. So you would expect them to change their position and now permit Mrs Low to make regular principal repayments for the life of the loan?---Yes. In fact, she might even be ahead at the moment, because if there was a 20 or \$30,000 surplus that the banks retained then that would actually cover her payments for 20 or 30 months. So she might actually be ahead.

Putting that to one side?---Yes.

Just in answer to my question?---Sorry.

Would you expect the bank to now change their position and permit Mrs Low to make principal repayments on a regular basis for the life of the loan?---Yes, I would.

Thank you. Now, will FOSs approach to responsible lending disputes for small businesses be used as the basis for AFCAs approach to those matters?---I would imagine so, initially, and then as the bodies come together, particularly the CIO and FOS, that we would have discussions about the various different approaches, and see what may need to be modified or changed to accommodate the various approaches.

How do you think, given your experience in the position you have, how do you think that AFCA should approach responsible lending outcomes for loans to small businesses?---Well, I believe the FOS approach is one that we've given a lot of thought to, and it seems to me that it would form an appropriate basis for AFCA subject to, you know, any modification and evolution of that approach over time.

Thank you. I have no further questions for Mr Field, Commissioner.

THE COMMISSIONER: Thank you.

MR WISE: No re-examination.

5 THE COMMISSIONER: Is anyone here representing Suncorp?

MR HUME: Yes. No re-examination.

10 THE COMMISSIONER: None from Suncorp? No. I was rather expecting you to be at the bar table, but thank you.

Very well, thank you very much, Mr Field. You may step down. You are excused from further attendance?---Thank you, Commissioner.

15

<THE WITNESS WITHDREW [10.33 am]

20 MS ORR: Commissioner, we are now moving to a different topic within the hearings involving a different party at the bar table. Would the Commission - - -

THE COMMISSIONER: If I come back at 20 to 11.

25 MS ORR: Thank you, Commissioner.

ADJOURNED [10.34 am]

30 **RESUMED [10.40 am]**

THE COMMISSIONER: Mr Hodge.

35 MR HODGE: The next witness is Mr Michael Kelly. I call Mr Kelly.

THE COMMISSIONER: Mr Kelly.

40 **<MICHAEL LAWRENCE KELLY, AFFIRMED [10.40 am]**

<EXAMINATION-IN-CHIEF BY MR HODGE

45

THE COMMISSIONER: Do sit down. Yes, Mr Hodge.

MR HODGE: Thank you – I'm sorry.

Your name is Michael Lawrence Kelly?---That's correct.

5 And you've given your address to the Commission?---That's correct.

And have you received a summons, Mr Kelly, to attend to give evidence?---Yes, I did. Yes.

10 And you've got that there. I tender the summons, Commissioner.

THE COMMISSIONER: The summons to Mr Kelly will be exhibit 3.87.

15 **EXHIBIT #3.87 SUMMONS TO MR KELLY**

MR HODGE: Mr Kelly, you've also prepared a statement for the Commission?---That's correct.

20

Commissioner – and that statement is dated 24 May 2018?---Correct.

Are there any corrections you wish to make to restructure statement, Mr Kelly?---No.

25 Thank you. And the statement is true and correct to the best of your knowledge?---Yes, it is.

Commissioner, I tender the statement.

30 THE COMMISSIONER: Exhibit 3.88, the statement of Mr Kelly.

EXHIBIT #3.88 STATEMENT OF MR KELLY DATED 24/05/2018

35

MR HODGE: Mr Kelly, I just want to ask you some questions to begin with, to allow the Commissioner to understand your background. You're from Perth?---That's correct.

40 And that's where you live at the moment?---That's correct.

And that's where you've spent most of your working life?---Yes.

And you finished high school in 1984?---Yes.

45

And then you went to work for Rural and Industries Bank of Western Australia?---That's correct.

And that bank is what ultimately became known as Bankwest?---That's correct.

And how long did you work for Bankwest for?---Just short of 23 years.

5 So you started in, what, about 1985?---Yes. 2 January '85, straight after new year, and finished on, I think, it was 25 September 2007.

And just before you left Bankwest what position did you hold?---Director of property finance.

10

And what was the responsibility of the property finance team?---Although there was a chief manager above me. There was a teams of – five teams of three staff and you're responsible for dealing with the at large property exposures, so generally transaction that require funding of 5 million upwards and it was just property specialists, so land subdivisions, apartment developments, shopping centres, both investment and construction.

15

And for property transactions where a loan of less than five million dollars was required, what section would that type of transaction typically?---That – that would in the commercial section of the bank.

20

Okay?---Although there was some overlapping.

And we will come to this, but two of the loans that we're concerned or you're concerned with here, they ended up coming out of the commercial section of the bank even though they involved more than \$5 million?---That's correct.

25

All right. And before you resigned from Bankwest, you had become involved in a company called Zen Corp; is that right?---Could you say – Zengold?

30

Called Zen Corp?---Zengold.

Zengold, I'm sorry?---Yes – yes.

And could you just explain what that company did?---That was just a property development company. It had a single asset project up in a place called Port Denison, north of Perth, about 300 kilometres north, and it was just a 51 lot subdivision.

35

And the – when you became involved, you were effectively went into partnership with somebody else; is that right?---I was a minor shareholder in that particular company, and with a number of other people. So we just formed a small syndicate, and acquired it and one of the other directors, they actually project managed it whilst working in the bank. So I was a minor shareholder, but provided some – you know, advice with structuring and financing, etcetera.

45

- And the person who project managed it, he then set up two other ventures; is that right?---Yes.
- 5 One of them is referred to as Silversun?---That's correct.
- And the other is referred to Wildlines?---Yes. That's correct.
- 10 And Silversun and Wildlines are the things you've spoken about in your statement?---That's correct.
- 10 And so you became involved in the ventures that Silversun and Wildlines were doing?---That's correct.
- 15 What was your involvement?---So I assisted, obviously, in arranging the financing, also cash flow, financial analysis, feasibility analysis. Preparing, you know, documents etcetera, to help structure the deals. The investors were family and friends. So it was a number of people that we knew who had asked to get involved in a project and we just coordinated just the corporate requirements, etcetera.
- 20 I want – so the Commissioner can understand what we are talking about, each of Silversun and Wildlines is a separate?---Separate shareholders.
- 25 Separate entities, separate shareholders?---In total, one company had 15 shareholders and one had eight, but there are only two common shareholders between the two entities, so – and the two didn't have a majority stake in either company.
- And each of those companies was investing in a piece of property or multiple pieces of property?---Yes, that's correct, buying land.
- 30 And they were buying land with the intention of redeveloping the land?---That's right. Initially one company was to – both were going to be rezoned. One was to develop and one was to actually on-sell post rezoning.
- 35 Now, have you heard the expression “land banking”?---Yes.
- 40 Is the type of business that Silversun and Wildlines engaged in land banking or something different from that?---You could define it as land banking. Silversun definitely, because we didn't initially have the intention of developing that site. It was only to rezone it and to resell. Wildlines, from the very beginning, we intended to develop. So initially it was required to be rezoned and then roll into development.
- Now, each of Wildlines and Silversun initially made applications to Bankwest for finance before you had resigned from Bankwest?---That's correct.
- 45 Were you involved, though, on the Bankwest end?---No.

5 All right. So - - -?---So – so – so I was never involved in any transactions where it involved me. My name is actually disclosed in the finance applications with the bank as a shareholder. I wasn't a director of those companies at the time of the original applications. I only became a director after I had handed in my resignation in.

10 And then you went to do the sort of financial management for the two companies?---That's right. Assist with the project management of those projects, plus complete the – finalise the Zengold company that was mentioned earlier.

All right. Now, each of Wildlines and Silversun was applying for a loan from Bankwest in about the middle of 2007?---Yes.

15 And Silversun – I'm sorry, Wildlines ended up applying for a loan in two stages; is that right?---That's correct. So we secured one property. Do you want me to say the amounts or - - -

20 Yes. One of them was – yes, go ahead?---Yes. Yes. So the first loan was for 1.75 million to secure one property. And then, shortly after, an adjoining farming property also came up which we managed to get under contract and then we increased the finance application to 6.6 million and the other facility for Silversun we applied for a facility for 5.15 million.

25 All right. We will come back to Silversun in a moment. In terms of the two blocks of land that Wildlines had acquired what was the expected development time frame?---We anticipated approximately two years to get the development approval through and then to roll into subdivision after that.

30 And Bankwest provided loans to purchase those properties?---That's correct.

To purchase those properties?---Yes, correct.

35 And the – you've set out the relevant terms of the facility in your statement. I will just run through them. The interest rate was to be the bank bill swap bid rate which is referred to as BBSY?---Correct.

Plus a margin of 1.75 per cent per annum?---Yes.

40 The loan to value ratio was to be 60 per cent or less?---60 per cent for Wildlines.

For Wildlines. Yes. All right. We are just talking about Wildlines at the moment. 60 per cent or less; is that right?---Correct.

45 There were some limited personal guarantees given in respect of Wildlines?---Yes, correct.

In proportion to the shareholdings of the company?---That's right. As a percentage of the loan balance.

5 And interest and fees were able to be capitalised?---That's correct, only up to the maximum LVR limit.

Up to 50 per cent LVR?---60 per cent, yes.

10 I'm sorry, up to 60 per cent. And the loan was for a two-year term?---Yes.

And at about that time when the loan was taken out there was a valuation that was obtained of the property by Bankwest?---That's correct.

15 And the valuation you've exhibited to your statement, but it was on an as is basis; is that right?---That's correct.

20 But the as-is basis took into account the potential, as it was, for development?---That's right. Takes into consideration, but on a deferred cash flow basis.

And perhaps just to assist the Commissioner, you've heard the expression "evaluation on an as developed basis"?---On completion, yes.

25 And could you just explain to the Commissioner what the difference is as is and as developed?---Yes. So an as is, is obviously what someone would pay today for it. On completion, obviously, is once the development is built and the end value of the total development.

30 The Commissioner probably didn't need to have that explained to him, but that's my fault, not yours. Let me ask you then about the hypothetical development and cash flow scenario that you were referring to. Could you just explain: what's the process by which hypothetical cash flows are used to arrive at a valuation?---Well, the valuer has to adopt two methods of valuation and generally on a land bank it's going to be the as – sorry, a comparative sales evidence than discounted cash flow as a
35 development site. So in a discounted cash flow they need to take into consideration the planning reports that we provide, plus the engineering numbers, and run a theoretical model on the development with – based on what the expected sale price will be and work backwards, and then it derives an as is value of the land. And they
40 – depending on the complexity or the risk associated with it, they adjust the internal rate of return. So they apply a higher rate of return if the uncertainty is there. So if it was zoned ready to go today, it's a lower internal rate of return. If it has got some time to go, well, obviously it's a higher internal rate of return.

45 And so if we just take that in a few steps at a time. In making or carrying out that hypothetical cash flow, one of the factors that goes into it is the internal rate of return that's to be achieved on the development?---Yep, that's correct.

- And the internal rate of return takes into account the relative risk of the development?---Yes.
- 5 And as there becomes more certainty about the development approval being obtained, the level of risk decreases?---That's correct.
- And as the level of risk decreases the IRR, internal rate of return that's required, is expected to decrease?---That's correct.
- 10 And as the IRR decreases, what effect does that then have on the value of the property?---Well, the value improves.
- The value goes up?---Goes up in value, that's right.
- 15 All right. And when the property was valued by Bankwest in August 2007 – sorry, when the Wildlines property was valued in August of 2007, what was the value arrived at by the valuer?---Actually, I'm not sure if it was August – or that was. Is that the second valuation?
- 20 The August – yes, it's – to help you, perhaps, if you go to MLK5. And go to page .5619 in the top corner?---Just – it was dated in June, that's all.
- I'm sorry. The valuation date was 18 June 2007?---Yes, that's correct. You said August. That's – I just wanted to be sure.
- 25 I apologise. And the as is valuation we can see, as at 18 June 2007 for the two blocks of land, was \$11 million?---Yes, that's correct.
- All right. And so if we then move from that to Silversun, Silversun also took out an application or made an application for a loan in 2007?---That's correct.
- 30 And it was buying just one block of land?---That's right.
- At a different property, obviously, from what Wildlines was concerned with?---That's correct.
- 35 And you've already mentioned that the amount of the loan was \$5.15 million?---That's correct.
- 40 And the timeframe for the Silversun development, what was that?---That was just a rezoning process, but because it was a major site and hadn't gone very far through the process it was estimated in between three to five. Obviously three was the perfect scenario, everything lined up. Five was a probably more realistic expectation.
- 45 All right. And the price that was paid for that site was - - -?---10.3.

- - - \$10.3 million; is that right?---Yes, that's correct.

And the loan - - -

5 THE COMMISSIONER: Sorry, what was the price?

MR HODGE: \$10.3 million. And there was a valuation that was obtained at about that time that valued it at \$10.3 million?---That's correct.

10 And the loan that was obtained then from Bankwest was for effectively half of the purchase price?---That's correct.

The rest of it was funded by equity from the investors?---That's right. Cash equity.

15 All right. And the conditions that attached to that loan were similar, but not quite the same, as for Wildlines?---Similar, but not the same.

The interest rate was still BBSY plus 1.75 per cent?---That's correct.

20 The loan to value ratio was 50 per cent rather than 60 per cent?---That's correct.

There were no guarantees that were required?---That's correct. There was no recourse lending.

25 Interest and fees were able to be capitalised?---Yes. The same as Wildlines. Yes.

And the loan was for a three year term rather than a two year term?---That's correct.

30 All right. Now, in 2008, there was a review that happened of the Wildlines loan?---I think both of them would have been reviewed at some point, but yes, but the following year.

They were both reviewed. In relation to Wildlines its interest rate increased?---Yes.

35 The margin went from 1.75 per cent to 2.25 per cent?---Yes, that's correct.

And did you discuss that rise with Bankwest?---Yes. I discussed it with the relationship manager.

40 And who is the relationship manager at the time?---Mr Andrew Steele.

45 And was it explained to you why there was that increase in the margin?---It was – well, it was, and – which is unusual to increase the rate during a term of a facility at an annual review event. It doesn't happen very, very often. I can't recall doing it myself. So the bank was repricing its book, was the answer, and so we had to grin and bear it.

There wasn't a change, though, in the rate for Silversun?---No. I think, though, that that facility was reviewed a month or two earlier.

I see?---And so we missed that – that one and got the next one.

5

And then in 2009, the Wildlines loan facility was coming to an end, because it was for two years?---Yes. That's correct.

10 And did you go and have a meeting with Bankwest to discuss where the facility was at?---Yes.

Was Wildlines going to need to refinance that loan?---We were going to need to roll to over; that's right.

15 Had the development approval come through at that stage?---No. It hadn't come through.

20 And what was the – that was obviously not what you had expected. What was the reason for that?---The reason being that the department of planning infrastructure in the local area managed to get a federal grant, and they wanted to widen the area of rezoning. So not just do our, you know, 400 acres, they wanted to do a bigger rezoning. And so, because they received Federal Government grant, they put our submission on hold so they could expand the area, and that held up the process.

25 And can we bring up MLK11. This should be RCD.0024.0014.0014. Now, can you just explain to us, Mr Kelly, what is this document?---That document is my pre-meeting notes. So – because we obviously called the meeting with our manager – say his name or?

30 Yes?---Yes. So Paul Chapman to actually discuss the rollover and also the development facility going forward. So in the lead-up to the meeting I prepared notes for discussion points so that way there was a number of discussion points I wanted to address with him and discuss. And when we got to the meeting, obviously, we got enlightened.

35

Did you go through these notes as to what you wanted to discuss?---No. The meeting got called short.

40 And why did you not go through what you set down in your notes?---Because his opening statement was that the banks would like us to refinance the facilities at expiry.

What, sorry?---To refinance our facilities. So to take our facilities and go.

45 I see. The bank – just to be clear what you mean, refinance, not refinance with Bankwest. Refinance with somebody else?---That's right. Externally.

All right. And was that what you were expecting going into that meeting?---No.

And why did that cause the meeting to be cut short?---I wasn't sure he was fully informed, because he was a new manager, of what he was actually saying. You know, to – obviously we're longstanding customers, obviously I had banked there all my life, sort of thing. And to go into a meeting where we – all upbeat about our project, and then to cut us off at our knees and to say, "No, we don't want to extend our facilities, you've got to go." There was a by the of a shock. So I said to him, "I think you had better go and just talk to someone senior and put something in writing to us. Because what you are saying, you know, is pretty significant." Especially giving the timing. Obviously we are talking June 2009, and obviously the peak of the GFC – I think – was – was it April 2009? So we were just, you know, going through a bit of a turbulent time. And, yes, so we – we weren't expecting it at all.

And Mr Chapman did then put that sentiment in writing?---Eventually, yes. A couple of weeks later, he sent an email.

And did you begin looking to see if you could find finance with somebody else?---Yes, immediately. So after that meeting, I had discussions with a finance broker that we use in our facilities and to find out, you know, what our options are, because obviously I took it offensively in the way that it was communicated, just dropped on us. We called the meeting. It wasn't as if the bank had called us in and sat us down and wanted to talk about something and work a staged process. It was just dropped on us.

And how did you go trying to find other finance?---Well, the timing with the GFC didn't make things – because obviously all the banks were not lending, especially on property. And so the answers we got obviously weren't very enthralling.

Now, having confirmed – I should just show you, if we go to MLK12, which is RCD.0024.0014.0016, this is the email on the 22 June 2009. That the one you were referring to, sent a couple of weeks later?---That's correct.

And then there was a slight softening in position from the bank?---In this email?

No, not in this email. If we can go to the next email, which is RCD.0024.0014.0017, which is MLK13. So this is then sent about eight days later on 2 July by Mr Chapman to you?---That's right. So he had further discussions with the credit department of the bank and, yes, the approach was saying obviously if we enhance the position, that we may be able to get a continuation.

And so the position being put forward was that the LVR would drop from 60 per cent to 45 per cent?---Yes, that's correct.

And the pricing would be expected to be BVSY plus 2.25 to 2.5 per cent with an extension fee of between .3 per cent and .5 per cent?---That's correct.

Was there a further valuation that was obtained at about this time?---That's right. So after the first meeting we got a valuation underway straightaway, because obviously you need a valuation to go and talk frankly with the banks. You can talk indicatively and show the previous reports, but they're going to require a current valuation. So
5 we already had one underway and the bank agreed to send their instruction letters to their valuer so the report could be assigned to them.

And if we bring that up, which is exhibit number 14, CBA.4000.0048.7306. So this is the valuation on 9 July 2009. Did you see this at the time?---Yes.
10

Okay. And then if we go to page 2, which is .7310, you will see the valuation as at 9 July 2009, on an as is basis, is \$12.7 million?---That's right, inclusive of GST.

Inclusive of GST. So that's actually an increase in the valuation that had been
15 obtained from 2007?---From – yes, from the – that's right. The previous valuation was \$11 million, exclusive of GST.

And from your perspective was the increase in value expected?---Yes.

20 And why was that?---Because we had progressed the rezoning. We were just about to lodge our development application, etcetera, so we de-risk it. We had done our water monitoring and a number of other environmental assessment reports, etcetera, over the – over the property.

25 And you then had some further negotiation with the bank over the terms on which they would roll over – are you right, Mr Kelly?---The desk is a bit short.

That's right. You then had some further negotiation over the terms on which the Bankwest would roll over the facility?---That's correct.
30

And they ended up making an offer to you on 1 September 2009, which we will bring up, which is tab 15 or exhibit 15CBA.4000.0072.0134. And the LVR was – in that offer, was that changed at all?---I think it was still 60 per cent, but reducing to 50 per cent by a given date.
35

All right. And perhaps if we bring that up on page .0136?---Yes. So by 31 October the following month we had to reduce the LVR from 60 to 50 per cent, so I think it's 540,000.

40 So I just want to understand how this happened. Was this – did the bank just decide to go for 50 per cent or was there some process of negotiation?---No, it was – it was negotiated. So obviously they had 45 per cent in their email as where they would like to be in the perfect world and we went back with an offer of 50 per cent, and obviously we could do it in a relatively quick period of time, and they accepted that
45 offer. So it was a submission submitted via our broker to the bank, which they agreed to.

And when you say “do it in a reasonably quick period of time”, you mean you would be able to reduce the LVR down to 50 per cent within a few months, within two months?---Within two months, yes.

5 All right. And if we go back a page to .0135, we see the facility expiry date – this is the offer being made on 1 September 2009 – is only being extended to 31 October 2009?---That’s right.

So this is being extended so that you can reduce the LVR?---That’s right.

10

Your understanding was if you reduced the LVR then they would roll over the facility for a further period of time?---That’s right. That’s right. We were talking – I think we had asked for about a 16 month extension and they ended up giving us a 14 month extension.

15

And we also see the varied interest rate has gone up the margin on BBSY to 2.65 per cent?---That’s right.

20 And that seems to be, on its face, higher than that range that had set out in Mr Chapman’s email?---That’s right. It’s part of the negotiation. We offered a higher rate because obviously we were only offering a 50 per cent LVR not a 45 per cent LVR. So in our submission we would have had the 2.65 margin because if we didn’t give something away, there could have been further push back.

25 And how did you manage to get the LVR down to 50 per cent?---It was just that the syndicate members obviously put the hat around and we raised the money from the members and paid the facility down and we also prepaid or paid the loan down as well, but not on a permanent reduction basis so that we could redraw it to pay working capital going forward. I think we transferred just over \$1 million by that date.

30

By 31 October?---I think it was on 31 October, we transferred the funds, because we had to coincide with the rollover of the bill.

35 And so then you extended – or then the loan was extended to 31 December 2010?---Actually, was it December or was it October?

You think it might have been 31 October. In any event, it was extended to the end of 2010?---Yes – yes.

40

And, in the meantime, Silversun was a three year loan. So it was going to run until August 2010 anyway?---That’s correct.

45 And you recall we already look at – there was no change in the rate in 2008?---Not on Silversun, no.

And – I’m sorry, what’s that?---No change for the rate to Silversun rate in 2008.

That's right. But in 2009 there was a change in the rate for Silversun. It went – the margin went up to 2.65 per cent?---I believe so.

5 I can bring that up, if that helps. If we go to MLK-49. This is an email from Mr Chapman to you about Silversun?---Yes, that's correct. Yes. So yes, the margin increased from 175 to 265.

All right. So that's - - ?---Point 9.

10 I'm sorry, say that again?---A .9 per cent increase in margin.

Yes. And was that something that you had expected?---Given our treatment on the Wild Line facility, it wasn't – we weren't shocked when they decided to bump the rate of the facility.

15 You see it says:

Our submission saw an approval for extension to 31 August 2010.

20 ?---That's correct, yes.

Do you know what that means?---I think he has just used the wrong terminology. He should have just said, "I've done the annual review and as part of the review process we deemed the pricing needed to be increased."

25 Because the loan was already going to run until August 2010?---That's correct.

30 So did you raise any issue with him about this changing of rate?---Not formally, no. We just grinned and beared it, because the dramas that we had gone through with Wildlines at the time, the last thing we needed was the bank to call a material change of circumstances and call up our facility.

35 And then if we come then to 2010, in August of 2010 you had a meeting with Mr Steele. Do you recall that?---What date was it sorry?

It was on 6 August 2010. I think, if we bring up MLK-19?---Yes, that's right. It was Shaun Lawson as well, the BDM, and myself and another director.

40 And could you just explain to the Commissioner this document is headed File Note. Is it your file note?---Yes, it is.

Okay. And when did you prepare it?---This was prepared after the meeting.

45 And one of the things you record is about where Mr – where it was explained to you that Bankwest was at in terms of their attitude to property finance. Could you just - - ?---That's correct.

- - - explain that to the Commissioner?---Yes. Because obviously in the previous year, in June the previous year, we were advised that the bank – because there was such success in lending to property, they were overexposed now, wanted to reduce their loan book. So this is another year on, and obviously they were treating
5 customers – I assume – the same as they were treating us. Some commerce would have been able to refinance or sell down or get away. So the first question was: are you still overexposed? And the answer obviously, unfortunately, was yes. And then the next part of it, obviously, they were saying that still the bank, under instructions from the CBA, they still have a strategy to exit the property exposures at loan expiry,
10 ie, not to offer new facility terms.

Do you – I should ask: do you now recall this conversation, or is this really just based on what you took down in your notes, bearing in mind it's eight years ago?---So you don't forget those sort of things.

15 All right?---It doesn't happen every day of the week that, you know, you get told to refinance.

And there was then a revaluation of Silversun at about that time?---That's right, because the – normally the bank does valuations every three years, and the original term was set for three years to coincide with the revaluation and there was some discussion obviously had about the revaluation because they mentioned to me that the – their internal valuer, Phil Edwards – can I say his name?

25 Yes?---It was noted that – on the file that our value would go down maybe 30 to 40 per cent lower for Silversun.

All right. And we will come in a moment to what the valuation showed, but at about this time, both Silversun and Wildlines were also moved into cam; is that
30 right?---That's right, in September.

Of 2010?---10.

35 And who is the person or manager that you were dealing with in CAM?---It was initially Greg O'Brien.

And was it explained to you why you moved into CAM?---Well, the bank considered us to be high risk customers.

40 At that point in time had there been any default that you were aware of by Wildlines or Silversun?---No. There was no missed payments, no missed reporting covenants.

45 And who informed you that there was going to be a further valuation of the Silversun property?---Well, I actually informed the bank that it was required in June, in one of my reports to the bank, and asked them for the names of the valuers that we could use because the bank – although it had a panel of half a dozen valuers who were specialised in in globo land bank valuing, the bank selectively decided who would

value, and would tell us – you know, to use a familiar firm. So they would give us a choice of two to pick. So we obviously asked for details in June, but never received any reply or response. And at this meeting obviously it was raised again that we needed to get the valuation underway because the facility was coming up for expiry.

5

And were you given a couple of valuers to choose from?---We were given two, yes.

Of those you picked one and got them?---That's right, we picked Savills.

10 And when Savills did the valuation did they do it on your instructions or the bank's instructions?---We – we negotiate the fee, because obviously with valuers depending on how busy they are, etcetera, their pricing can change by reasonable sums and then, once we negotiate a fee, the banks sends instruction letters.

15 And what happened to the value when it was revalued be - - -?---Well, the value went up.

Perhaps if we bring this up, it's exhibit 57 to Mr Kelly's statement CBA.0517.0096.1710.

20

THE COMMISSIONER: We may want the number again, Mr Hodge.

MR HODGE: Yes. It's CBA.0517.0096.1710.

25 So this is that 2010 valuation of the Silversun land?---That's right.

And if we go to page 2.17111 we see the market value had now gone up to 13 and a half million dollars?---That's correct. 13 and a half inclusive of GST.

30 I'm sorry, inclusive of GST?---Yes.

And what effect did that have, then, on the LVR ratio for Silversun?---Well, once you adjust for the GST under the margin scheme the value does get reduced back to 13.12 million. So the LVR went from 50 per cent down to 37.2 per cent, I think.

35

And did that lead to any change in the pricing for Silversun?---Yes, unfortunately.

Perhaps if we – well, sorry, the pricing had already changed by that date?---We are up to 2.65 and then I think we got offered – I'm not sure if it jumped to 3.95.

40

I will bring it up for you, just to help you, so you don't have to guess, Mr Kelly. Can we go to RCD.0024.0014.0113 which is – thank you. So this is the variation on 6 September 2010?---Correct, yes.

45 And this is, effectively, at the same time as Silversun and Wildlines are moved into CAM?---That's correct.

And if we go to page 2, which is - - -?---But this letter was issued prior to the report being available.

5 I'm sorry, let's just make sure we have got these things lined up?---Yes.

This letter of offer is issued at about the same time that Wildlines and Silversun go into CAM?---Correct.

10 The – when you say the report, you're referring to the valuation report?---That's correct.

The valuation report didn't come until late - - -?---The next month.

15 - - - October 2010 or sometime in October 2010?---Early October, probably, yes.

And if we go to page .0114, we see the margin then went up to 3.95 per cent in the letter of offer?---Yes, that's correct.

20 And do you recall whether that was – I'm sorry, you also see the facility expiry date is 30 October 2010?---That's correct.

And do you recall whether that was accepted?---That letter, yes, we had no choice but to accept that letter.

25 And then the valuation occurred which increased the value?---That's right.

30 I think then to come back to the question I asked you before, was there any change in the pricing once the valuation came in?---We did get a concession from 395 to 350, but I can't recall the actual date. So it did come down. I just – yes, I'm not sure of the date, I have to go back to the actual letters to determine it.

I think we will come to this, but that might have occurred in the following year, Mr Kelly?---Yes, it could have been the following year.

35 And then – but there was no change in Wildlines' rate at that time in 2010?---No, because the facility hadn't quite matured.

40 And then you had a meeting with Bankwest on 29 November 2010; do you recall that?---Yes.

And the purpose of that meeting was to discuss a further extension of the facilities for both Silversun - - -?---For both – both facilities; correct.

45 And at that meeting – which you've got a file note of, if it would help you – what was the attitude that was expressed by the bank about continuing to be involved in property?---Actually, if you just bring it up, because obviously there was a number of meetings, and I just want to make sure - - -

5 Could we bring up RCD.0024.0014.0025. If I phrase the question like this: was there any change that you can recall?---Not in their attitude for us to leave. They still wanted us to leave, but they did actually acknowledge it's extremely difficult to refinance in the current circumstances. Obviously, they commented that if our gearing hadn't gone down we would be unlikely to provide any extensions. So it was lucky we got a higher valuation.

10 And at that point in time you were told that the bank had extended the facility, or would extend the facility, through until 28 February 2011?---Yes, that's correct.

15 And can you recall why it was that the -- I'm sorry, can you recall a discussion about a greater extension having been sought?---Well, Greg actually mentioned at the meeting that he actually applied to go to 31 May. So give us like six, seven months extension, but he got knocked back and they only allowed it to go to 28 February the following year.

20 And so as a result of this meeting, did you understand that there would be some further conditions that the bank would require in order to extend the loan?---No, because I think he had the files on the desk at the meeting. I think it's in my file note that he actually had the approved files on the desk during the discussion, they had already come back from credit, and obviously we discussed -- pricing was obviously a sensitive issue -- and obviously any additional terms and conditions, but there was nothing other than -- no -- that was disclosed.

25 And then a letter of offer to vary the facilities eventually came from Bankwest?---That's right.

30 And that came on 23 December 2010?---It was dated the 23rd, but I think I received it on the 30 December.

All right. And that is -- -?---Over the Christmas period.

35 I beg your pardon?---With the Christmas period, and all the rest of it, that was probably why it was late.

And that is tab 24 to your statement, which is RCD.0024.0014.0027. And -- -?---Yes, that's correct.

40 We go to page .0028. We see the varied facility expiry date was to be 28 February 2011?---That's correct.

45 And how did the conditions that were set out in this offer to extend compare with what had been discussed at the meeting at the end of November?---There were some additional special undertakings included in the letters for both Wildlines and Silversun, were the main issues. There's obviously -- there's some typo errors and I think Mr Guarantor position on one of the letters, and they're referring to the wrong offer letters from the previous correspondence, and there's a few other bits and

pieces. But obviously I received it on the 30th. I wrote back to them on 31 December, because obviously we wanted to have this resolved so we had a facility in place, because we had gone – you know, a good month between having approval on a guy’s desk in a meeting to actually getting a letter, and the letter was incorrect.
5 And incorrect, but also with varied terms than what was discussed and I thought agreed.

And you referred to having sent a letter on 31 December. That is tab 25, RCD.0024.0014.0039. This is, you sent two letters, one on behalf of Wildlines, one
10 on behalf of Silversun?---Yes. That’s correct.

And you sent it to Omar Varinda and also to Shaun – who is – what’s Shaun’s
- - -?---Lawson.

15 And are they in CAM or - - -?---No. They’re in commercial banking, but Greg O’Brien from CAM was assisting them in managing the files.

And we will just look at one of the letters, but you raise a few different issues in the letter with the new terms. One is about the directors giving an undertaking as to
20 refinancing?---Yes, that’s correct.

And can you explain to the Commissioner what the issue was?---Well, they wanted us to give an unconditional undertaking or have an unconditional finance approval by 28 February which – obviously committing – trying to cross secure or cross-
25 collateralise both of the loan facilities which had been stand-alone facilities.

So just trying to break that down. What they asked you to do in relation to Wildlines appeared to give an undertaking to have refinance – Silversun; is that right?---That’s
30 correct.

And you note, maybe that’s a typo, but in any event it’s impossible for you to give that undertaking?---That’s – for the Wildlines company to give that undertaking for a Silversun company, yes.

35 And there was also an issue about a 6 months interest deposit; can you explain what that was?---Yes. The bank decided that we would put six months interest on deposit in an account in addition to obviously servicing the loan interest going forward. So basically in quasi – you know, another principal payment of the debt by having six months interest on deposit, which we couldn’t touch.

40 And were either of these things that we’ve just talked about things that had been raised in that meeting in November 2010?---No.

45 And did you receive a reply directly to this letter?---No.

And is the next thing, that happened on 13 January 2011, Bankwest issued you with a breach notice?---That’s correct.

And if we bring that up, which is tab 26. So there was one issued for each of Wildlines and Silversun?---That's correct.

5 We are just looking, at the moment, at the Wildlines one – this is Wildlines?---Yes, that's correct.

And the breach was not having repaid the facility on 31 December 2010?---And it starts off differently, saying:

10 *You have not accepted the bank's variation of facilities letter extending the facilities to 28 February 2011 and you have not repaid the facility upon the expiry on 31 December 2010.*

So obviously we could have accepted their letter or repaid the facility.

15 All right. Now, this doesn't say anything about default interest?---No.

20 But was there default interest that started being charged on the loans?---There was overdue interest, which is the bank's default interest. But we had a meeting – which you are going to come to, I think – on 24 January 2011.

Why don't we work it through in that way, then. If we go to the meeting on 24 January 2011, again, you took a file note of that meeting?---That's correct.

25 If we bring up RCD.0024.0014.0042. So at this meeting you've got Greg O'Brien who is from CAM?---That's right, but Greg had been involved since September.

And also Shaun Lawson who is from - - -?---The commercial part of the bank.

30 Commercial part of the bank. Also - - -?---We also had Melinda Rivera from CAM as well.

35 And what was explained to you was the bank was – the bank was fully aware that it was extremely to refinance at that time?---That's right. It said the bank was now taking a different approach to clients with land facilities, as they are fully aware that it is extremely difficult to refinance at present.

And was there a discussion about default interest?---Yes.

40 And what was the discussion?---That they wouldn't charge default interest whilst we were negotiating the loan extensions.

All right. And was there a negotiation over the terms on which the loans might be extended?---Yes.

45

And I think we see that at the bottom of the page. For Silversun the idea was there be a 12 month extension with interest to be paid three months in advance?---That's correct.

5 And for Wildlines there would be an extension until 30 September 2011. This is over the page, on .0043. I'm sorry, there would be a 12 month extension, again with interest to be paid three months in advance?---Yes, that's correct.

And there would also be guarantees that would be given in respect of
10 Wildlines?---That's correct. Limited guarantees.

All right. And then if we go to tab 28, which is RCD.0024.0014.0044, and can we go to the second page .0045, so taking these emails first in time. The first in time is an email from you to – I'm not sure why – I'm sorry, it's – the whole email address
15 is redacted but the name is not - - -?---Yes.

- - - subject to a non-publication direction. That is Omar Varinda?---That's correct.

And Mr Varinda was in which section of Bankwest?---In the commercial banking
20 section.

And you were sending him an email in mid-2011 because you just received a statement for Wildlines?---That's correct.

25 And the issue was that you were being charged 8.81 per cent?---That's correct.

And what you had previously been charged was about 7.45 to 7.5 per cent?---That's correct.

30 All right. And you made the point that when you had met in January the bank said it would keep charging a similar rate to what the new terms were?---That's right.

Now this – I want to be clear, this was just for Wildlines which was on a lower interest rate anyway compared to Silversun?---That's correct.
35

So the Silversun rate that you were being charged was approximately what it ought to have been?---Well, it was around about 8.8, that's right. Or just under.

And then on 27 February you sent a follow-up email to see what was going
40 on?---That's right.

And to find out how the loan extensions were going?---That's correct.

And then on 28 February you received, if we go to the first page, an email from Ms
45 Rivera?---That's correct.

Now, let me summarise this. This email seems to say that, what had been discussed at the meeting was that the bank would consider extending the facilities if the Silversun shareholders provided guarantees and serviceability of both facilities could be demonstrated?---Yes.

5

And then there were requests for evidence to support recurring cash flow capacity?---Yes.

And there also appeared to be a request for evidence to support shareholders' recurring cash flow capacity. That's in the fourth paragraph?---Yes.

10

And then the only response with respect to the interest rate was:

In relation to your query about the interest rate for Wildlines we note that the facility has expired and the bank standard default rate is 18.81 per cent.

15

That's correct, but just so you get an understanding: the difference between the standard rate and the default rate is an additional 100 or just short of 100,000 per month.

20

And again, just so the Commissioner understands that and we can break that down, you mean the difference between charged 18.81 per cent and being charged 7.5 per cent, or the difference between being charged 8.8 per cent and 7.5 per cent?---No, the difference between say 7.5 and 18.8 per cent.

25

Yes. So the normal interest rate of 7.5 per cent that had been charged for - - -?---Wildlines.

- - - Wildlines, that was \$100,000 less per month in interest compared to - - -?---On the combined facilities for both Wildlines and Silversun, because we had – just say \$10 million in exposure, and 10 per cent or \$11 million exposure, so yes, another \$1.1 million in broad numbers.

30

All right. And – now, did you – were you surprised to receive Ms Rivera's email?---Yes.

35

Why was that?---Because we had agreed at the meeting, and also her attitude – wouldn't say attitude – she sent that email on her final day of secondment with Bankwest and when I sent my reply it bounced back that she had obviously left the bank and – and then I had to refer on to Greg O'Brien.

40

Well, maybe if I just – at least show you the document, so the Commissioner can see what you are talking about. Having got that email on 28 February, you responded to Ms Rivera on 1 March?---That's correct.

45

And we can see that at tab 29, if we bring that up, RCD.0024.0014.0046, this is the letter that you sent back to Ms Rivera?---That's correct.

You explain on the first page that your file notes from the meeting confirms that there was no discussion or request made by the bank for the shareholders of Wildlines to provide the bank with a demonstration of serviceability?---That's correct.

5

And you note that you had previously provided the bank with tax returns and assets and liabilities for the major shareholders?---That's right, for Wildlines, yes.

Then if we go over to .0047?---Actually, just that table is quite important.

10

Sure. If we go back to .0046?---Yes. Just – that was one of the main shareholders, and just from his reoccurring business income, can demonstrate serviceability of all facilities. So – which they already had that information on their files because he was one of the shareholders that was in both companies.

15

And then if we go over to .0047 you note that the email – we see this about a quarter of the way down the page, that in her email Ms Rivera had said that:

The bank needs sufficient evidence to support the recurring cash flow capacity to meet all future development approval, expenses, costs of the Silversun development.

20

?---Yes.

25

And again you say this detail hadn't been requested by the bank at the meeting?---Yes.

And then you make a few more points about information that hadn't been requested by the bank at the meeting?---Yes. That's correct.

30

And if we go over to page .0048, in the middle of the page you say:

Cash flow forecasts for each project are attached for your reference.

35

?---Yes.

So insofar as the bank had asked on 28 February 2011 for cash flow forecasts you provided them the next day?---That's right.

40

And then you queried why it was that the bank wanted cash flow forecasts for each shareholder?---That's right. To go into each shareholder's private business.

And that request was never pressed by the bank?---No. Because we had provided information just from one shareholder that could demonstrate the serviceability. So I didn't see the need to go to 22 other shareholders and ask them for all their personal information.

45

And then can we bring up RCD.0014.0011.0011. Now, just to cover off on what happened about the interest rate, this is a statement for Silversun?---Yes.

5 And we see there's a note a handwritten note at the bottom of the page, 31 March 2011?---Yes.

Whose writing is that?---That's my writing.

10 Could you tell the Commissioner what that note says and what it means?---Yes. So on – during March we received the letter. On the second page, it – on the front page it says obviously approved maximum facility limit: zero. Balance of account, 4.9 million, and on the back of it our interest rate was 18.81 per cent. So I phoned Omar from the bank just to confirm what rate they were going to apply to this facility because – given it had expired and we hadn't accepted the letter, and he said that 15 they would apply a 10 per cent discount to each of the limits to bring it back to 8.81 per cent instead of 18.81.

All right. And then can we bring up – sorry, I tender that document, Commissioner.

20 THE COMMISSIONER: Letter Bankwest to Silversun – have we got a date on it somewhere.

MR HODGE: It doesn't. We can see it's for the period up to 14 March 2011 and it has statement 28 on it.

25 THE COMMISSIONER: If I just call it letter Bankwest to Silversun, March 2011, RCD.0014.0011.0011, will become exhibit 3.89.

30 **EXHIBIT #3.89 LETTER BANKWEST TO SILVERSUN, MARCH 2011
(RCD.0014.0011.0011)**

MR HODGE: Thank you, Commissioner. And then can we bring up 35 RCD.0014.0011.0014.

Now, this is another set of emails that you exchanged with Mr O'Brien in March 2011. You ask him if he has heard from Phil Edwards about the Silversun valuation report. Can you - - -?---That's right.

40 - - - explain to the Commissioner what you were trying to find out and why?---Yes. So the valuation report was completed in early October and it's part of the internal process of the bank. They have – their internal valuers review the external valuers and Mr Edwards was one of the bank's internal valuers and because he had an issue 45 with the report he wouldn't sign off on the valuation report because he had forecast previously that the value was going to go down, but the actual value went up, and

even though we are five months later he still hadn't signed off on the report or had only just signed off on the report.

5 And that was – the information that you've giving us, you obviously weren't working in the bank, but this was information you had been told by whom?---Well, obviously Greg O'Brien.

10 Right. And so then you are following up Mr O'Brien and he then tells you on 24 March that he has now submitted his paper to Les Nathan?---That's right; he is one of the senior credit managers.

All right. And then – I tender that document, Commissioner.

15 THE COMMISSIONER: Emails between Kelly and O'Brien, March 2011, RCD.0014.0011.0004, exhibit 3.90.

20 **EXHIBIT #3.90 EMAILS BETWEEN KELLY AND O'BRIEN, MARCH 2011 (RCD.0014.0011.0004)**

MR HODGE: And then can we bring up one last document from March which is RCD.0014.0011.0008. When we look at the chain of emails, this I think is what I think you were referring to before, on 1 March in the morning at 10.31 am, you sent the letter we looked at before together with the cash flow budgets?---That's correct.

And then you got a reply from Mr O'Brien saying Melinda has finished her secondment with Bankwest so he is back to running the matter?---Correct.

30 Right. I tender that document, Commissioner.

THE COMMISSIONER: Emails between Kelly and O'Brien, March 2011, RCD.0014.0011.0008, exhibit 3.91.

35 **EXHIBIT #3.91 EMAILS BETWEEN KELLY AND O'BRIEN, MARCH 2011 (RCD.0014.0011.0008)**

40 MR HODGE: And then in May 2011 you were able to, or you were taken out of CAM; is that right?---I'm not sure it was May. It might have been - - -

45 Well, I will show you a document which might help. Can we bring up exhibit 31 to Mr Kelly's statement RCD.0024.0014.0050. Would you like me to say the number again? It's RCD.0024.0014.0050. It is tab 31 to Mr Kelly's statement. Thank you. So this is an email sent by Mr O'Brien on 20 May 2011 to you?---Yes. That's correct.

And he's telling you that both facilities have been extended through until 30 October 2011?---Yes, that's correct.

And he says:

5

Management of file has been passed to property finance unit and I believe Tim Lyons will be the contact.

?---Yes, that's correct.

10

So I just now want to try to understand the various segments of the bank that we have gone through. The loan was originated in commercial; is that right?---Commercial banking, that's correct.

15

And then for a period of time from 2010 through until this day we're looking at, May 2011, it's then being dealt with by CAM?---CAM and commercial banking.

In consultation with commercial banking?---That's right.

20

And then it gets moved to property finance?---It was intended to be moved.

It was – sorry, you were told it was going to be moved to property finance?---That's correct.

25

Was it in fact moved to property finance?---Eventually it was, in January of the following year.

Okay. Did it – for a while did it stay with the commercial part of the bank?---I believe so, yes.

30

All right. And there was, in terms of just walking through what happens then with the interest rates, for Wildlines you were offered a variation which we will bring up now, which is tab 32 to the statement, which is RCD.0024.0014.0053. So this is the offer sent on 30 May 2011?---That's – yes, that's correct.

35

And if we go over to page .0055 we see the margin is to be 3.95 per cent now?---That's correct.

And it had previously been 2.65 per cent?---That's correct.

40

And you then had some negotiation about the margin?---I sent a letter back to the bank. But these letters weren't received until sometime in June, I think.

45

Yes. The fact that the offer is dated 30 May 2011 doesn't mean you actually got it in May of 2011?---No. It was much, much later.

5 But the process was you got it. You then complained about the interest rate?---That's right. So I had facilities for – letters for both facilities and there was a number of differences, number of mistakes in the documents. So we sent back a letter the following day trying to get the facility bedded down, and obviously one of the big issues was they had increased the interest rate outside of our discussions or negotiations.

And eventually the bank agreed to have a margin of 3.5 per cent?---That's right.

10 And there were then a series of short extensions to each of the facilities?---That's right.

They were extended first to 31 October 2011, which are the offers we're looking at now?---Yes, I believe so, yes.

15 And then to 31 January 2012?---I would have to check the letters, but if you've got the letters then I would say yes, but there may have only been a month or two at a time, maybe not that – three months.

20 And then I suggest to 31 March 2012?---Yes.

From the end of January to the end of March?---Yes.

25 And then it looks like for Wildlines there was no further extension that was granted, but the loan just carried on?---That's correct.

30 And in January 2012 did you approach the bank about financing the next stage of development?---That's right. So once we got to meet our new account managers we had a meeting and put forward our proposal for financing the development of the Wildlines property. And we gave them a detailed application.

35 And at about the same time did you also put forward an application to refinance the next stage of development for Silversun as well?---Yes. We also applied for an extension for Silversun at the same time.

40 At the time, that is in early 2012, what was the feedback that you received from the bank?---We actually received positive feedback, that the bank was – I think, it would be in my file note, whatever, the description for the Wildlines facility, the account manager said, "It's in our sweet spot. So this is something that we will be recommending." And also for the Silversun they were happy to recommend the extension on that facility also, but bear in mind we were already up to our second manager in property finance even though we never met the first manager.

45 The second manager is Jason Black?---And Lee Curtis.

All right. And there was a previous manager that you never met?---Well, initially Greg O'Brien said we were going to deal with Tim Lyons.

And then you got to June 2012. Had the approval come through from Bankwest?---No.

5 And what did you do in June 2012 for Wildlines?---Well, because of the delays when you apply for something in January and you've got to June and you still don't have an approval, but you are getting some positive feedback we also were able to lodge an application with a few financier, and I think it was 11 June we were able to send a letter to Bankwest to say that we are in a position to refinance the Wildlines facility.

10 So you moved Wildlines to somebody else?---That's correct.

And then for Silversun it appears there was another short extension of the facility from 18 September 2012 to 15 November 2012?---That's right. But there's a gap, obviously of months.

15 You had no approval in place?---Yes. So from March to September of that year.

And what did you do then with the Silversun facility?---We were actually able to refinance the Silversun facility also.

20 All right. And have both developments or what's happened to each of the developments?---The Wildlines has been developed. It's still ongoing, because they're multistage projects. The facilities that we borrowed to complete the first stage, were repaid in 15 months once we refinanced, so it had zero debt. We
25 borrowed money for subsequent stage, but it has no debt, and eight, nine – \$9 million in net assets. The other facility is a very large project. We have actually just held that, because obviously in the Perth property market over the last few years has been on the downward slide so the syndicate members continue to support it today and we have just put it on the shelf.

30 Commissioner, I don't have any further questions of Mr Kelly.

THE COMMISSIONER: Mr Scerri.

35 **<CROSS-EXAMINATION BY MR SCERRI** **[11.53 am]**

40 MR SCERRI: Thank you, sir.

Mr Kelly, the negotiations of the initial facilities were both on an arm's length basis?---That's right, through a finance broker. Not – actually, that's incorrect. The very first application was by the company director to the bank for Wildlines and then, subsequent to that, we used an intermediary.

45 And that included negotiation of the initial terms?---That's correct.

By that I mean the duration, not the terms and conditions, but the duration?---That's right.

5 And one of them was two years and one was three years; is that right?---That's correct.

10 And when it came to renegotiate an extension, were those extensions also conducted on an arm's length basis?---That's right. So the finance broker attended the meetings with us, with the bank, and the applications were submitted through the finance broker.

And in relation to Silversun, didn't you agree and – negotiate and agree six extensions?---Yes, that's correct.

15 And in the case of Wildlines, you negotiated and agreed five extensions?---Yes, that's correct.

20 And they were all negotiated on an arm's length basis?---No, not all of them. I would have been involved in – heavily involved. The person who was acting as our intermediary was well known to me, and I obviously assisted in all the negotiations.

But as between the two syndicates and Bankwest, it was at arm's length, wasn't it?---Between the syndicate – the company.

25 And the bank?---And the bank, it was arm's length.

Yes?---Yes.

30 Commercial loans for two very substantial projects?---Yes.

And can I ask you to be shown a document called CBA.4000.0074.8630. You see that email, Mr Kelly?---Yes, I see that email.

35 It's an email from you, isn't it?---That's correct.

To whom?---To Mr Andrew Steele from Bankwest commercial.

Continuing:

40 *G'day Andrew, thank you for being very fair about the extension and annual review of the facilities.*

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

45 This is in relation to the negotiations that went on in August 2009?---That's correct.

Which was the first variation – first extension, I should have said?---The first extension for Wildlines.

5 And can you explain why that email isn't in your statement?---Because my witness statement was already getting pretty extensive and I didn't print out every single email that

10 You printed out several emails and you printed out file notes; why didn't you include the email where you said the bank had been very fair?---At that point in time, post GFC, when the bank told us to actually – they weren't going to extend any facilities, and we were able to actually negotiate and agreed position, we were quite relieved because we had obviously gone into the marketplace and the lenders at the time were not giving us an alternative to refinance. So to actually be – have some breathing space, without being put to the sword, we were happy that we could
15 actually get some breathing space and try and look further afield to see what other options were out there.

20 So they were very fair?---On that extension, that's right, and the pricing was at 265 which we agreed to.

Yes. And I just want to ask you why didn't you clue that email in your statement?---Because I had probably hundreds of emails over the period.

25 Who chose the emails and other documents that went into your statement?---I would have obviously chosen the statements.

30 Did you – did you do the first draft of your statement?---No. I – I did a – a first detailed summary, I think – I'm not sure how many pages, it might have been a dozen pages, detailing sequence of events, etcetera, that were submitted.

And are you seriously saying to the Commissioner that the reason that email is not there is just to save space?---No, I'm not saying that.

35 No. Well, then, why isn't it in your statement?---Because with the time restraints because obviously I'm running a business at the moment, the amount of work that's required to go into a detailed witness statement and get every single thing picked up, there was obviously some emails which I printed out and I had inches, piles of correspondence, and obviously put forward – you know, relevant items, I thought.

40 You've put in a lot of documents and statements in your witness statement about this very negotiation and you leave out the one email where you say the bank was being very fair.

45 THE COMMISSIONER: Just a moment. You say this very - - -

MR SCERRI: Is that just coincidence?

THE COMMISSIONER: Just a moment.

MR SCERRI: Sorry, your Honour.

5 THE COMMISSIONER: You say “this very negotiation”, to what are you referring?

MR SCERRI: I’m referring to negotiations in August 2009.

10 THE COMMISSIONER: Could you put the question again, then. I did interrupt.

MR SCERRI: I will put it a different way, Commissioner.

15 Mr Kelly, is it just a coincidence that the one email that says the bank was being very fair is omitted from your statement?---No. Because that email is obviously sent from me to Andrew, and also I go through all my sent emails at around that time to try and find it, it’s not actually kept in my inbox. So when I receive emails from the bank – so I would have that bottom email and that would be saved in a folder in my inbox.

20 Did you review this email when you were preparing your statement?---I don’t think I did.

Thank you, Commissioner.

25 THE COMMISSIONER: Do you want to tender the email, Mr Scerri? I would have thought you might.

MR SCERRI: It’s an exhibit to the next witness’s, Mr Perry’s statement, Commissioner.

30

THE COMMISSIONER: Is it? Yes, Mr Hodge.

<RE-EXAMINATION BY MR HODGE

[12.00 pm]

35

MR HODGE: Commissioner, I’m sorry. There’s just one other thing I needed to confirm with Mr Perry. Mr Perry, did you make a submission - - -?---I’m Mr Kelly.

40 I’m sorry. Mr Kelly, did you make a submission to the Royal Commission?---Yes.

And that was how the Royal Commission contacted you?---That’s correct.

45 You did it through the web form?---That’s right. But it was only limited to 3000 characters and then I sent a follow up detailed – more detailed submission once I had been contacted.

And the Commission hasn't shown you the statement of Mr Perry?---Hasn't shown me that email?

No. The statement of Mr Perry?---No.

5

Okay. That's it. Thank you, Commissioner.

THE COMMISSIONER: Yes, thank you, Mr Kelly. You may step down. You are excused?---Thanks.

10

<THE WITNESS WITHDREW

[12.01 pm]

15 THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Commissioner, the next witness is Mr Perry.

20 THE COMMISSIONER: Just give us half a moment, Mr Perry, we will give you a space where to sit and put your papers. Now perhaps if you can go into the box, Mr Perry.

<BRETT ROBERT PERRY, SWORN

[12.01 pm]

25

<EXAMINATION-IN-CHIEF BY MR SCERRI

30 THE COMMISSIONER: Thank you very much, Mr Perry. Yes, Mr Scerri.

MR SCERRI: Mr Perry, what is your full name, sir?---Sorry. Brett Robert Perry.

And what is your business address?---201 Sussex Street, Sydney.

35

Are you a general manager of group credit structuring within CBA?---Yes, I am.

And have you made a witness statement in relation to rubric 3-26, the ID number of which is CBA.9000.0052.0001?---Yes.

40

Do you have a copy there?---Yes.

I will come to a couple of corrections?---Sure.

45 I should have asked you, did you also receive a summons to attend the Royal Commission and give evidence?---Yes.

Perhaps I should tender the summons first, Commissioner.

THE COMMISSIONER: Exhibit 3.92 will be the summons to Mr Perry.

5

EXHIBIT #3.92 SUMMONS TO MR PERRY

10 MR SCERRI: And, Mr Perry, if you have the witness statement there, please, I understand you wish to make a correction to paragraph 55?---Yes, I do.

What's the correction?---I would like to remove the words, the final words "rather than as a result of policy of Bankwest".

15 Would you strike those words out with a pen and initial in the margin, please. I understand the next correction is in paragraph 70, subparagraph (b); is that right?---Yes.

20 And what's the correction there?---I would like to change a date from currently 2012 to 2010.

It's in the second line?---In the second line.

25 Can you make that correction and then initial the margin. And finally, sir, in paragraph 85 - - -?---Yes.

- - - I understand you wish to correct a misspelling of a word?---Yes, I would like to correct the word of "publicly", the fourth word of paragraph 85.

30 And with those corrections, Mr Perry, are the contents of your witness statement true and correct?---Yes, they are.

I tender that, Commissioner.

35 THE COMMISSIONER: Exhibit 3.93 will be the statement and exhibits of Mr Perry in relation to rubric 3-26.

40 **EXHIBIT #3.93 ENT AND EXHIBITS OF MR PERRY IN RELATION TO RUBRIC 3-26**

MR SCERRI: Thank you, Commissioner.

45 THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Thank you, Commissioner.

5

Mr Perry, can you explain, you are currently the general manager of group credit structuring at the Commonwealth Bank; is that right?---Correct.

10 And group credit structuring is what deals with what are sometimes referred to as troublesome or impaired assets?---That's correct.

15 That is, in broad terms, assets where either the bank has impaired them, that is it does not believe that it will manage to recover the full amount of whatever it has loaned out or is entitled to, or are troublesome where there is a risk that that might occur?---There's a high credit risk, yes.

And we have heard some references to CAM, which is credit and asset management?---Yes.

20 CAM was a section of Bankwest?---It was, yes.

And that section effectively performed the same function as your – in relation to Bankwest assets as your GCS section performs in relation to CBA assets?---Correct – correct.

25

And the CAM section from Bankwest has now been rolled into GCS?---Yes. The – we merged in – I think around 2012, yes.

30 And you've been put forward by the Commonwealth Bank as the witness to give evidence about the situation of Mr Kelly and Silversun and Wildlines?---Correct.

You weren't involved in – directly in the dealings with Silversun and Wildlines?---No, as I've said in my statement, I've never worked for Bankwest.

35 And you have been, or you were, the head of GCS back in – well, back for about nine years or so; is that right?---Yes, in its former names, but in CBA.

All right. But never in relation to Bankwest?---Never in relation to Bankwest.

40 And so I just want to make sure that everyone understands. When you are speaking about this, this is not something that you were directly involved in?---No, I'm speaking by reviewing the file.

45 Yes. And we will go through a few things, but where you've had to make commentary about what has or hasn't happened, you have had to effectively derive that from what you can see in the documents?---Yes.

All right. Now, I want to start by having a look with you at the original loan assessment, which you've looked at. It we bring up BRP-4. It's CBA.4000.0058.7297. This is an internal document that you've exhibited to your statement, Mr Perry?---Yes.

5

And this is the credit risk – although it says facility amendment, this is for the – it seems to be for the original facility in relation to Wildlines to buy just the first property?---Yes.

10 So it's just for the 1.75 million or so?---Yes.

And then ultimately – as we know and you know – that was then amended and increased; is that right?---Yes.

15 And if we go to page .7298, we see in the middle of the page there's an explanation which is clients have paid down the Zengold debts?---Yes.

And can you just explain – actually, we might take that down because that has not been properly redacted. Do you have a copy of the document there?---Yes.

20

We might just work off your - - -?---Was it BRP4?

BRP4, thank you, Mr Perry. You're on page .7298?---Yes.

25 And that refers, first, to clients having paid down the Zengold debts. I just wanted to understand: have you familiarised yourself or are you aware of what the situation was with Zengold?---No. I only looked at the Wildlines and Silversun.

30 Okay. You're aware then, I assume, from looking through the documents and the references in the documents, that these particular players had had some previous special purpose entity that they used to borrow money from Bankwest?---Yes. I – I – yes, I had – one of the things I noted on the file early is that they were quite experienced and syndicated property investors.

35 Yes. And then the other thing that you can see then is that there's a reference to SPs, which I assume is statements of position?---Yes.

And it's explained that the statements, or what the statements of position are for the following key players, and it runs through who the main investors are - - -?---Yes.

40

- - - in the syndicates?---Yes.

And – or in that syndicate. And then it said:

45 *The above provide the majority of the shareholding in this new venture and have been involved in the successful Zengold project 2. Their vast expertise and asset position suggest they can adequately cover any contingencies should*

the need arise by other resources. Added comfort can be taken in the fact that above income streams does not include their spouses' additional revenue.

?---I see that.

5

And then if we go over to page .7301, which should start at the top Credit Risk Submission. It's up on the screen now, if that helps?---Yes.

10

And I just wanted to ask you, you see the risk grade is said to be six?---Yes.

Could you just explain to the Commissioner what that means about the riskiness of the asset?---Yes. From my research, the Bankwest risk grade system was, I think from one to 10. And if I recall, risk grade six was – I can't recall how it was – but it was mid-scale or a bit beyond mid-scale, yes.

15

THE COMMISSIONER: Sorry, it was? Just repeat what you said, I'm sorry?---I said – I said mid-scale, yes, risk

20

Mid-scale, yes.

MR HODGE: And then if we go to BRP-18, which is CBA.0517.0096.1700. CBA 0517.0096.1700. This is the credit risk submission for Silversun?---Yes.

25

And, again, you've exhibited this to your statement?---Yes, I have.

And the risk grade for this is also said to be six?---Correct.

30

And then if we go over the page to .1701, we just blow up the bottom three paragraphs of the page. And what's being recorded in the credit submission is that there's initial loan term of three years, which will then coincide with a property revaluation, and the strategy of the syndicate is to hold the property for the next three to five years and complete the rezoning?---Correct.

35

And what I'm interested in understanding is: is that typical, in your experience, that property developers might have a strategy that extends beyond the length of the facility?---It's – it's – I would – I would expect that the term of the facility should match, more particularly for a project finance sort of structured finance arrangement. It should match the end of the term, and the issue with requesting a three-year term is that there always is a refinance risk, which as sophisticated developers I'm they were aware of that risk, and the refinance risk is you assume and you take the risk, as an investor, as a property developer, that at the end of that term either the term will be extended – the facility will be extended and that – whether the facility will be extended at all, rather. And it may well be extended on different terms.

45

Yes, I understand?---Sorry. A long way of - - -

And we will return to that point in a moment?---Yes.

Can we go then to BRP-25, and that is CBA.4000.0074.5769. So this, then, is a credit risk review that happens for Wildlines in July 2008. You can see – if we go over to the next page, that might be easier. If we go over to .5770. I'm sorry, I said July, it's actually August. Do you see that up in the top left-hand corner of the page.
5 "Prepared and recommended by"?---Yes.

And if we go over to .5771 and at the bottom of the page we see a section Pricing?---Yes.

10 Could we just blow up that section. And you will see it's said:

Current pricing is based on BBSY rate plus a margin of 1.75 per cent. It is noted at time of approval, comments by June Sullivan stated that a gearing level of 60 per cent and RAROC –

15

what does that stand for?---Risk adjusted return on capital.

Continuing:

20 *circa 40 per cent, a 1.5 margin was satisfactory. Propose for pricing to continue at current margins to be reviewed upon development of funding.*

?---Yes.

25 Now, I'm interested – because we will come back to this over and over again – in understanding what happens here, because we know it doesn't stay at a margin of 1.75 per cent; it rises to 2.25 per cent?---Yes.

30 Are you able to complain to the Commissioner: what's the bank trying to factor in?---In terms of the - - -

Changing it from 1.75 per cent to 2.25 per cent?---From my review of the file, the offer had a different date, or different rate – I think that's where you're going to. There would have been an approval, that I couldn't locate on the file, by credit
35 signing off on that – on this final approval, yes.

What I'm trying to get you to explain is - - -?---Yes.

40 - - - something else, I think. Maybe if I bring up another document to help you. Can we bring up RCD.0014.0015.0002. This is an email sent from Mr Steele who is the relationship manager we have seen named that says:

Due to the nature of the facility land bank, the pricing has been increased to BBSY plus 2.25 per cent.

45

?---Yes, I see that.

So does that assist to understand and just explain to the Commissioner what the thought process is, in relation to the setting of the margin?---So if you go back to your previous document.

5 Yes, that's BRP-25?---So I don't know – I don't know why that has changed, but this document does say that the drop in RAROC is a result of the asset – the lend being classified as a specialised asset which may have contributed to the approval to increase pricing. But I don't know.

10 Is it – you give some evidence in your statement about how the bank goes about setting its interest rate margin?---Yes.

Is it – there's nothing sinister about this question – is it possible that Bankwest has made a decision in 2008 that it's going to adjust the pricing that it is charging for land banking?---I don't know.

15

You don't know?---I don't know.

All right. And so perhaps if we can consider this, because we will come to it in a moment: is one of the issues that was becoming apparent in 2008 that there was increased risk associated with property development and with in globo development?---I don't know the time line, but if we - - -

20

You don't need to do it in the context?---I don't know the particular time line. Yes.

25

Let's put side what's happened in Wildlines and Silversun. You were about to become the head of GSC as at – or you were about to become the head of GCS as at the end of 2008?---Yes.

30 You've been in banking for 34 years; is that right?---Yes.

If you cast your mind back to 2008, which is as the GFC is unfolding - - -?---Yes.

35

- - - was it – do you recall it being obvious that there was increased risk associated with property development and in globo land property?---Yes. So my opinion – not relate to this file of course.

Yes?---But yes, there were – after the GFC there was concern about the impact on property.

40

And in terms of your understanding of the process of setting margins, which you've given some evidence about, is one of the factors that's relevant to the setting of the margin what the risk is that the bank associates with a particular loan?---Yes. So the – if – to summarise it, it's – the two elements are customers and markets. And you know, because that's – that's one of the – that's – that's the key, particularly in this transaction.

45

And when you talk about market, does that mean the particular type of lending that's being engaged in?---Correct.

5 All right?---So I think I refer in my statement as industry, which is – which would apply to any customer, a review of the industry that they operate in.

All right. Now, at the end of 2008, CBA acquired Bankwest?---Yes.

10 And you're aware that there was a review or a series of reviews that were undertaken of the Bankwest portfolio?---I was aware of it, but I wasn't involved in it.

15 Okay. What I would like to do is – I will show you some documents. It may be that you are able to assist us with these. It may be that you're not. Can we bring up CBA.0002.2076.7461. This is a submission to the risk committee of Bankwest for a meeting on 25 March 2009?---Right.

Have you seen this document before today?---No. I don't recall seeing this.

20 All right?---It wasn't on the file.

It wasn't on - - -?---I don't recall seeing it on the file, no.

On the file for Wildlines and Silversun?---Yes.

25 All right. Are you aware that Bankwest had identified that it had a very significant exposure to what it defined as commercial property?---I became aware of that from a review of this file, yes.

30 Okay. Are you aware that – you see the second dash point under Key Findings, that commercial property represents 50.3 per cent of total committed exposure?---Sorry.

Do you see the second dash point under key findings:

35 *At \$14.2 dollars commercial property represents 50.3 per cent of total committed exposure.*

?---Yes, I see that.

40 Were you aware that it was of that magnitude?---No.

Okay. Were you aware that there was a concern within CBA about the level of exposure on the Bankwest book to commercial property?---No.

45 Were you – all right. Were you aware that there was a concern about the worsening of risk associated with commercial property?---Well, I think that was – well, my view is that was a concern right across CBA as well.

All right. Were you aware that there were decisions that needed to be made – I shouldn't say "needed" – there were decisions that were made to attempt to manage that risk for the Bankwest portfolio by setting caps on the amount of commercial property exposure?---I wasn't, no. No.

5 Okay?---I am aware today of the concept of caps and targets we have in CBA on industries, but not – not then.

10 Okay. Are you aware now that in 2009 Bankwest started to introduce, internally, caps on the extent of its exposure to commercial property?---I'm aware now, yes. Not then.

Sorry?---Not then.

15 No, no, I understand. But, again, you're now coming now to look back at a file from 2010?---Yes.

It's important that we be able to put this in some sort of context which is, as you understand it as at 2009, first Bankwest had a significant exposure to commercial property. You agree with that?---Yes.

20 Second, it was regarded as an overexposure to commercial property?---Yes.

Third, that in order to manage that overexposure there were caps that were in place on the lending in commercial property?---As a result of the review of this file, I understand that, yes.

25 All right. And then that has a ramification to the approach that's taken to the management of the book; you agree with that?---Yes.

30 MR SCERRI: What does that mean? The witness says he hasn't seen - - -

THE COMMISSIONER: If the witness doesn't know, he will no doubt tell me, Mr Scerri.

35 MR SCERRI: Well – but the question doesn't make sense, your Honour, with the greatest respect.

THE COMMISSIONER: Yes. Well, Mr Hodge, do you want to rephrase the question?

40 MR HODGE: No, that's fine. I don't want to rephrase the question.

45 Can I take you, then, to paragraph 59 of your statement, Mr Perry. Could we bring up paragraph 59 of Mr Perry's statement. What you say in paragraph 59 is that you're not aware of any Bankwest records that indicate that there was any general policy to withdraw from funding property dealing for existing customers before the

facility expiry date?---Not general policy. There was an email that I saw. But not – I didn't see a policy document.

5 Right. Well, if we bring up BRP-23, CBA.0517.0096.5020, this is the email that you've referred to?---Yes.

And can I – perhaps to assist – just bring up a more legible version which is CBA.0002.2078.8755. CBA.0002.2078.8755?---Yes.

10 All right. And then can we go to page .8757. This, I hope in slightly more legible form, is the email you were referring to Mr Perry, sent by Mr Clark?---Yes.

And this is the email that has informed your understanding of the risks in Bankwest?---Yes. Yes.

15 And what you understand is that there was this concern which was 51 per cent of assets had been classified as commercial property and there was a target by the end of 2009 to reduce this to 45 per cent?---Yes.

20 And then there's a series of things that are set out as the following actions that need to be taken at a minimum?---Yes.

And the point that you're making in your statement is that these actions are not concerned with attempting to terminate existing facilities before those facilities reach their expiry date?---Sorry, can you ask the question again.

25 The point that you're making in your statement in paragraph 59 that we looked at before, is that these actions are not concerned with trying to terminate a facility before the facility has reached its expiry date?---I'm not saying that. That's why I amended my witness statement from the previous – previously, paragraph 50 - - -

35 Yes. The – what you're trying to say is Bankwest isn't trying to exit early from loans that it has already made that have an expiry date and that aren't in default?---Correct. Correct.

But what goes along with that is, when the facility hits its expiry date, Bankwest may not renew that facility, and that's a different thing?---It's – yes, it's a different thing, yes.

40 And that when the borrower enters into the facility at the time they enter into it, they understand, or they ought to understand, that it has a particular term?---Correct.

45 And the borrower takes the risk that, as at the end of that expiry date, Bankwest may or may not be willing to refinance?---Or may not be willing to refinance in the same terms, yes.

That's right. It may not be willing – it may just not be willing to extend the facility or may not be willing to extend it on the same terms?---Yes.

That's your point?---Yes.

5

And that's the same for any borrower that's dealing with a bank?---Correct.

10 And one of the things that you understand that happened within Bankwest was that, once this level of risk associated with borrowing for commercial property was identified, that there were then caps that were put in place to try to reduce the level of borrowing for commercial property and the consequence was that, when it came to considering extending a facility, or refinancing a facility, that this policy would be relevant?---Yes.

15 Because extending a facility is not terminating a facility early; it's making a decision that the bank wants to continue or enter into a new relationship?---At the end of a term, yes.

20 That's right. And that is the point that you were trying to encapsulate at paragraph 59 of your statement?---Could I go back to 59 and just re-read it?

Sure?---Yes.

25 And as to – I'm sorry, go on?---My point of paragraph 59 is the question referred to, if I can just read it – the question referred – the Q3, indicated the bank was withdrawing from property dealings for existing customers. Withdrawing I took to mean that you just withdraw during term of the facility, and that's what I meant by paragraph 59, that we wouldn't be withdrawing during term, that we let the term run its natural – they would let the term run its natural term.

30

That's right. And that's what Bankwest did in relation to the Wildlines and Silversun facilities?---Correct.

35 And, on your review, there's nothing that suggests that Bankwest tried to look for some default to terminate the facility early?---Before the initial two years and three years, no.

40 And in fact what happened is just, once it got to 2010, Bankwest wanted to reduce its exposure to commercial property and, therefore, it evaluated extending the facilities in that light?---You mentioned 2010.

Yes?---Are you talking Silversun or Wildlines?

45 Well, both Silversun and Wildlines get extended in 2010. But I've jumped you forward. Would you like to - - -?---Sorry. Yes, I - - -

Let's go back?---You're – we're - - -

In 2009 - - -?---Yes.

5 - - - Bankwest has a policy that it has implemented. It's considering whether to extend the Wildlines facility. It considers that in light of its policy, is your understanding of the documents?---Yes.

10 All right. And there's something that you say in your statement, which is at paragraph 25. Can we bring up paragraph 25 of Mr Perry's statement. This is about a meeting that occurred on 8 June 2009?---Yes.

And this is the meeting where Mr Kelly says he was told that Bankwest did not want to continue with the Wildlines facility and would likely ask for the loan to be repaid on 31 August 2009?---Yes.

15 And what you say in your paragraph is that, apart from the fact that there was a meeting on 8 June, the records that you reviewed indicate that the summary of what happened at that meeting was incorrect?---Let me just think.

20 Can I help you, Mr Perry?---Help me and I will - - -

Again, it's not a trick. The - what you looked at was the file note or what appeared to be a file note that had been provided to you or that you found on the file; is that right?---Correct.

25 And it had a signature on it?---Correct.

You assumed it was a file note?---Yes.

30 It didn't contain any reference to the fact that Mr Kelly had been informed that Bankwest didn't want to extend the facilities?---That's correct.

And you, naturally enough, just had to go off what records you could find on the file?---Correct. Correct.

35 But what you now understand is that wasn't actually a file note of the meeting. That was - Mr Kelly says that was the notes of what he was going to say at the meeting?---I understand now.

40 And what Mr Kelly says was said at the meeting is something that is then reflected in an email that Mr Chapman sent shortly after the meeting and you've exhibited that?---Yes.

45 If I take you to that it's BRP-13, CBA.0517.0100.0001. So you looked at this email before?---Yes.

And insofar as Mr Chapman says the bank has recently made a decision to cease funding new property dealings for both non-bank and existing bank clients, that

reflects your understanding of the policy direction that had been taken by Bankwest?---Yes.

And what Mr Chapman then says a little further on is:

5

Although the annual review is not yet due, it is likely that the bank may not renew the Wildlines facilities on expiry at the end of August.

?---I see that.

10

And, again, that just reflects what it is that Mr Kelly says was communicated to him at the meeting in June 2009?---Yes.

And, as it turns out, Bankwest was prepared to extend the Wildlines facilities?---Yes.

15

And what Bankwest wanted to do was to extend them, but nevertheless to exit from them as soon as it was practically possible to do so?---Yes. I think there was a reference in Mr Clark's note, yes.

20

Sorry, could you say that again?---So – so, refinance was referred to as an option, and that was what was being communicated here.

Yes. What Bankwest wanted was for Mr Kelly's syndicate to refinance with somebody else?---Correct.

25

And that consideration reflected the view that at a general level Bankwest was overexposed to commercial property?---Yes.

30

And you would say that is a prudent risk management approach on the part of the bank?---I – yes, it is. And a regulatory approach as well, I would add.

All right. And there was ultimately some negotiation as to the terms on which Bankwest would be prepared to extend the loan?---Yes.

35

And Bankwest originally - - -?---Sorry, can I just clarify?

Yes?---The loan had expired. So it was – the loan had expired and it was a new facility that needed to be put in place.

40

Yes. That's right. This is - - -?---Clarity.

This is – whatever is happening here, these are new contractual arrangements that are being entered into?---Yes. Yes.

45

All right. And there's a negotiation over the terms of those new contractual arrangements?---Yes.

- On the one hand, between the bank and on the other hand, at arm's length, with the borrower?---Yes.
- 5 Wildlines. And Bankwest's original position, which was a 45 per cent LVR with a particular pricing wasn't, in the end, what was adopted?---No, it wasn't.
- The LVR ended up being 50 per cent with a slightly higher margin rate?---Correct.
- 10 And, as you understand it, that reflected the evaluation of the risk that the bank was prepared to take on in entering into this further facility?---Yes.
- All right. Now, then, in 2010 Project Magellan occurs?---Yes.
- 15 Are you familiar with Project Magellan?---I knew the name at the time, but I wasn't involved in it. So no, I didn't.
- All right. Do you have an understanding now of what Project Magellan was?---Only from a review of information on this file.
- 20 All right. Could you just explain to the Commissioner what your understanding is, now, of what Project Magellan is?---My understanding that the – as a result of concerns around the exposure – I don't know what – what qualifying customers were asked to be reviewed. That's all I know about Magellan.
- 25 All right. Do you understand that it was a review done as part of deciding whether adequate provision - - -?---I don't know.
- - - had been made?---I don't know.
- 30 Okay. All you know is from what you can - - -?---It happened.
- - - see on the file was - - -?---Yes, it happened.
- - - there was a review of some files?---Yes. Yes.
- 35 All right. Okay. And then can we go to BRP-56, which is CBA.0517.0096.1871. This is the Project Magellan file review?---Yes is.
- 40 And we can see that this was completed on 25 June 2010?---Yes.
- And I understand you have reviewed this document in order to give evidence to the Commission?---Yes. I reviewed this document as part of my file review.
- 45 Okay. And then if we go to the page ending .1875, we see this is the section that is completed by the reviewer?---Yes.

And the reviewer is not somebody from Commonwealth Bank or Bankwest; do you agree with that?---Yes.

5 It's somebody external in this case, Grant Thornton?---Yes.

And that – they – those two people have completed a review of both borrowers as at 13 May 2010?---Yes.

10 And they set out, we can see on the first page, various matters that they've taken into account?---Yes.

On that page. And then if we go over to .1876 they set out various other things, including what they consider to be the various risks associated with the borrowings?---Yes.

15 And they note that the risk grade for one is six and for the other is six, but for the second one that it's likely too low?---Yes.

And then if we go – I'm sorry, I should say, do you know B2 is Silversun?---I think there was reference to it – no, there's reference on the previous page.

20 All right. You understand that one of them is Silversun and one of them is Wildlines?---Correct.

25 All right. And then if we go over the page to .1877, there's then some conclusions set out as to what the recommendations are?---Yes.

And in relation to B2, which I will suggest is Silversun, it's said that a valuation is required?---Yes.

30 And then if we look at the project recommendation it's red for, I will suggest Silversun, with an urgent valuation required of Silversun's property?---Yes.

And B1, which is Wildlines, is considered to be green. Now, if we go over the page to .1878, this is now a separate section. This is being done by the Bankwest Review Panel?---Yes.

35 And the panel decision is that the file should be moved to CAM?---I see that.

40 And that the risk grade for each of the files should be seven plus?---Yes.

And that they should be classified as red; yes?---Yes.

45 And do you see "CP adjustment not accepted". CP stands for collective provision?---Correct.

So collective provision adjustment not accepted. And then there's some recommended actions?---Yes.

And one of them is that CAM is to manage the file?---Yes.

5 The second is that the LVR is to be reduced to 50 per cent; do you see that?---Yes.

The third is that there's to be a recalculation of collective provision?---Yes.

10 And then the fourth is that Don, who presumably is Don Galbraith, is to review and revise?---Yes.

And what was Don Galbraith's role?---Understand that he was head of CAM at the time.

15 All right. And do you know why there's this difference between the decision made by the review panel and what had been recommended by the Grant Thornton reviewers?---No, I don't.

20 Okay. Have you made any inquiries to try to understand that?---No. No, I haven't.

Did you realise before now that there was this difference in approach?---I realised – yes, I realised that the – yes, the difference, yes.

25 All right. But you are not able to assist us to understand why there's that difference?---No.

All right. Is it – perhaps if we then have a look at another document, which is BRP-57. So this is a strategy paper dated 9 September 2010?---Yes.

30 Now, this is a paper from Greg O'Brien, who is in CAM, to his manager in CAM. I'm sorry, I'm told we have to take this down because these names are also subject to a non-publication direction. Could I get you to go off your volume?---Sure. What
- - -

35 It's BRP-57?---Okay, I've got it.

And the group name is described as Zengold Corporation?---Yes.

40 As you understand it, though, there's only two – there's only two borrowers that are being dealt with as part of this. One is Wildlines and the other is Silversun?---Correct.

45 And the group risk grade is seven plus?---Yes.

And that reflects the decision that had been made by the Project Magellan panel?---For Wildlines and Silversun?

Yes?---Yes.

Then if we go over to the page ending .5597?---Yes.

5 You see the section at the top of the page which is Reasons for Impairment?---Yes.

And we can probably bring that page up. I think that won't be covered. So this is the review explaining – sorry, this is the section of the strategy paper explaining why it is that these loans have been impaired?---Yes.

10

Because – and we probably need to draw some distinction here. There doesn't appear to have been a specific provision made for these two loans?---I wasn't – I didn't see a provision during my review, that's correct.

15 Insofar as there's a provision, it's just as part of the collective provision?---Yes.

And could you explain to the Commissioner the distinction between specific provision and collective provision?---Okay. A collective provision is calculated on a formula basis, based on the risk profile of an exposure. An individually assessed provision is a manual assessment of the loss on that particular exposure.

20

So in the case of a collective provision, that might be a collective provision made for a particular part of the book that is in a particular area or industry or something like that; is that right? Or is it more complicated than that?---It's a little bit more complicated than that.

25

All right. Do you think it's necessary to explain to us any more than what you have said?---Not unless you want to, but - - -

30 I don't think we do. So what happens then, when you look at 2.2, is that it's setting out the points that have been made by the Magellan review and Grant Thornton, and then the recommended course that had been taken by the panel?---Yes.

35 And then it notes that at present there were no defaults, either monetary or non-monetary?---Yes.

But a revaluation of the security was occurring?---Yes.

40 And it was possible that that revaluation might result in a breach of the LVR covenant?---Yes.

In fact, we know that didn't occur?---It didn't occur, no.

45 In fact, the revaluation increased the value of the property and therefore decreased the LVR?---Yes.

All right. And then if we then go to CBA.4000.0074.8586. Have you seen this document before, Mr Perry?---Yes, I have seen that document before.

Okay. In the course of preparing your evidence; is that right?---Yes.

5 And Frank Houwen was or is a senior manager at business credit?---Yes.

Business credit was one of the divisions at Bankwest?---Yes.

10 Another division was property finance?---Yes. Business credit was – yes, probably in risk management, but I’m unsure.

You think that might have been in risk management, that section?---Yes.

15 All right. Do you – this is an analysis, then, that’s being provided by Mr Houwen to Don Galbraith, who is the head of - - -?---Yes.

- - - CAM at the time?---Yes.

20 And you see at the end of the email, Mr Houwen expresses the view:

I don’t consider there to be any basis for this group to be placed in CAM, however there is a reasonable likelihood the Wildlines and Silversun exposures could lead to significant land development financing opportunities in the next few years, depending on property appetite at the time. As a result it may well be better placed with PFU.

25

?---Yes.

30 And PFU is what we were talking about, property finance?---Yes.

Do you know why it was – or have you been able to ascertain why it was that the group was placed into CAM?---I did ask the question, and the only thing I can ascertain is CAM decided that they would go with the recommendation of the

35 Magellan and put it into CAM.

All right. Commissioner, is that a - - -?---So – so - - -

Sorry, go on?---So can I comment on this?

40 Yes?---So my only comment on Frank’s note is he was asked for an opinion and he has given it, and he is entitled to his opinion. That’s my – I – I note from the review of the file further on that Frank’s boss, I think, the manager, had a – had a different view to Frank. So it just demonstrated to me that there was a little bit of uncertainty

45 around the different views.

And whether it should be in CAM?---Yes.

And who is Mr Houwen's boss that you are referring to?---John Howe.

I see. Is that a – I'm sorry, can I just ask one more question. When you refer to the view of Mr Howe, and later in the file, is that from early 2011 that you are speaking of?---Yes, I think it is. I think it might be on the way, on the other side of when it came out of CAM.

Yes?---Yes.

10 Commissioner, is that - - -

THE COMMISSIONER: Is this to be tendered? This email?

MR HODGE: Yes, Commissioner, I tender that document.

15

THE COMMISSIONER: Email Houwen to Galbraith, 26 May 2010, CBA.4000.0074.8586, exhibit 3.94.

20 **EXHIBIT #3.94 AIL HOUWEN TO GALBRAITH DATED 26/05/2010
(CBA.4000.0074.8586)**

MR HODGE: Is that a convenient time?

25

THE COMMISSIONER: Yes. 2 pm.

ADJOURNED

[12.57 pm]

30

RESUMED

[2.00 pm]

35 THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Thank you, Commissioner.

Mr Perry, before lunch we dealt with the file in relation to Silversun and Wildlines being moved into CAMs and, as you know, there was a meeting that occurred on 29 November 2010 after CAMs had become involved with the file; you know that? About the meeting on 29 November?---Yes. Could I have a look at the document?

45 Sure. Why don't you go to BRP-34. That is CBA.4000.0072.0227. Now we have seen already, or the Commission has seen already up on the screen, Mr Kelly's file note of this meeting. But this is an internal bank call report note that has been prepared; is that right?---I believe so.

And you've reviewed that for the purposes of giving evidence?---Yes.

5 And you know that one of the complaints that Mr Kelly has is that as at the end of December 2010, when the offers were sent out, that the offers did not reflect what had been discussed on 29 November 2010?---Yes. I do recall that.

And do you agree that Bankwest's own internal note does not reflect the conditions that were to be imposed as part of the offer?---Can I just recall the conditions first.

10 Yes. Would you like to – why don't we bring that up. So if we put the note on one side of the screen, and on the other side bring up the next document, which is BRP-35, CBA.0517.0096.1901. So – and then if we go to the third page of the document on the right, page 1903?---Yes.

15 And we look at the bottom of the page. We see that there's to be evidence of unconditional refinance approval by the expiry date and that's a special undertaking?---Yes.

20 And that was different, do you agree, from what was discussed at the meeting on 29 November, which was that they would be making – they would continue to seek refinance?---Yes.

25 And then you see at the bottom of the page, on 1903, the document on the right, that there's a requirement for six months interest - - -?---Yes.

- - - to be deposited. And again, that that doesn't seem to have been discussed on 29 November?---Yes.

30 You agree with that?---Yes.

35 And in the course of preparing to give evidence, have you considered the differences between what the bank had been discussing on 29 November 2010 and what the bank then offered at the end of December 2010?---I do recall seeing a document of the – of the approval that had the requirement for cash cover.

Sorry, could you say – you will have to say that again?---I think I do recall seeing an approval which required the cash cover. I'm not sure.

40 An internal approval, you mean?---Yes.

45 Yes. But my question is do you recall having turned your mind, before giving evidence, to the difference between what had been discussed on 29 November 2010 with the customer and what was offered at the end of December 2010?---No, I hadn't. No, I hadn't.

It's not something you thought about?---No, it's not something I picked up in the discrepancy, sorry.

5 All right. Having noted it now, do you have any view about the particular course that the bank took in discussing one thing on 29 November and then having something different in the offer that was sent out at the end of December?---No, I don't. I don't – a couple of occasions I've seen, like, terms in papers that have been approved separately, approved differently. But – did you want me to talk about the deposit, possibly why the deposit is there? Or – I can only give an opinion.

10 Well, you're obviously experienced in relation to the operations of these sorts of sections?---Yes.

It might help the Commissioner - - -?---Yes.

- - - if you explain your view - - -?---Sure – sure.

15 - - - as to the use of that sort of deposit?---Sure. So when the – recall when the facilities were first established, there was an interest capitalisation built into the facility. So you could be sure that during the term of the facilities, there would be no need for further equity and the interest would be – it would be automatically debited against the loan account. Post that approval, or when that facility ended and a new facility needed to be put in place, there would be ongoing reliance for the shareholders to put in funds to pay the interest. Remember, this is – Wildlines and Silversun earned no income. They only held land and they earned no income. So my opinion, the requirement for the guarantee was to ensure that there was sufficient funds available to meet interest as it fell due.

25 Now, I just want to make sure I understand that. Your point is, initially, the loan allowed for the capitalisation of interest when it was first established?---Yes. Yes.

30 And, therefore, interest wasn't being paid on an ongoing basis; it was just capitalising?---Well, it was being paid.

It was being paid out of the available loan funds?---Yes. Yes.

35 And then you know that it was no longer permitted to be paid out of the loan funds, it had to just be paid on an ongoing basis?---Because the limit was fully drawn.

And, as at this date, do you know whether the available limit remained fully drawn?---No.

40 Okay. So when you – again, I just want to understand when you've expressed your opinion, what you're – the assumption that you've made is that there's no longer available capacity or the bank no longer has security over the payment of interest; is that right?---Well, there's no mechanism, yes – yes.

45 All right. Now, your – as far as I can tell, your statement doesn't exhibit the response that was received by – that was sent by Mr Kelly?---No – no.

All right. And I'm sure Mr Scerri would like to know: why didn't you exhibit that document?---I – I don't recall seeing that document until today.

5 And can we go then to that document, which is RCD.0024.0014.0039. So I just want to take you to the second page, which is .0040. So this is where there's a reference to the interest deposit account. This is that extra clause of holding six months interest?---Right.

10 So that what Mr Kelly is recording that had been conveyed to him was that either they could deposit interest into an account or they could prepay the interest?---Yes.

15 And if they were prepaying the interest, would that also have – would that also have addressed the type of concern that you're speaking about?---I'm just trying to identify the paragraph around the prepayments – okay. All right. Is that the – that's the paragraph starting with the discussion.

Yes?---Yes.

20 So perhaps if we just run through what I understand to be the points you want to make. First, you had never seen this letter until today?---Correct.

In the reviewing of the file you hadn't been able to pick up this letter and no one had pointed it out to you?---No.

25 And the second is that your speculation as to the six months interest is that, by having the six month interest sitting there, then that at least gives the bank security over that interest?---Yes.

30 And that's a reason why the bank would want it?---Yes.

To shore up its security position?---To ensure that the cash was available to pay when interest fell due.

35 And the complaint, or a complaint, that is being made by Mr Kelly is that the bank is double-dipping because it wants to both have interest paid monthly and also to always have six months interest paid or put on deposit?---Yes.

40 Do you agree with that point?---I've seen that in past transactions from my experience, yes.

Sorry, you've seen a situation where - - -?---Yes – yes.

- - - there has to be both a deposit and the payment of interest?---Well, yes.

45 Yes. All right. And if we go to BRP-36, this is the breach notice that is sent on 13 January 2011?---Yes.

And is it – is it the case that this is exactly what you would expect would be done today in the management of your section, that in the event that the facility had not been rolled over in these circumstances, that a breach notice would be given?---I would expect it, yes. Yes.

5

All right. And does it matter that there has been this ongoing discussion starting at the end of November 2010 and correspondence at the end of December 2010?---The facility has expired.

10 And by giving the notice then, as a matter of law, Bankwest is preserving its legal position?---I – I don't know. I'm not a lawyer.

But that's what you would expect - - -?---That's what I would expect, yes.

15 - - - people within your section to do, to just give the breach notice in those circumstances?---Yes.

All right. And then there's a discussion that occurs or a meeting that occurs at the end of January 2011. Are you aware of that?---Yes.

20

And you've also exhibited a note in respect of that discussion?---Yes. Where's that – I've seen it. It's - - -

All right. Well, we will bring this up. It's BRP-59, CBA.4000.0072.0229?---Yes.

25

Again, this is CBAs internal note in relation to this facility; is that right?---Yes.

And you've reviewed it in preparation for giving evidence?---Yes – yes – yes.

30 Can I just draw your attention to a few parts. You see halfway down the page, the third bullet point under what Mr O'Brien said:

The facilities would have reverted to default rates of 18.81 per cent, but a negative margin of 10 per cent has been applied so that rates are close to what they would have been if the facilities had not expired.

35

?---Yes.

All right. And then if you go over the page you see it's explained that what Mr O'Brien had said at that meeting is that the margin will be subject to the risk grade. Those are the two top sentences?---Yes, I see that.

40

And then Mr O'Brien explains that the refinance market, or he knows that the refinance market is still relatively closed?---Yes.

45

And is it the case that what was happening internally was that CAM was attempting to hand the file back to Property Finance, and Property Finance was saying they

didn't want the file?---The only evidence of that I see is John Houwen's note that I referred to before lunch.

All right. Well, let's have a look at these documents, if we go to BRP-60?---Yes.

5

So this is the note that is prepared by CAM?---Yes.

Is that right?---Yes.

10 And we can see somebody has crossed out 18 February, so the date of it is 22 February 2011?---Yes.

And the approval that's sought is, you will see this in 1.3 on the first page?---Yes.

15 To amend the risk grades back to the pre-Magellan risk grades to extend the facilities of Wildlines and Silversun to 31 December 2011?---Yes.

And you see there's an explanation of this approach in 1.2, which is that:

20 *The risk grades have been downgraded by the Magellan review as a result of concerns about the Silversun property.*

And:

25 *The concerns have now been addressed through an updated valuation and additional security from shareholder guarantees.*

?---Yes.

30 And then if we go over the page, to page .5577, you see the section which is Current Defaults and the only default that is identified is that breach letter for the facility expiring issued on 13 January 2011?---Yes.

35 And otherwise it's explained there were no monetary or non-monetary defaults?---Yes.

And then you see in 5.2, it's explained that the updated valuation indicated that there had been – there had not been a decrease in security value and so in fact the LVR was only 37 per cent?---Yes.

40

And then in 5.5 it's said:

45 *The customer has advised that they are not able to provide 6 months interest on deposit as well as paying interest as and when it falls due. It has been agreed that they can provide 3 months interest up front on a rolling basis if the facility is extended.*

?---Yes.

5 Now, you may not have examined the documents in this much detail, but the internal note doesn't seem to have been that Silversun or Wildlines said they couldn't pay six months interest. It seems to be that they said they didn't think that was reasonable. Is that your understanding? Would it help if you showed you that note?---Yes.

10 Can we bring that up. CBA – we will put it up on the other side of the page. CBA.4000.0072.0229. And you see at the bottom half of the page are the things that Mr Kelly said during the meeting?---Yes.

And you see the last – the third last point on that page, they can prepay three months interest in advance on a rolling basis starting February 2011?---Yes.

15 And he did not believe the six months interest on deposit was reasonable?---Yes.

20 All right. But that seems to have been – and I don't say this critically of anyone – but that seems to have been understood and reported by CAM as meaning that they couldn't provide six months interest on deposit?---I don't know. I don't know.

Well, you see that's what's written in the CAM report, isn't it?---It says he did not – is this the report you are referring to here?

25 Well, that's the file note on the right-hand side and on the left-hand side it says:

The customer has advised that they are not able to provide six months interest on deposit.

30 ?---Yes.

Because ultimately, the fact that that's what's reported has effect on the opinion expressed by Mr Houwen, doesn't it, or - - -?---Yes.

35 - - - or you are not familiar with that - - -?---Yes – yes.

- - - level of – that's right, isn't it?---Yes – yes – yes.

All right?---Yes – yes.

40 And then if we go to 5.6, and in the third dash point in relation to Silversun, the CAM note explains that the customer had noted that the Silversun facility limit was reduced by \$250,000 in September 2010, which is more than the bank required to be lodged on deposit. See that?---Yes.

45 And then in – at the bottom of the page you see there's section 6 which is the Revised Strategy?---Yes.

And this explains that in 6.1 that the Magellan review noted that an urgent valuation was required for the Silversun property to ensure the property had not significantly decreased, but Wildlines was considered status green?---Yes.

5 Now that's – we have seen already that's what came out of the review by Grant Thornton of this file?---Yes.

It's slightly different to what the review panel ultimately recommended?---Yes.

10 Then it's explained in 6.2 that the revised valuation was obtained and in fact the property value hasn't decreased; it had increased?---Yes.

And then in 6.4 it's explained that:

15 *The customer acts professionally and is cooperate with the bank. They understand the need to exit these facilities from the bank and are working to enhance the value of the properties in order to obtain refinance.*

?---Yes.

20

And then if we go over the page to page .579, and 6.6 we see:

25 *Although refinance does not appear to be a feasible option at this point it is noted that an alternative option to appoint a mortgagee in position to the Wildlines - - -*

?---Sorry, what number are you – sorry?

Sorry, .5579, it should be page 5 of 10?---Okay.

30

Have you got that?---Five of 10, yes.

Yes?---Yes.

35 And you see 6.6 at the top?---Yes.

Now, to be clear as far as we can tell, there never seems to have been any serious consideration given to appointing a mortgagee in possession; do you agree with that?---I agree with that.

40

And then if we go over the page to page 6 of 10, .5580?---Yes.

You see this is the risk grade and pricing, 8.2:

45 *We recommend that the group be regraded to the pre-Magellan risk grades given that the issues raised by the Magellan review have been addressed.*

?---Yes.

And there's a recommendation in 8.5 that the pricing for the facilities be decreased to 3.5 per cent?---Yes.

5 And then if we go over the page to .5581, this is the recommendations and approvals sought?---Yes.

10 And you see much of this repeats what we have already looked at and then it is proposed that the risk grades are upgraded. We see that a third of the way down the page?---Yes.

The facilities be extended to 31 December 2011?---Yes.

15 And then in the third last point, the group be returned to the control of Business Credit?---Sorry, which point?

You see the third last dash point on the page?---Yes – yes – yes.

20 So can – you recall we were having a discussion a little earlier about whether business credit is a separate section of the – a separate division of the bank, separate from property finance. Does this help you to say - - -?---Yes.

25 - - - whether business credit is a separate division?---Business credit is a part of risk management. It's the credit department that supports the business.

Okay. So your understanding is that it's to be returned to the control of the risk department?---Within the business, yes.

30 I'm sorry, within the business, that is - - -?---Well, that supports the business, sorry.

It's not to stay within CAM, it's to go back to - - -?---The – it's where the decision-making goes from CAM to Business Credit.

35 Yes. And then if we go over the page to .5582, and this is what gets signed off on by the chief manager?---Yes.

And relevantly at the last three points, we see that the interest is to remain at 3.95 per cent?---Yes.

40 The facilities are to be subject to cross-default?---Yes.

And the extension of the facilities is only to be considered to 30 September 2011?---Yes.

45

And is it fair to say the point you would make about this is different people look at these files and they form a reasonable view as to the risk involved with the files and, therefore, the approach that ought to be taken?---Yes – yes.

5 And the fact that the proposal made by Mr O'Brien and the other – and the other part of the CAM team which presumably was Ms Rivera – was Ms Rivera, the fact that their view as senior managers is different from the state manager doesn't really tell us anything other than that, that different people look at things and have different views about it?---Yes – yes.

10

And is there anything in your experience – obviously you weren't involved in Bankwest but in your experience running the GRS – is there anything that seems unusual in this approach to you?---In this approach – hierarchy, no – no.

15 And can we then look at CBA.4000.0089.0617. This is a collection of emails. Can we go first to the page .0628. This is Mr Edwards, who we understand was the manager of commercial valuations within Bankwest, emailing Mr O'Brien with comments on the valuation. Have you looked at this document before today?---I don't recall seeing this before.

20

This wasn't part of the file that you looked at?---No. This wasn't part of the file.

All right. Maybe if I just ask you some general questions then?---Yes.

25 Is there – this is obviously some commentary being provided by Mr Edwards as to the valuation. Is there anything unusual in the internal valuer providing comments on the external valuation?---I can't comment on the Bankwest process.

Okay?---But it was practice in CBA.

30

Yes. And the only particular point that seems to have been noted in relation to this by Mr Kelly is that it has taken some months for this to be resolved. That is, the valuation as provided in October 2010 and Mr Edwards' commenting on it in March 2011. Does that seem like a particularly long period of time to you?---I can't really comment on that. I don't know what discussions there were in between or whether there was anything in between the request in this memo.

35

All right. Can we go to page .0630. This is an email you have seen?---Yes.

40 This is the email you were referring to before, sent by Mr Houwen?---Yes.

Sorry. Just because it's being recorded, you will need to speak a bit louder?---Okay.

That's the email you are referring to?---Yes.

45

And this seems to be Mr Howe as the state manager of business credit pushing back on the CAM view that it should be repatriated – I’m sorry, Wildlines and Silversun should be repatriated back to him?---Yes.

5 Is there anything unusual from your perspective in that sort of approach from Mr Howe?---No – no. From my understanding, from what I’ve been told, is that the practice was that when a customer was transferred back to Business Credit they were asked to review prior to transfer.

10 All right. And then – so on the space this just appears to be the person who is going to have to then take responsibility for the file saying “I don’t really want the files, they should stay with you”?---Making comment about the file, yes.

15 Yes. Making comment and then saying, “I’m not comfortable or I have difficulty with repatriation to the business” and that means his business; is that right?---Well, his view is in the last paragraph of the letter, yes.

And then – and you haven’t discussed this with him, have you?---No. No, I haven’t.

20 You haven’t really discussed this file with anyone involved in it?---Yes, I have discussed it with - - -

You have?---Yes.

25 Who have you discussed it with?---Andrew Steele, Greg O’Brien.

30 And what was their – let’s start with Mr Steele, what was Mr Steele’s view about the management of the file?---Well, he worked for Mr Chapman at the time. He – none of – these issues particularly, although he might not have been involved in this part of the file, but he was – his view of the management of the file was that he was surprised by the events coming up to expiry of the initial facility.

35 Surprised by what events?---The events of Mr Paul Clark’s note, and he referred more, when I spoke to him we talked more about that, that period.

MR PERRY: Sorry, you will need to be a bit more helpful for us, I think?---Yes.

He was surprised by what events precisely?---The note that came from Mr Clark.

40 Which note is that?---It’s the email that’s in my attachments.

About how the business was to be managed?--- Yes – yes.

45 That’s the general note, not the one related to this specific file; is that right?---Yes, the general note, yes.

- And he was surprised by that. Why?---I don't think he was expecting it – they were expecting it. Yes.
- 5 Wasn't expecting the bank to take that direction; is that right?---Yes.
- And was he surprised at its application to this particular or these particular files?---I didn't ask him if he was surprised about his feelings about the application.
- 10 To these files?---Mmm.
- All right. Did you speak to him about these files?---You mean Silversun and - - - Wildlines?---Wildlines. Yes.
- 15 Okay. And what was his view about the way in which they had been managed?---Well, he was – he was manager before – before this.
- Yes?---He didn't offer me a comment on the way they were managed.
- 20 After he was no longer involved?---Or even during he was involved. He was – he was – just told me he was managing the files.
- All right. And then you spoke to Mr O'Brien?---Yes.
- 25 And did Mr O'Brien have a view about the way the files were managed?---He – his only view on – that he needed to have a look at the valuation and – with a view to send it back to the business unit – the issues raised by Project Magellan, and consider the issues that – have a look at the file and consider the issues that might come up in terms of the options which I think he has covered off in one of his notes.
- 30 And when you spoke to him, did he express a view about the attitude that was coming back from the Business Unit?---No, he didn't.
- 35 All right. And so if we then go to .0640 and maybe if we bring up .0640 and .0641 which is the next page as well. So what happens then is that Mr O'Brien gives a very detailed response to the points that have been raised by Mr Howe?---Yes.
- And ultimately the position of Mr O'Brien prevails and the files get moved back to Property Finance or they get moved to Property Finance?---Yes.
- 40 They get moved out of CAM?---Yes.
- But that's not until May 2011?---I believe so.
- 45 And was Mr Howe involved in the Property Finance section?---No, he was in Risk Management. Credit decisioning.

Sorry?---Credit decisioning.

And you understand one of the complaints that Mr Kelly has made is about the fact that the interest rates kept going up - - -?---Yes.

5

- - - throughout the period of – throughout the period that he was with Bankwest?---Yes.

I just want to work through a few points about that. One is, these internal issues that were happening about whether or not the files should be in Project Magellan, whether it stayed in Project Magellan, whether it got moved back out of CAM into Property Finance, would they have had any effect on the interest rate?---They may – I don't know. I don't know. Certainly the interest rate decision was made – are you talking about the 3.95, is that - - -

15

Well, there were a number of decisions, but that's right, there was a 3.95 increase for Silversun in about September or October 2010?---Yes.

And that presumably would often made based on the risk grade that had been given to the facility?---Yes.

20

And the risk grade had been increased by the Project Magellan?---To seven plus, yes.

So, logically, that would have affected the interest rate?---Logically, yes.

25

Beyond that, once you get into what's happening in early 2011, is the to and fro over whether or not the files get moved back – moved out of CAMs something that would have had a bearing on the interest rate?---It should have, and one of the things I called for was to look at the analysis behind the 3.95 interest rate, which – nothing available.

30

There was nothing available?---Yes – yes.

Right. Did you get analysis as to the other changes in interest rates?---I asked for the model – the models that were applied back, particularly the guidelines going way back, and nothing was available to be provided to me.

35

All right. Now, the other thing that I want to show you and get your comment about, Mr Perry, is the email that was sent on 28 February 2011. I will just turn that up.

40

THE COMMISSIONER: Is this bundle of emails to go in?

MR HODGE: Yes, I tender that.

THE COMMISSIONER: Exhibit 3.95 emails between Nathan, Howe, O'Brien, and others, March 2011, CBA.40000.00089.0617. 3.95.

45

EXHIBIT #3.95 EMAILS BETWEEN NATHAN, HOWE, O'BRIEN, AND OTHERS, MARCH 2011 (CBA.40000.00089.0617)

5 MR HODGE: Can we bring up RCD.0024.0014.0044. And this is an email we were looking at before, which is an email sent to Ms Rivera – sent by Ms Rivera to Mr Kelly?---Yes.

Have you seen that document before today?---No, I haven't.

10

Okay. And you will recall – you listened to Mr Kelly's evidence this morning?---Yes.

15 You recall that Mr Kelly, in response, made a number of points about these matters not having been mentioned in the meeting on 24 January 2011?---Yes, I do recall.

And you will also recall that Mr Kelly had been making inquiries about the interest rate that was to be charged on the facility?---Yes.

20 And that the response of Ms Rivera was:

In relation to your query about the interest rate for Wildlines we note that the facility has expired and the bank's standard default rate is 18.18 per cent.

25 ?---Yes, I see that.

And, as you know from the internal bank file note about what was discussed on 24 January 2011, there was a discussion about the interest rate being reduced?---Yes.

30 And that was a file note prepared by Ms Rivera?---This one here?

No, no, the file note that we looked at before, on 24 January 2011 had been prepared by Ms Rivera?---Can I just go back to that, please?

35 Yes. Can we bring up, on the other side of the page, BRP-59: this is the note we were looking at earlier?---Yes.

You see it's prepared by Ms Rivera?---Yes.

40 And you will see the third bullet point that Mr O'Brien had advised a negative margin of 10 per cent has been applied?---Yes, I see that.

45 Do you have a view as to the appropriateness of this email on 28 February 2011?---That's inconsistent with the email that says the default rate is 18.81. It doesn't refer to the 10 per cent.

Do you have a view about the various additional requests being made for information in that email of 28 February 2011?---?---No, I don't. No, I don't.

Commissioner, I don't have any further questions of Mr Perry.

5

THE COMMISSIONER: Yes, thank you. Mr Scerri.

<RE-EXAMINATION BY MR SCERRI

[2.42 pm]

10

MR SCERRI: Just one question, Commissioner. Mr Perry, at transcript 2596 about line 3, you were asked about the proposal that the customers be asked to refinance and you said that was in accordance with prudent banking and regulatory approval?---Yes

15

Or regulatory approach, I should have said?---Yes.

What did you mean by regulatory approach?---Sorry, repeat the question, I missed the first part, sorry.

20

You were asked about the request that there be refinancing, that is that they go elsewhere?---Yes.

25

And you said that was consistent with prudent banking and "regulatory approach"?---Right, yes.

And I'm just asking you what did you mean by regulatory approach?---I recall that I was talking about regulatory approach into the management of the property limits for Mr Clark, if I recall. And there's a couple of aspects there that banks have obligations to maintain their credit exposures by counterpart. There's another requirement also that banks manage their credit appropriately, and my view on that was that the refinance and working with the customer was the better approach under those credit management standards.

30

35

Thank you, sir. Thanks Commissioner.

THE COMMISSIONER: Yes. Thank you very much, Mr Perry, you may step down. You are excused.

40

<THE WITNESS WITHDREW

[2.43 pm]

THE COMMISSIONER: Yes, Mr Hodge.

45

MR HODGE: Commissioner, there's going to be a slight change of counsel at each end of the bar table. Could we adjourn for three minutes or so while we do that.

THE COMMISSIONER: I will come back at 10 to 3.

MR HODGE: Thank you.

5

ADJOURNED

[2.44 pm]

10

RESUMED

[2.50 pm]

THE COMMISSIONER: Yes, Mr Dinelli.

MR DINELLI: Thank you, Commissioner. I now call Stephen Weller.

15

THE COMMISSIONER: Mr Weller, would you go into the witness box.

20

<STEPHEN FRANCIS WELLER, SWORN

[2.50 pm]

<EXAMINATION-IN-CHIEF BY MR DINELLI

25 THE COMMISSIONER: Thank you very much, Mr Weller. Do sit down. Yes, Mr Dinelli.

MR DINELLI: Thank you.

30 Mr Weller, can you please state your full name?---Stephen Francis Weller.

And you've given your address to the Royal Commission?---Yes.

Have you received a summons to attend today to give evidence?---Yes, I have.

35

I do you have that summons with you?---I do have that here. Are you going to take it from me?

I tender that summons, Commissioner.

40

THE COMMISSIONER: Yes, 3.96 will be the summons to Mr Weller.

45

EXHIBIT #3.96 SUMMONS TO MR WELLER

MR DINELLI: Mr Weller, have you prepared a statement together with 29 exhibits of your – of the evidence that you’ve given, that you wish to give to the Commission?---Yes, I have.

5 And is that statement dated 21 May 2018?---Correct, yes.

And is it true and correct?---I believe so.

Commissioner, if I could tender Mr Weller’s statement, please.

10

THE COMMISSIONER: Statement of Mr Weller and its exhibits, the statement dated 21 May ’18, is exhibit 3.97.

15 **EXHIBIT #3.97 STATEMENT OF MR WELLER AND EXHIBITS DATED 21/05/2018**

MR DINELLI: Thank you, Commissioner.

20

Mr Weller, can you assist the Commission today by briefly explaining your employment background?---How long have we got?

25 Well, perhaps you can start by telling us what you did after you received your bachelor of commerce from Newcastle University?---Okay. I went into a professional accountant’s office during the course of that degree. And then went out into commerce, worked for Lang Hancock for a period of time, and probably about 35 years of working in commerce up until the time that I bought the hotel.

30 And had you worked in the hospitality industry before you bought the Nambucca Hotel, which we will come to in a moment?---I had spent some years in what I would call family owned hotels as a younger person.

And are you also, or were you a certified practising accountant?---Yes, I was.

35

And you mentioned that you purchased the Nambucca Hotel. When did you do that?---October 2005.

40 And am I right to say that it was at that time that you resigned from your commercial position and took up running the pub with a business partner?---Yes, you could say that, yes.

45 And can you tell the Commission how you came to fund the purchase of the Nambucca hotel back in 2005?---Well, as I understood it at the time, there had been an auction program and a loan had been established for a possible purchase. So that was Bankwest and that loan was still available, and I was able to avail of that loan at the time from Bankwest.

And you purchased the – you purchased the hotel through Bainbridge Enterprises number 1 Proprietary Limited; is that right?---Correct. Correct, yes.

And it was that entity that was the borrower for the facility at that time?---Correct.

5

Now, when you – and we will come to the facility, the subject of – the major subject of your evidence in a moment, but can you tell the Commission, please, a little bit about how you managed the hotel in that early period; that is between 2005 and about 2008?---Can you just ask that question again, please.

10

Can you tell the Commission how you managed the hotel, how it operated during the period from 2005 to 2008?---Well, I would visit the hotel from Sydney, probably on a basis which I think I've said in here, about five days a fortnight. Travel up, spend time there, and basically performed the role of a proprietor. And that continued until approximately 2008. That was all aspects of the hotel came under that management.

15

And in 2008 you bought out your partner; is that right?---Yes, that's correct.

20

And it was at that time, you say in your statement, that Bainbridge the company took out a facility or a different facility for the purchase – for the purposes of buying out your partner, and you entered into a facility in about June 2008; is that right?---That would be right. And, yes, to – to your question.

25

And you set it out in your statement and I will just go through some of the terms of that, but as I understand it, the facility obtained totalled about \$3.725 million; is that right?---Yes, that would be about right.

30

And there was an interest rate for a fixed portion which had a fixed rate plus a margin of 2.24 per cent?---Yes, on one half of it, yes.

And there was an interest rate for the variable portion which was the bank bill swap rate plus 2.74 per cent?---Correct, yes.

35

And there was a mortgage over the hotel itself; is that right?---Yes.

And you and your wife also offered guarantees; is that right?---Correct.

And what was the length of the facility that you entered into at that time?---15 years.

40

And is it the case that there were also some non-monetary covenants on the facility?---Yes, that's true.

45

And what were they?---I think they refer to them as – were DSR and the ICR, which was interest cover ratio, and a debt service ratio. Yes.

I see. Was there an LVR or a loan valuation ratio at that time?---Not at that time. I think they – it might have been referred to differently or in a different way,

particularly in the 2005 documents. But they're not here. So there was nothing mentioned in that 2008.

5 I see. And you are also aware that your – the facilities, I might call it the 2008 facilities, were also governed by Bankwest general terms for business lending?---Yes.

10 And you refer in your statement to those – to those terms. Perhaps I can take you to CBA.0517.0094.0080?---All right.

Are these the terms to which you refer?---They look familiar.

15 And I think if you go to .0083, and we will just blow up 1.2(a), and that refers to a facility review; is that the provision that you referred to in your statement?---Yes, I – yes.

20 And perhaps I can skip ahead, and that can come down. In your evidence, you say that after you entered into the facility, the 2008 facilities, then you were informed by Mr Goldsmith in about mid-2009 about a valuer being engaged. Who was Mr Goldsmith?---He was the relationship manager for the bank.

I see. And what was it that he discussed with you in the middle of 2009?---Well, the fact that there was a need for a valuation at that time.

25 When had there last been a valuation of the Nambucca Hotel?---I think it was in 2006.

30 I see. And did you or can you explain what involvement you had in the engagement of Mr Quinlan who was the person who did the valuation?---Well, as is the case with these things, the borrower pays for the valuer. So I selected Mr Quinlan from the panel of valuers.

I see. And he produced a valuation of the Nambucca Hotel?---Yes, he did.

35 And that's in your evidence. If I can take you to SWF04, which is CBA.4000.0059.8146, and that's a picture of the Nambucca Hotel on the front of the valuation?---Correct.

40 And were you given a copy of this valuation?---Yes, I was, yes.

And in fact if you go to – if I can ask the operator to go to .819 – 8149, I'm sorry – page 4 of that document, and the hotel was valued at that point by Mr Quinlan at \$4.53 million?---Yes, correct.

45 Now, returning to around that time – or perhaps you can explain for the Commission the nature of the business in the period during 2010 and how the hotel was travelling at that time?---2010, after the GFC, things changed a little bit. People – you know,

the effect on the economy was such that discretionary spending was impaired by people. So we had a little bit of a downturn in revenue. And this is – this is something that I would communicate to the bank in my regular reporting to them. I started to spend more time at the hotel in an attempt to – well, keep the profitability up, decrease costs, you know, manage the employment, manage the stock – all those sorts of things that you would try and do to assist in maintaining stability of the hotel and obviously the loan arrangements, yes.

10 And in – how often or what hours were you spending working at the pub around this time, Mr Weller?---Start at 3.30 am in the morning and finish about 9.30 at night.

And now Maxville, which is where the Nambucca Hotel was and is, is some way out of Sydney?---Yes.

15 How far is it from Sydney?---Well, five to six hour drive.

And so would you – how many days a week would you spend at the hotel?---At that time I would be spending four days a week, yes.

20 And you've given evidence at around this time you received some notices of non-monetary breaches from Bankwest; is that right?---Correct, yes.

25 What was – what was a non-monetary breach or what was identified in those notices?---You – well, when they examined your reports and your financial statements and compared them to their requirements under the interest cover ratio and the debt servicing ratio, if you weren't hitting the limits that they had imposed, you were issued with a breach notice.

30 And were you up to date with any payments, interest payments that had to be made on the loan at that time?---We were always up to date with our payments.

35 Now in that year, in June 2010, the interest only period and the fixed rate period expired, and you had a discussion about that with – with a representative of Bankwest, with Mr Gold Smith and what did he say in relation to the ongoing payment from around 2010 onwards?---2010 – basically they were coming back and saying – well, they issued some – they issued a variation, right, which is the normal thing. They call it a variation, but it was just a review of a facility. And they had – I think in the first set of documents that they presented they had put the term at 24 months.

40 You may be referring – it may assist, I think this is SWF05, which is CBA.4000.0074.8001. Is that the document to which you are referring?---Yes, that's the one. Yes.

45 Perhaps we can go to the next page. You referred to 24 months. Where it says the facility expiry date, it says 24 months from initial draw down date?---Yes.

What did you understand that to mean?---Well, I will just take it in two parts. The initial drawdown date to me always meant when the loan was rolled over, right.

5 Yes?---Not going back to the initial loan in past years. So 24 months from the initial drawdown date indicated to me that it was another two years from whenever this variation took place and the loan was rolled over.

10 I see. And you gave evidence previously that the facility in 2008 had a 15 year; is that right?---Yes.

And what was – when you received this letter from the bank, had you discussed it with Mr Goldsmith before you received this letter?---No.

15 And what was your reaction when you received this letter?---Well, I sent him a memorandum saying that, you know, the expiry date in particular was not what I would expect, because the original documents were all out to 2023. That was probably the main point that I was making. There was – I had some discussion in that memorandum about the interest rate, and then the principal repayments that they were proposing were higher than I thought we could manage, given the
20 circumstances at the time. And then I – you know, the other things were the payment of the facility where, in the past, we had had a gap between the two parts of the loan. So that the cash flow could handle, within the month, the payment on time.

25 Are you referring, as you give your evidence, to your memo itself that's there?---Yes.

If it would assist, I will call that up, assist SWF06, CBA.0001.0318.1880. And if I could just go to where it says “Term of facility”, is that – there's a paragraph there:

30 *The original documents all noted the expiry date of 8 June 2023. The current documents note only the term of two years from drawdown. In discussion, we have talked about the remaining 11 years after the 2 years contained in the document nation. I would presume then there would be no objection to showing the date of 8 June 2023 in the current documentation.*

35 Is that what you are referring to?---Yes.

40 And then you have referred to the margin, I won't go to that, but also the other issues that you've mentioned are in this memo. So is this how you responded to Mr Goldsmith in response to that?---Yes.

45 And you then had some further email correspondence with Mr Goldsmith. Perhaps I can take you to SWF07, CBA.4000.0075.1182, perhaps we can go to the bottom of that, or to the .1184. Is it possible to put them both up, 1183 and 1184? Mr Goldsmith wrote back to you, and he apologised for not coming back to you sooner. You see there his email on 10 September?---Yes, I do.

And in relation to the term of the facility, he said:

5 *As discussed the loan would be amortised over the remaining 13 year loan term, however, with a term of four years. This reduced term assists with pricing, so as to alleviate issues with long term funding premiums. That said, in my response to BC, I will seek that a fresh letter of variation be prepared with the remaining term based on the original funding date be used.*

10 What did you understand that – what did you understand Mr Goldsmith was telling you at that time?---Well, I think he was saying that they were going to go back and reinstate the original date that I considered to be in effect, and they would look at the 13 year term remaining and look at pricing based on how they would set that up. But there was going to be a – what does he talk about:

15 *A fresh letter of variation be prepared with a remaining term based on the original funding date.*

Yes. And that – and that letter we will come to in a moment?---Yes.

20 Why was that issue important to you, Mr Weller?---Well, in a business sense, you – you want to know that you’ve got a – you know, a reasonable term in front of you for the loans, because it’s just the way you would think in business. You know? And that’s the way it was set up initially, and there was no reason for it to be changed, in my view.

25 And he responds to the other issues, I just draw your attention to the margin, he says:

30 *The margin of 3.19 per cent will remain as it should. Look, we look to maintain this loan as a commercial bill. However, we would be prepared to review the margin upon production of final statements.*

35 So you were having a discussion about the length of the – making sure the length was what you understood it to be, but there was also a discussion about the interest rate that you were negotiating?---Yes.

Is that right?---That’s correct, yes.

40 And then you responded there – perhaps we can go to 1182 and, under Term of Facility, you say:

The original date of 8 June 2023 is a term I have always related to in my own thinking.

?---Yes.

45 That’s consistent with the evidence you have just given?---Yes.

Now, following – then there’s again – and I won’t take you to all of it, but then there’s a further discussion about the margin you have suggested, 3 per cent, and then a discussion as to the principal repayments. So that then did result in another letter being sent, which is in fact the next, exhibit SWF-08. And this is
5 CBA.4000.0074.8041. If you go to the second page, that does have a facility expiry date of 8 June 2023?---Yes, it does.

Was that not what you had sought in those discussions with Mr Goldsmith?---Exactly what I – yes. Yes.
10

And did – and what was your reaction when you received then this – this letter of variation?---I was very happy.

And, in relation to the margin, it provided a margin of 3.95 per cent. Did you have some further discussions about that particular issue with Mr Goldsmith?---Yes, I did.
15 Yes.

And as a result of those discussions – or perhaps I should put it this way. What did you – what were your discussions with Mr Goldsmith about that, in that intervening period?---Well, I was comparing that rate to what had been in place previously, and there were two margins applied for the interest only and the other one, the fixed rate – well, the variable and the fixed rate one, I should say, and they were respectively 2.24 and 2.74, so 2.95 was quite a large jump up from those.
20

And as a result of that, what then – what further discussions did you have with Mr Goldsmith?---Well, I think that – if I can say, the – the principal repayments were another point that I was trying to put across whereby they were looking for a certain amount, and I was trying to negotiate a smaller amount because of the cash flow that I knew, and also the non-monetary covenants, which I wanted to have arranged rather than a fixed number.
25
30

I see. And another offer was made then, or another letter was received – another variation letter was received on 12 November 2010, which is CBA.4000.0074.8062. If you go to the second page of that, I think this is the – ultimately the variation that was signed by you and your wife; is that right?---Yes.
35

And ultimately it was for 12 months from the initial drawdown date?---Yes.

Which is obviously less than what was in the previous document and what you had discussed. Why was it that length of time?---I have no idea.
40

Well, did you feel able to – in your discussions with the bank were you able to maintain the longer expiry date that you sought?---No, I wasn’t. I think that that information came to me by way of a telephone conversation that Garry Goldsmith and I had, and he was telling me what was going to happen. And that was – the expiry date was – that was on the October variation letter, was not going to remain, but the other matters that we’ve now got in this document were going to be put in
45

place and that is the 12 months, a principal repayment of 8000 which is what I had negotiated, and the non-monetary covenants were altered also. One, I think, was reduced and the other one stayed the same. Yes. So that revelation came by way of a telephone conversation, and then I received this further letter of variation.

5

And ultimately this was the variation that you signed?---Correct.

And noting the matters that – or perhaps summarising the matters you identified, the expiry date was now 12 months?---Yes.

10

And the interest rate had gone up, I think, from the previous amount, or the previous margin had been 2.24 per cent, it was now 2.81 per cent?---Yes.

Yet it was not 3.95 per cent, which I think was one of the - - -?---That's right, yes.

15

And you also agreed in relation to payments towards the principal at \$8000 per month; is that right?---Correct, yes.

20

Then through – no doubt the business goes on whilst you're having this negotiation, but then during 2011 can you explain how the business was going during the course of the length of this facility?---Well, it was in that same period where trading had turned down and, as I've said before, I attended the hotel on a more frequent basis so that I could try to not only work at the business but manage, you know, the aspects of employment and stock and whatever I could do to help maintain the business and obviously all the relationships with the bank and whatever.

25

And did you make the relevant principal and interest repayments that were required of you at that time?---Yes, we did. Yes.

30

And it is the case, is it not, that then at the end of 2011 the facility was extended for a further 12 months; is that right?---Yes.

And again, during 2012, you continued to make the payments that were due?---Yes.

35

Did you receive any notices from the bank during that period?---I think as stated in here, we received some breached notices of the non-monetary covenants. Right? And they were – they incurred a fee of \$250 which, I think in all instances, the bank waived, probably because I was such a good customer.

40

Well, can you explain – well, that occurred, I think in your evidence you refer to two occasions where that happened in 2012. You had a meeting in September 2012 with the bank?---Yes.

45

Can you explain to the Commission what happened at that meeting?---We had a meeting with Tim Dellit and Gary Goldsmith.

Who is Mr Dellit?---A gentleman in credit.

I see. And how did this meeting come to occur?---Well, I think we received a phone call from Gary Goldsmith to say yes, we – they wanted to have a meeting with us in Sydney on a certain date. And do you want me to go on about the meeting?

5 Yes, please?---Okay. Well, at the meeting, Tim Dellit expressed a view that he thought that the value of the business and the property had deteriorated. He didn't offer any reason why he was saying that. But, anyway, you take that as given. We discussed the purpose of the meeting was to explore how we would go about things so that we could head towards a renewal of the loans in January 2013. There was, in
10 his view, probably a need to have – well, certainly a need to have a valuation and, secondly, he expressed the view that we will probably need to inject some funds to reduce the loan balance because of the LVR. And he then – we then discussed what other assets we may be able to introduce to sell. One of them was a set of the poker machine entitlements, which I offered as a means of reducing the loan, to sell a block
15 of poker machine entitlements. We then explored the possibility of selling our house, which came up in conversation. And I think that was – they were the main points of the discussion at that time.

20 I see. The house wasn't security for - - -?---It was not security as part of these loans, no.

And when you left that meeting, what steps did you put in place in relation to these matters after that meeting?---Well, firstly, I engaged an agent to get a sale going for the block of poker machines because that was, you know, pretty straightforward. My
25 wife and I talked about the house and thought that we would need to – or perhaps we should pursue a sale of the house. And I guess that's – that's about all.

You mentioned one of the other issues that was raised by Mr Dellit at that meeting was a valuation of the hotel?---Yep.
30

What happened in relation to that?---Well, the valuation was to be initiated by the bank on an expeditious basis because of the – you know, the time and basically they were saying time was of the essence because of the facilities becoming due in
35 January 2013, yes.

And was that valuation obtained by the bank?---Eventually, yes.

And did you receive a copy of that valuation?---No, I did not.

40 You had another meeting with Mr Dellit in December. Do you know if – do you know if he had received the valuation by that time?---I think he had a draft of it.

And what was discussed at that meeting that you had with Mr Dellit at that time?---Well, we wanted to know the outcome of the valuation. He said that it was
45 done on a privileged basis and therefore he could not provide us with the valuation, but he indicated that it was approximately 100 per cent of the loan's value.

And what did that mean, that it was a 100 per cent of the loan from what Mr Dellit told you?---Well, I presume that he meant – like, the loan balances were around about the 3.6 mark – I think. I presumed that that’s what he was saying, that the valuation had come in at about 100 per cent of the loans as an amount.

5

And did you discuss further with him the two other matters that you had raised and you’ve given some evidence about, and that is the sale of your – the sale of the gaming entitlements or the pokie machines and the – your home?---Yes. I think, well, I’m sure that we discussed it and whatever I’ve said in here, it would have been that the PME’s arranged for an agent to sell them. We had put the home on the market. And he then said that they were not intending to roll over the loans because of insufficient time. That was as a consequence of the fact that the bank had not initiated the valuation until November. They had not instructed the valuer until November, as I understood it, and now they had a draft and we’re in December and loans were to expire on 10 January and there was insufficient time to roll over the loans. Well, make your own judgment.

Well, you – so just to put that in context. So you’ve had this meeting, in your evidence I think you say it was on 3 December and when was the facility to expire?---10 January.

And then after that meeting, what was the next contact you had with the bank, as best you can recall?---Golly. Well, I think that from there on we had email exchanges, right, and the bank – I think – well, what Dellit was saying was that the only way we could go forward was by way of a deed of forbearance which was to be prepared and, yes, I mean there’s not much else to say, but - - -

Your evidence says that you received a draft of that in January?---Yes.

And you got some advice from solicitors in relation to that. You wrote – you continued to correspond over email with Mr Dellit about the deed of forbearance?---Yes. Well, as you say, we received it on 8 January, which – and the facilities were expiring on the 10th. And that worried me because, obviously, we wouldn’t have time to examine the deed of forbearance before the facilities were due to expire, and I thought that left us exposed to the bank calling a breach on the loans themselves, you know. And we got a response from him to say, you know, like, the deed of forbearance is not due to be signed until, I think 22 January.

I see?---And under the terms of the deed we needed to get legal advice, which we then had to appoint a solicitor to help us with the deed of forbearance and negotiate whatever terms were going to be in that deed.

And until – sorry, if I can take you, then, to – or the deed of forbearance was entered into in January?---Mmm.

45

And I didn't ask you previously, but during the course of 2012, were you also – had you made your repayments during 2012?---All – all repayments and interest were up to date, yes.

5 And - - ?---Well, I will change that. Were always made on time.

And the deed of forbearance required you, amongst other things, to sell three of the pokie machines; is that right?---Yes.

10 And also to provide funds from the sale of your home; is that right?---Yes.

And can you explain what happened first in relation to the sale of the poker machines?---Well, we did – we did achieve a sale with a major organisation. And they had a threshold, I think, something like 29 January in order to – for us to
15 complete the sale. And we approached the bank to tell them that we needed to have their approval to release the poker machines from the security and that the threshold was 29 January, and therefore it was, you know, pretty urgent to get it done. So, in the fullness of all of that, the bank came back and said well, they're not prepared to release it unless and until the deed of forbearance is signed. So that sale collapsed.

20 But you were able ultimately to sell them, weren't you?---Subsequent to that, yes, we – in fact the same buyer came back, that was Coles. They had, in fact, another hotel that they could use the poker machines in, and they had deposited the sale proceeds with my solicitors – into my solicitors' trust fund. All the paperwork had been done.
25 We had lodged the papers, the transfer papers with OLGR.

Who is OLGR?---The Office of Liquor, Gaming and Racing.

Which is required to transfer the poker machines?---Yes. The authority – yes, they
30 have to authorise – they have to sign off on it, yes. So we were aware that there was a backlog in OLGR of approximately two weeks, we thought and understood, so at that stage I think they – going back in my mind, 28 Feb was the date called for in the deed of forbearance. A little time before that, we realised that it was not going to happen and we wrote to the bank under the terms of the deed, as we could, to request
35 an extension to the date. And I think I suggested extending two weeks at a time and monitoring OLGR in the meanwhile. So I think Tim Dellit wrote back and wanted to know how long it would be or what it would happen. I said I don't really know, because it's in the hands of the authority, but if you extend on a couple of weeks at a time, we would, you know, be able to monitor that. And subsequently – when was
40 that? 28th of Feb. On 5 March we received an email from Tim Dellit saying there was a breach of the terms of the deed of forbearance. I corresponded with him immediately. I asked him to withdraw it. Our solicitor wrote to the bank's solicitor asking them to withdraw it and that we had requested an extension. We didn't really get an answer from the bank on the extension, the request for the extension at the
45 time, but 5 March we were issued with a breach. 8 March, they received the money from the poker machines, which would have been eight days after our – after the day that it was meant to be paid.

And it was around this time, was it, that you lodged your complaint with FOS, with the Financial Ombudsman Service?---Shortly after that, yes.

5 And why did you bring that complaint?---Well, at that stage I reckoned I knew what the bank was on – on about, and although I had no knowledge of FOS at that particular time, and the bank had said that they will refrain from taking any action for 14 days. So I was pretty – pretty concerned at that stage that, you know, things were going to be taken out of my hands and so I - - -

10 What do you mean by you were pretty concerned that things would be taken out of your hands?---I thought they would foreclose, you know – if that's a word you can use – that they called the breaches. They were reserving their rights all the way along. We were getting all – that sort of – those sort of terms were being used and, therefore, I had no – I had every thought to believe that they were going to appoint
15 receivers.

And what happened as a result of your complaint to FOS?---Well, we lodged a long letter of complaint that went on – it's from March until about November. We had a
20 phone conference between FOS, the bank and ourselves in November.

And am I right to say that you ended up resolving the dispute with Bankwest through the FOS process at that time?---Well, we agreed on a process only because we were told that if we didn't agree the bank would be able to determine the course of action, so we had no option but to agree.
25

And then that required the sale of the hotel?---Yes.

And, sorry, I should have said you continued to run the hotel, did you, during the course - - -?---Yes, I did.
30

- - - of 2013?---Yes, of course, yes. Yes.

And were you able to sell your house during that time?---The house was under contract, I think, at that stage, and settlement had not occurred at that time.
35

If I – sorry, can you just assist, just in terms of the chronology. The sale of the house was – did settlement occur after you had commenced the FOS proceeding or complaint?---Yes.

40 And why was it that you didn't – and why was it that you didn't pay any of the proceeds of the sale of the house to Bankwest?---I thought that was my most prudent course, and I didn't feel any obligation, because the bank had – well, what's the word I would like to use? Unilaterally cancelled the forbearance of the deed.

45 And – sorry, just then to return to where we were in our chronology – you then – the settlement occurred in December 2013. That required you to sell the hotel by 28 February of the following year. Were you able to do that?---No.

And?---Well, I just say this: that the agent that we appointed advised us not to commence marketing in December because it was, you know, just a waste of time. So we started off in January. So it was a big ask to achieve a contract by the end of February.

5

And ultimately you weren't able to do so?---No.

And thereafter, you – or Mr Dellit contacted you again at that time, did he?---Yes, I think he issued a breach notice, yes.

10

And you made a further complaint to FOS at that time?---Yes. On different – what we thought would be different grounds, yes.

That's right. Well, you set out in paragraph 88 of your statement the grounds and that – or perhaps that – perhaps I can take you to that. That's CBA.4000.0074.3006. So CBA.4000.0074.3006.

15

THE COMMISSIONER: It's SFW26.

MR DINELLI: Thank you, Commissioner. If I can just go to the dispute summary about four lines down where you set out the reasons, starting with one. And when you say there were different reasons, is that a reference to what you say are the reasons in this application: that the facilities were changed against the will of the borrowers from a 15 year loan to facilities with only a 12 month term?---Yes – yes

25

And was that a – and you go on then to explain further that they were amended only two years into the facilities. Was that a reference to what occurred – the discussion we had about what happened in 2010?---Yes.

30

And FOS ultimately determined it didn't have jurisdiction in relation to this complaint, didn't it?---Yes, correct. Yes.

And when you were informed of that on 22 May 2014, what happened after that?---Well, as I understand it – recollect, I should say – we had some further communications with Mr Dellit. We were going through the sale process and trying to obtain a sale.

35

You weren't able to, though. You weren't able to, in the end, were you?---No. But we put to them that we needed some further time to explore another way of selling or dealing with the business. Anyway, that's – that didn't hold any water. We then – after the FOS had knocked us back – that must have been in June, I think, or – on 7 July the receivers were appointed, yes. Or moved in, yes.

40

And that's when you finished managing the hotel?---Mmm.

45

And thereafter you received a letter of demand in relation to guarantee?---Mmm.

And ultimately the hotel was sold by the receivers, wasn't it?---Correct, yes.

And you were ultimately – there was ultimately proceedings against you in the New South Wales Supreme Court?---Correct.

5

And you were able to resolve those ultimately with Bankwest in about 2016; is that right?---Yes.

10 Mr Weller, did you make a public submission to this Royal Commission?---Yes, I did.

And was it – was it – you were contacted then by someone at the Royal Commission to prepare this statement; is that right?---Correct.

15 Thank you. No further questions.

THE COMMISSIONER: Yes, Mr Scerri.

20 MS COLLINS: I have no questions of Mr Weller, Commissioner.

THE COMMISSIONER: Yes, thank you. Mr Weller, then thank you for your evidence. You may step down. You are excused from further attendance?---You want this back, do you? Are you sure?

25 MS: Yes?---Okay.

<THE WITNESS WITHDREW

[3.44 pm]

30

MR DINELLI: Commissioner, I - - -

THE COMMISSIONER: Yes, Mr Dinelli.

35 MR DINELLI: I wish to call the next witness, Mr Doherty, Mr Michael Doherty. Mr Stapleton – sorry, Mr Stapleton is just joining us at the bar table. He has leave to appear for Mr Doherty.

40 THE COMMISSIONER: Yes.

<MICHAEL EDWIN DOHERTY, SWORN

[3.45 pm]

45 **<EXAMINATION-IN-CHIEF BY MR STAPLETON**

THE COMMISSIONER: Thank you very much, Mr Doherty. Do sit down. Yes.

MR STAPLETON: Commissioner.

5 Can you tell the Commission your full name?---Michael Edwin Doherty.

And the Commission has your business address, hasn't it?---Yes.

10 And you have received to appear in the Commission today?---Yes, I have.

And do you have an original copy of that with you?---Yes, I do. Thank you.

I tender that Commissioner.

15 THE COMMISSIONER: That will be exhibit 3.98 is the summons to Mr Doherty.

EXHIBIT #3.98 SUMMONS TO MR DOHERTY

20

MR STAPLETON: Thank you, Commissioner.

And you have prepared a witness statement in order to give evidence today, haven't you?---Yes, I have.

25

And that was sworn on Thursday, 24 May - - -?---That's correct.

- - - 2018. Do you have an original copy of that with you?---Yes.

30 And are there any corrections you wish to make to that?---No.

And is it true and correct?---Yes, it is.

I tender that.

35

THE COMMISSIONER: Witness statement of Mr Doherty is exhibit 3.99. Thank you. Yes, Mr Dinelli.

40 **EXHIBIT #3.99 WITNESS STATEMENT OF MR DOHERTY**

<CROSS-EXAMINATION BY MR DINELLI

[3.46 pm]

45

MR DINELLI: Thank you.

Thank you, Mr Doherty. Mr Doherty, in your witness statement you explain that you followed your parents into the hospitality industry. Can you inform the Commission as to your background?---Yes. Entered with my parents, we actually started in a take away food store not far from here at Flinders Lane, Melbourne, about 35 years ago.
5 After that we went through various layers of hospitality. We had a hotel – small hotel in Echuca. We went to Cairns, we went through the airline pilot strike during that period there. We extended and international marketing into Papua New Guinea and also United Kingdom. We developed a number of properties which are now known as the Sebel in Hawesbury and Sydney, the Novotel Launceston, the
10 Australian Wilderness Gallery, properties both in Fiji and South America, and also extensive developments into Tasmania.

And in fact I would like to ask you a few questions, if I may, about the development in particular in Tasmania. Before we come to that, I understand that in about 2006
15 you became a customer of Bankwest; is that right?---That's correct.

And how did you come to be a customer of Bankwest?---We had always had a very good relationship with the valuers and real estate agents, and we used them for our due diligence in anywhere that we used to go to, and we used extensively Jones Lang
20 LaSalle for corporate advisory and it was Troy Craig, from the valuations department, that told that Bankwest had an exceptional business banker in the hospitality industry, Darren Longmuir, and would you like to organise a cup of coffee between us, and I said yes, we certainly would, so that was the introduction to Darren Longmuir.
25

So you met or you were introduced to Mr Longmuir by Mr Craig and then did you start banking with Bankwest around that time?---Yes, around that time. He gave us an offer, which actually – the offer came out within 24 hours of meeting him. It was a very good offer, the rates were very competitive, and Darren Longmuir was an
30 incredibly intelligent guy, knew the hospitality industry backwards, and yes, we felt very comfortable dealing with him.

And your dealings, this is around the middle of 2007, wasn't it, that you were dealing with Mr Longmuir?---Yes.
35

Can you explain to the Commissioner what the nature of the facility that you entered into with Bankwest around that time was?---Yes. We had one facility. It was for – over three properties Leura, Ballarat Lodge and Hadley's, and we were currently dealing with Westpac, and they offered to buy the Westpac debt out and change over
40 the securities. And the offer that they put forward, the margins, which were so good we couldn't turn it back.

Sorry, you said that there – it was secured by some properties. Can we just go back a step. What were those properties?---It was Leura Gardens Resort, in Leura, in the
45 Blue Mountains, Ballarat Lodge in Victoria, and Hadley's in Hobart.

So Hadley's, can you explain to the Commissioner – and we will come to discuss it in a bit more detail – what Hadley's was and where it was?---Yes. Hadley's, a very historic hotel, it's the oldest continuing liquor licence in Australia. The hotel was 71 rooms. It was around about a three and a half star. It was a bit run down at the time of buying it, but we had refurbished it extensively to a four and a half star. And at the time of buying it we also we also purchased the land called Inner Collins, which is attached to the hotel fronting Collins Street, and that was originally the Boag's brewery offices, which they had rented back off us for a short period of time, and now it was a vacant development site but we were using it for car parking in the hotel whilst we were obtaining town planning permits.

I see. So when you refer to Inner Collins, can you assist by explaining how that related to Hadley's Hotel?---They were all next door to each other. Hadley's fronted Murray Street and backed on to inner Collins, which fronted Collins Street, so it formed a big L-shape, virtually, of the land and it had a separate entrance off it from Victoria Lane at the back.

In your evidence, you speak about around that time, 2007, 2008, what the major goal of your hotel group, which I understand is Doherty Hotels, if I can call it that just for convenience, what was the major goal that they had around that time in relation to Hadley's?---Well, it was a project that had been in the plan for many years. And yes, that was when we made the move with Darren Longmuir. It was always discussed that Hadley's was going to be the development which we were planning towards going towards. There was a lot of correspondence between Darren Longmuir, Jones Lang LaSalle, etcetera, we were planning what the property was going to be like. At that stage we were wishing to go with the or the service department model, rather than a motel build. The discussions were around the service department model, had a number of upsides to it: if times got tough you could sell off a few units. It gave greater flexibility to the valuer, because once one unit is sold in the complex it's a powering value there for it. The downside is, to a service department, it's a lot more expensive to build than a traditional 25 square unit motel development. But we thought with the flexibility then this mixed use development was the way we wanted to proceed.

So that I understand that, Hadley's on Murray Street was the hotel. Was that going to remain a hotel?---Yes. That was going to remain and that was understand the management of Accor.

And you said that inner Collins was to become a group of serviced apartments?---It was a mixed use development on the ground floor. There was two retail components. There was a first floor restaurant. which was on a separate strata title, then levels 3, 4 and 5 was public car parking. Then it had four levels of serviced apartments. Then the top floor was eight penthouses for residential use, which had big spas on the balcony, looking down the Derwent River.

How many penthouses did you say?---Eight.

- And you used a term there, you said that it was a “mixed use development”. What exactly do you mean by a mixed use development?---Well, when – put in a mixed use such as a retail component. The tenant pays the outgoings, virtually all the money that comes in is profit. And a hotel will run traditionally on about 25 per cent turnover to profit. And the apartments on the top floor they were valued around \$8000 per square metre, so they had a different use altogether, because they would be for a residential component rather than a commercial component. So it was a variety of mixtures as the public car park, than just a straight hotel.
- 10 One of the other terms that comes up on a number of occasions is the concept of in one line. What does that mean in the context of a valuation?---Well, the in one line valuation that was called for – skipping forward to - - -
- 15 I’m asking about the concept first. We will come to that. What does it mean?---In one line is just as one hotel. So you don’t take into account the value of the residential apartments. They’re valued as a motel compartment, which is strange because a motel is traditionally 25 square metres. An apartment is, you know, 130, 140 square metres. So it has a totally different building rationale, because it’s built to a totally different market. But if it’s put into one line, it’s just considered another motel room.
- 20 So is – when, during your evidence and the evidence of others, there’s reference to in one line, that – relevantly does that mean all of Hadley’s and inner Collins; is that right?---Yes, correct. Car park, retail shops, etcetera.
- 25 Now, you’ve said that it was a very large project. You obviously needed funding for that. How did you propose to seek funding to complete this project?---Well, as I said, it was a project that we built up to over a number of years. We sold the Leura Gardens Resort before we entered into it, and then – yes, there was a considerable amount of town planning that had to go in because it was a big project in Hobart. And, you know, a number of consultancies and all that time, all correspondence was always between – we had a very good relationship with Darren – nothing was done as – by surprise. It was – you know, everything was planned, because it was always the goal we were heading into.
- 35 And I will ask you about a number of valuations during the course of your evidence. Perhaps I can take you to identify at MED2, RCD.0024.0013.0001. Thank you. The operator has correctly predicted those numbers. Thank you. This is an evaluation report which was obtained from – I’m sorry – Knight Frank in December 2007. Can you explain to the Commission why this valuation was obtained?---Yes. This was a valuation on the feasibility of the project going forward. It was commissioned by Bankwest. Bankwest appointed Matthew Page, who was the head valuer for Knight Frank Tasmania, to do the valuation.
- 40 And had you dealt with Mr Page beforehand?---We had dealt with Matthew Page, yes. He was the panel valuer.
- 45

I see. And if I can go to the third page, .0003, there's a reference to various components of the project, and it's valued ultimately at \$60 million?---Yes.

5 Was that a valuation as at that time or it is at the completion of the development?---That was when the development was being proposed, going forward, and that didn't include the penthouses on the top floor at that stage because they were a later thought. But that was the development on completion.

10 I see. And you wanted to borrow, if I'm right – or your companies, your family companies, wanted to borrow ultimately \$50.2 million, didn't you, to do - - -?---Yes.

- - - this development. That is to say, for the actual facility as well as the costs of the construction?---That's correct.

15 And when you went to Bankwest, they wanted to do a check valuation, didn't they?---That's right. So a few months later, because it took a while to get all the planning approvals in case.

20 I think the one we've just been to, that Mr Page of Knight Frank performed, was in December 2007. The next one – before I come to it, the next one wasn't prepared until August 2008. Why was there that - - -?---That was just during the town planning process to get – before we got ready to build.

25 I see. And can you explain to the Commission why it was necessary to get a further valuation that period of time later, that is to say 10 months, approximately 10 months later?---I think it was just the – so this was a big development, no one was hiding that, and they said they would like to get a check valuation done on it and they proposed it would be done by Peter Grieve, who is the head valuer Asia-Pacific for CBRE.

30 And perhaps I can go to that valuation at MED3. Is this the valuation to which you are referring?---Yes.

35 And did you have any discussions with Bankwest at that time about who should perform that valuation?---They told me that they considered there was a conflict of interest with Troy Craig doing it, because they brought up that Troy Craig was actually paid a commission to bring us in as a client of Bankwest, which we didn't know of at the time, but we later got that confirmed by Troy that he did – he was paid to bring us in as a client.

40 But you wouldn't have had any difficulty with Troy valuing the property at that time?---No.

45 And perhaps if I can go to one particular part of this valuation. At .4984. So you said previously that it was Mr Grieve who performed the valuation. In your experience were there many people who could perform these valuations at the relevant time in Tasmania?---Well, they were all tier 1 valuers and all panel valuers.

The main panel valuers in the country are Jones Lang LaSalle, CBRE and Knight Frank for this sort of hospitality venture.

I see. And Knight Frank had already given a valuation?---That's correct.

5

And perhaps we can blow up this little table here. This was – just to assist – just to assist the Commissioner in terms of these values, there's a reference to the hotel valuation as is, \$15.2 million. What does that refer to?---That is the original Hadley's Hotel in Murray Street, which is the 71 rooms, the heritage property.

10

I see. And then there's also a reference to as if complete valuations, can you assist me with what is meant by Hadley's and Collins Street in one line?---That would be the Hadley's and motel as – just built as a – sold as a hotel.

15

So if – so if you sold Hadley's, the older hotel that had been there for 150 years, together with your development, or Inner Collins, it was Mr Grieve's view that together in one line they would have a value of 53.5 million; is that correct?---That's correct. Not taking into account the various components.

20

Okay. And what about if you took into account the various components? How would it differ?---Well, then you would be looking at the Collins Street, which is the gross realisable including level 8, at 49 million, plus the Hadley's valuation at 15.2.

25

So, if my maths is – if my maths is correct, it would have then led to a combined value of \$64.59 million; is that right?---That's correct, yes.

30

So the 64.59 was on the basis that the parts of the development were sold separately; that is to say, you would sell Hadley's and you would sell the mixed use development in separate parts; right?---Yes. Sell them or take them into account of what they are.

35

Yes. And conversely, in one line, was if they were to be sold as a whole?---And disregard the various other entities. Yes.

When you say disregard the various other entities, what do you mean by that?---Well, you wouldn't – just take into account that a residential house is worth 700,000, you just put it in as motel stock - - -

40

I see?--- - - - and value it at whatever a unit is. You know, 180, 200,000.

I see. Now, soon after – so we can take down that valuation now. Soon after you – did you receive a copy of that valuation?---Yes, we did.

45

Who provided it to you?---The bank.

And you – in your evidence you say that you had a discussion with Mr Longmuir about it soon afterwards, is that right?---Yes, that’s correct.

5 And what did you discuss with Mr Longmuir about the CBRE valuation?---One particular thing is Darren said – and it sort of came up later in the conversation – he said, “Well, it is what it is.” He said, “It’s a mixed use development, it has got to be valued accordingly to it.” And Darren Longmuir – he’s a very intelligent man, he understood the industry, and he said, “Of course it has got to be what it is.”

10 And perhaps if you can just assist me in relation to that, just to break that down. What was he suggesting by – when he said that or what did you understand?---When he said, “It is what it is,” he said, like, the retail is not a hotel. The public car park is not a hotel. And the residential penthouses that will be sold off as residences are not a hotel. So he said, “We value the hotel as a hotel and we value the other
15 components as what they are.”

So when you say – when he referred to – when he was referring to Bankwest; is that right?---We. He’s Bankwest – yes, he was representing Bankwest.

20 So what relevance does the difference between the two valuations mean for what – for the money that you wished to borrow from Bankwest to do the development?---We had a loan – the loan approval had a covenant in there that wasn’t to exceed 65 per cent.

25 Just stopping there, what do you mean by not exceeding 65 per cent?---Well, when you took the two valuations of Ballarat – Ballarat and Hadley’s, combined them up, the valuation ratio was not to exceed 65 per cent of the total amount borrowed.

30 So the loan to valuation ratios wasn’t to exceed 65 per cent?---Yes. That’s right. And when the equation was done, as all in one line, it did exceed 65 per cent. But when it was done as the mixed use, it came down to very close to 60 per cent. So that was why he accepted the valuation as Darren said, “Well, we don’t have to change anything because it falls within – it falls within the guidelines.”

35 Now, perhaps just to explain that – and there is some complexity to it – can I go to WIT, which is your statement, if I can kindly have called up WIT.0001 and perhaps I can go to .0006. Now, you referred to various properties which is the Doherty Hotels Group owned, but at the time you had the Grand Mercure in Ballarat; is that
40 right?---That’s correct.

And in your statement where you refer to the capital P property, that’s a reference to both Hadley’s and Inner Collins; is that right?---That’s correct.

45 What is – in paragraph 23, can you explain what you’re seeking to explain there?---What we are doing there is we had this loan to value ratio that it was capped at 65 per cent. If we took the Ballarat valuation and the Hadley’s valuation in one

line, it came out at 73.5 million, which had an LVR covenant of 68 per cent. So we would have been outside our covenants before the building ever started.

5 So that is – when you say outside your covenants, what you’re saying is that you would have breached the LVR ratio, it would have been more than 65 per cent?---Before – so, however, if we took the Ballarat valuation and the Hadley’s valuation as a mixed use it came in at 84.59 and it brought us in at an LVR at 59 per cent. Now, at that point, Darren Longmuir made the point, “We don’t have to go back to credit to get any further approvals because you’re inside your covenants comfortably.”
10

And when he said that you understood him to be referring to an analysis of the type that you’ve just explained to the Commission?---Yes. Well, we did that same graph with him, as we were working with him very closely and clearly it showed, you
15 know, one it doesn’t work out, one it does work out, and that was where the phrase was used so many times, “It is what it is.”

And the valuation was obtained – that valuation which we have been referring to and which is reflected there, was obtained in August 2008?---That’s correct, yes.
20

And then it was soon after that, in fact it was in September was it not, that you entered into the facility agreement?---That’s correct.

And perhaps I can summarise the main terms of that. and you can tell me if I’ve
25 erred in any way, but what was intended by the facility was that it was to incorporate the previous loans and also the construction costs which we will come to describe as tranche 2. There was two parts of the loan; is that correct?---That’s correct.

So tranche 1 was the commercial advance for \$23.5 million; is that
30 correct?---Correct.

And a second commercial advance for the development of the property was for \$27.2 million?---That’s correct.

35 And pausing there and returning to your statement, that’s where you get to the 50.2; is that correct?---That’s correct.

Were you advanced or how was it that you would come to be advanced the \$27.2 million, the tranche 2 funds?---That was for the building cost.
40

And so you didn’t receive them at that time?---No.

It was at another time?---The bank appointed Napier & Blakely as quantity surveyors for the building and each month when the builder would put into a – the bank also
45 requested that Napier & Blakely be the site superintendent, so that way the project was minuted. Each month when there was a builder’s meeting Napier & Blakely

would certify whether the costs were accurate and put the costing into the bank and then the bank would release that money to the builder.

5 I see. And returning to the terms of the facility, interest was payable on tranche 1; is that right?---That's correct.

But the interest in respect of tranche 2 could be capitalised as long as the facility didn't go into default; is that right?---That's correct.

10 Now, because Doherty Hotels no longer owned Leura Gardens, the security was Inner Collins and Hadley's, that is the property that we are talking about, as well as Ballarat; is that right?---That's correct.

15 And I've already referred to the fact that there was a loan valuation ratio of 65 per cent, or you've given evidence about that?---Mmm.

And that was ultimately agreed in the form of a facility agreement, wasn't it?---Yes, that's correct.

20 And we won't go to its terms, but it's the document which you have in your statement at MED4?---Mmm.

Mr Doherty, can you explain when you understood the facility was to expire?---Yes. The – we took – we – the facility was taken out, I believe, to 2013. We had detailed
25 discussions with Treasury, and it was also hedged to 2013. That's for tranches 1 and tranches 2. We were explained that tranches number 1 was written straight to 2013. Tranche number 2 was written at the expected completion date of the motel, then it would be repriced as building is always a dearer pricing than what normal long term debt is. And then it would all be rolled into the one facility. But with Treasury we
30 discussed, you know, world matters, implications. It was quite a lengthy discussion, and we all came to the mutual idea that we should hedge the entire debt out to 2013.

35 And when you refer to Treasury, what's that a reference to?---That was Bankwest Treasury.

40 And what did the hedge involve?---The hedge involved taking an interest rate mitigation program. So we bought swap deals, I think they call them. But it was a facility so that if the interest rate went extremely high, we were covered. If the interest rate went below what we had hedged it, we had to wear the loss on it. But it was something which we and the bank, we all thought, given the size of the loan and the long-term commitment we were all entering into, that it was prudent.

45 I see. And the last – or the last aspect of the facility agreement I wish to deal with is this: did you also give – personally give a guarantee?---Yes.

And did you sign that guarantee at the same time that you signed the facility agreement?---Would of, yes.

Is that an appropriate time?

THE COMMISSIONER: How long do you expect to require to complete?

5 MR DINELLI: I will probably be at least another half an hour to 45 minutes,
Commissioner.

THE COMMISSIONER: Then, I am sorry, we will have to ask you to return at
10 quarter to 10 tomorrow morning?---That's okay. I'm here.

THE COMMISSIONER: 9.45 it is tomorrow.

15 <THE WITNESS WITHDREW [4.14 pm]

MATTER ADJOURNED at 4.14 pm UNTIL TUESDAY, 29 MAY 2018

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