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TRANSCRIPT OF PROCEEDINGS

O/N H-896302

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, TUESDAY, 29 MAY 2018

Continued from 28.5.18

DAY 26

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 C. SCERRI QC appears with DR R.C.A. HIGGINS SC, MS J.T. BUNCLE, MS E. COLLINS and MR P. MEAGHER for CBA
MR G. STAPLETON appears for Michael Doherty

<MICHAEL EDWIN DOHERTY, ON FORMER OATH [9.45 am]

<CROSS-EXAMINATION BY MR DINELLI

THE COMMISSIONER: Yes, Mr Dinelli.

MR DINELLI: Thank you, Commissioner.

Mr Doherty, yesterday afternoon we arrived at the point where you just signed the facilities. The facilities were in place. You had offered a guarantee. And I understand that then construction started soon after. When did construction start---Construction started about January/February of 2009.

And who were the builders that had been engaged to do the - - -?---The builders were Hinman, Wright & Manser. They were a division of Gunns, and that was again through consultation with the bank because they were the only builder that had experience in high rise construction in Tasmania.

I see. And the construction proceeded during 2009?---Yes.

And you made your – whatever interest payments were necessary?---Yes.

And there was some amendments during 2009. I'm not going to go to them in the interests of time, but if I can summarise them. Am I right that there was an addition of a new security property in 2009?---That's correct, yes.

And what was that security property?---That was the Man of Ross Hotel in Ross, Tasmania.

I see. Is it also the case there were some amendments of the amount of the tranche to funding?---Yes. There was confusion there from the start from the bank's perspective because they weren't sure whether they approved 28.1 or $29 million. And when we pointed out to them the correspondence of the emails, it was actually the full 29 million amount.

I see. And 2010, you've spoken about in some detail in your statement. Can you explain to the Commission what happened during 2010 with the management of your account?---We went from an extremely great business manager who understood the total building scenario, across to another gentleman, Martin Waller. And when we got there with Martin Waller, we were starting to get very concerned. There's a couple of instances which really concerned us. One of them was that there was a comment made for the 2009 figures, June, that there was over a $5 million loss, and their only investigating accountant pointed out to them that it was actually a $3 million profit. And our chartered accountant Alex Stevenson from William Buck in

Melbourne spent six hours over two days explaining to Mr Waller how to read a set of chartered accounts and the differences there were within the accounts. So we were starting to get very concerned at that level.

You mentioned an investigating accountant. What do you mean by that?---The bank wanted an investigating accountant appointed and they appointed Nick Codling of 333, which is a division of KordaMentha.

Who related to you that Mr Codling was going to be appointed as an investigating accountant?---Martin Waller initially said that the concerns over the June '09 accounts and using phrases like "the worsening economy", etcetera, that he wanted to – that we had to appoint the accountant. We did express to them, "Look, why?" You know, "There's to – $5 million loss is actually a $3 million profit." We went through all the reasons why the accountant should be employed and Martin made ..... comment to me which was pretty damning to me one day. He said "Look, if you don't do it, we will do it."

And what involvement did you personally and/or members of your staff have with Mr Codling at that time?---Nick Codling was – is quite a smart man. We got on with him very well. He understood the accounts, which was different to what Mr Waller did. He actually offered to liaise to help Mr Waller get over the problems of not understanding the set of accounts. And in his report, I think page 14, he identified where the bank had misunderstood the situation. But our chartered accountants during that period of time were asked for enormous, copious amounts of reporting to be done in excess of the facility guidelines and over the period of 2010/2011, we had run up an additional $526,000 in chartered accountant's fees for just continual remodelling and explaining to Mr Waller in particular how the accounts were put together.

Mr Codling from 333, who had been appointed by the bank as the investigating accountant, who paid his fees?---We had to pay his fees and they were over $200,000 again, which came out of our money.

And there was also involvement, around this time, of someone else at Bankwest. Who was that?---At that stage, we were introduced to Jonathan Clements who was the head of CAMs.

Okay. And how did Mr Clements come to be involved in the management of your account?---Well Martin Waller used the phase once, again he got back on to this supposed loss of $5 million, and said, "Look, it's going to have to be handed to the bank's intensive care department."

I see. And is that what led to Mr Clements becoming involved?---I believe so.

And Mr Codling prepared some reports. Did you see any of the reports that were prepared by Mr Codling?---Yes, we did. But the copy that we had, there were seven pages missing out of it. and the bank refused to give us those missing pages.

Now in – towards the end of 2010, you also received a letter from the bank. I might call it up, if I may. RCD.0024.0013.0197. Do you recall this document, Mr Doherty?---Yes, we do.

And if you go to the second page there's a schedule of revised conditions. Can you explain what effect that had on your facility?---Well, that was putting up the interest rate, which again drew cash that we had to finish the building out of our loan. So it was a cash grab.

Did you question – did you question why this letter was sent?---We certainly did. We took it up with Jonathan Clements. And we said, "Well, look, Jonathan, what do you base creditworthiness? What's the interpretation of that? We have shown you we are inside our LVR. We have shown you we are inside our cover. What is the actual determination of the word 'creditworthiness'?" Jonathan Clements had a very arrogant attitude and brushed us off by saying, "It's a credit issue."

And were you given any other explanation at the time?---No.

And what effect did the payment of that interest have on you at this time?---Well, all the time it was drawing our cash flow, you know, down and down. Between that, the Nick Codling report, the continual requests for additional accountancy outside of the facility agreement. It was just those professional fees were crippling us.

Can I return to the questions of valuations which you have referred to already in your evidence. You had – or you had two valuations completed by Knight Frank in 2010; is that right?---Yes, that's correct.

Now, again, I won't go to them, but there was one in May 2010 and a later one in December 2010. Starting with that which was provided in May, can you explain how or why that valuation was obtained?---Yes. We were getting exceedingly worried by the commentary that was coming back from the bank and that the commentary that was coming back was totally misunderstanding the account. At the time our director of finance was Harry Kelly, who had 34 years as an investigating accountant with the Commonwealth Bank, and finished his career with senior investigating accountant in the credit department. So Harry understood the bank procedures and the notions. So Harry said, "Look, I think we should take the bull by the horns here, get a valuation done, so we can slow it to the bank, but we have got to do it in consultation with the bank." So we liaised with Nick Codling. We gave Nick Codling Matthew Page, the valuer's, details. They had numerous discussions between themselves, but we thought that was the best way to show if there is a doubt of creditworthiness, let's get it defined and sort it out. And we thought it was easier to take the bull by the horns that way.

And you ended up getting a valuation in May?---That's correct.

And was that provided by Mr Page of Knight Frank?---That's right. He was also a tier 1 valuer and on the bank's panel.

And am I right that the valuation that was prepared led to a value of, or a valuation of, $67.75 million; is that right?---Yes, that's correct.

And that valuation, I can take you to if it would assist, that valuation did proceed on the basis, did it not, that at least part of the assets were to be sold together; is that right?---It was – it was on the asset but he took a part the revenue streams as different. So retail component was different, car parking was different. So the revenue streams were analysed in a different manner.

I see. Yet – but you still went back to him for a further valuation later that year, the one I referred to previously, December 2010. Why did you get a further valuation from him?---Again, the rhetoric which was coming out of the bank was misunderstanding. There was a comment made by the bank, and I notice it's on Peter's affidavit, 34(b), where the bank couldn't understand the valuation. And Harry Kelly pointed it out to us. He said, "Look, the bank has these resources, Michael." He said, "If the relationship manager doesn't understand and can't comprehend a valuation he should go for help rather than just leaving it there." So again we offered to say, as a further confidence to the bank we will pay for another valuation and, again, be in full consultation with the bank. Things that had changed is that we were starting to get some very significant presales on the building for the unit development, and we were also negotiating with Mantra Group for them to come in. So at that stage we thought we had a much better picture to show and we wanted to share that with the bank in a transparent manner.

And that valuation – and that valuation came out, as I understand your evidence, at $75.317 million?---That's correct.

And can you explain – you referred to some matters about presales, etcetera. It was still the same properties, though, that were being valued by Mr Page on the second occasion, weren't they?---Yes, it was, and it gets back to the earlier part of my statement in the due diligence that we did with the project and the bank where we considered that the wisest way to go forward was to do it on a strata title unit basis, because you can sell some of the units down and, you know, retrieve some cash flow in should times get tough. And, given the misunderstanding rhetoric that was coming from the bank, we thought this was an ideal time to consider that option and start looking at selling some of the units down.

So, is that – do I understand that to be the explanation you gave to the Commission yesterday as to the method of valuation?---Yes. Yes, because it was a – the property had different spectrums and different avenues of sale.

Now, just to be clear though: these 2010 valuations, they weren't requested by the bank, were they?---No. They were – that was when we thought – we were getting extremely concerned by the bank's misunderstanding of the portfolio and the rhetoric that was coming through. We said to them in all cases, it was very transparent. We said, "Look, we will pay for the valuations. You instruct them. You speak to the valuer, it's Matthew Page. He's involved with the presales, Knight Frank, so they have an understanding of what the real market is and what the sales are." Nick Codling spoke to them on numerous occasions with how the sales were going, how the valuation was to be formatted and it was to bring some common sense to the situation where if the bank was – and particularly Martin Waller was having problems understanding the file, we can sit down and work out what, if any, there is a problem. Because the underlying security is just getting better.

Now, if I can more forward then to the end of that year, and remaining on the question of valuations. You were told, were you not, that you needed another valuation?---Not – in 2011 we needed another valuation, yes.

I see. You refer in your statement to a discussion you had with Mr Longmuir?---Yes.

And when did you have that discussion with him?---Darren Longmuir had always been – not supporter. He's a great bank manager; he understood what he was talking about.

He was no longer on your file, though, by this stage, was he?---No. But we still kept in touch with him. Not regularly but, you know, we still kept liaising with him to see, "Look, you know, how is everything going?" He was interested in our case and we valued his support.

And you had – well, one of those discussions – those infrequent discussions you referred to, you had with him around this time?---Yep. And one of the discussions in early 2011, the building was coming to a close. We were getting very short of cash due to all the additional expenses that the bank was piling on us and, you know, additional raised interest but I said to Darren, "Look, when it's finished, what are we going to do?" And he said that he had spoken to the head of business banking and that we would be welcome to come back to the business banking department on completion of the building and management rights being assigned. We explained to him that we couldn't deal with Martin Waller any longer because, without being cruel to the man, he just didn't – he was out of his league, this depth of file. And he said no, he would apply to see whether it may be himself but, if not, he said it would be a responsible business banker who was used to this level of transactions.

Did you discuss with him a further valuation at that time?---He said on – they will have to have a valuation now for on completion, for it to come back to the business banking sector, and he would liaise with Nicole Tartaglia who was in the business banking department, or sorry the credit asset management department, who was an assistant to Jonathan Clements and Michael Hogan.

Did you subsequently have discussions with that person?---Yes. Well, then Nicole – and she copied in Michael Hogan – said they would like to have Troy Craig of Jones Lang LaSalle do the valuation. We did query it. We just said, look, we thought there was a conflict of interest because Troy had been paid a commission to second us to the bank, and they said – they came back to us and said, "Well, it won't actually be Troy," but they still want Jones Lang LaSalle to do the valuation. And we said we had no objection to that. Later, Michael Hogan was dealing with the valuation and we, at that stage thought that Michael Hogan was an employee of the bank but then found out he was a director of PPB advisory and solvency group, wearing the bank's business card, and – which again worried us in that position. He said that the valuation would have to be all in one line, and - - -

Just stopping there. You referred to Mr Hogan but in fairness, he was seconded to the bank, though, wasn't he, at that time? You now know that to be the case?---Yes, we looked at his LinkedIn profile and we saw that he was a director of PPB at the time.

And was he, you were dealing with him and with Ms Tartaglia at that time; is that right?---That's correct. Jonathan Clements very rarely spoke to us, it was always through Nicole or Michael.

I see. At this stage was Mr Waller involved in the management of your account?---Well, it was run by them, but occasionally you would get an email out of the blue from Martin Waller, of which we got one in January 2011, and he said that approximately we were at $2.2 million short to finish the project, and what were we going to do about it, and the bank reserved its rights to not continue on with progress payments. And we panicked when we saw this, and we contacted Nick Codling at 333, and he explained to Martin Waller, no, there was enough money in the facility. Mr Waller just didn't understand the facilities.

Can I return to the valuation that was obtained at this time. And I'm placing this, I think at about March 2011 when Ms Tartaglia called you to inform you that Mr Craig – that is Troy Craig of Jones Lang LaSalle – would do the valuation; is that right.?---That's correct.

And on what basis – or were you told at that time how the valuation was to be performed?---We were told – I had a good discussion with Troy Craig, as we had used him many times in the past and valued his opinion, and Troy told me that the instructions were quite strict. He had to do them on an industry set of figures, which was our initial complaint because we said, "Hang on, you're not going to take into account the actual turnover of Hadley's Hotel?" And also, in regards to that, at that time Simon McGrath, the chief executive of Accor Asia-Pacific, the world's biggest hospitality group, wanted to get involved. And he offered to meet the bank – which he did – and he also offered to meet Troy Craig and discuss the projections that he had set forward for the trading of the hotel because they were quite confident to go forward. He also said that it had to be valued all in one line, taking in no regards for the retail, the apartments, and the public car park. He explained to me – he said that was a specific instruction from the bank and he also said that his public liability only covered themselves to do all in one line valuations. So if it was going to valuation on a mixed use basis it was not one that he or his company could perform.

Could we take that one step at a time. In relation to the in one line valuation, you said that they wouldn't value – they wouldn't value certain aspects of the development. Can you explain that in a bit more detail?---He said it would be just valued as one complete asset. So retail – like, retail would work on – nearly 100 per cent of the rental is profit. Car parking, you're probably looking at 75 per cent of the revenue as profit. The apartments were selling – you're in the vicinity of 750 to $900,000 each, but they would have to be disregarded as apartments and considered a motel room, which you would be capping a motel room out at a quarter of a million. So instead of valuing them as three quarters of a million they would have to be capitalised in as a motel room. So that's when he said in one line, he just had to imagine it. It was one revenue stream.

Did you – obviously you have expressed concerns about this. Did you raise the concerns at the time with Bankwest?---We raised concerns a lot of the time. We sent quite a few letters to Nicole, to Michael Hogan, to Michael Clements. We also had discussions with them about it, and we also raised it in a quite lengthy letter to Troy Craig. One of the considerations, we also said to Troy Craig was, "How can you not take into account the actual trading performance when you are doing a valuation, especially when you have got the chief executive, Simon McGrath, personally wanting to get involved?"

The email you summarise – I won't take you to all of the documents, but I will take you to this briefly, just to ensure that the Commission understands the way you put your concern. If one goes to MED16, this is RCD.0024.0013.0209. Is this – I think it's on – there's no need to go back to the previous page, but I think this email was sent on 17 June 2011. Is this the email you were referring to in your evidence a moment ago?---That's correct.

And if you go to the top, or the second paragraph of the second page you summarise, or you say there:

> *We are looking at all the options at the moment in considering which will be the best one to go forward with the Inner Collins development. I know you are looking at valuing it at all in one line, however we feel there is significant value in the non-related key parts of the property, being its strata potential, penthouses, residential retail areas, etcetera.*

Now, is that what you were referring to a moment ago?---Yes, that's correct.

Was Mr Craig, at the time, aware of the other valuations that had been obtained?---I don't know. We certainly hadn't showed him the other valuations, as that wouldn't be ethically right to do, but we certainly would have discussed the value that we perceive in the different areas.

And did you also have discussions with Mr Craig at around this time?---Yes.

And what did he say in particular about this question of there being significant value in other parts of the property?---Well, initially, Troy passed it off to one of their other senior valuers and the valuation process went on for about five months. In the end, the other valuer declined to do the valuation and then Troy Craig had to get back involved with it, and said that he would personally have to do it, and we had lengthy discussions with Troy about the methodology and getting Simon McGrath involved, and what – all the retail we were able to arrange with him, appointments with the sales agents that were doing the pre-sales, so he would get a full understanding of the market and the conditions.

On the next page you say – you do actually refer to one of the earlier valuations, I'm not sure if you have provided a copy – but you say at the top of .0211, there's a discussion about some other refinancing which we will come to in a moment, and it says their value is Peter Grieve. Who is Peter Grieve again, if you can just remind - - -?---Peter Grieve is the tier 1 panel valuer for Knight Frank.

I think it was your evidence yesterday he was the person who did the - - -?---Sorry, Peter Grieve – no, sorry, Peter Grieve is CBRE, sorry. Matthew Page is Knight Frank.

The check valuation in August 2008; is that right?---Yes. That's right. Yes.

And you say:

> *We also note from Peter's valuation from August 2008 he valued the Inner Collins development, excluding Hadley's, in one line at $49 million.*

Do you see that?---Yes, at the top.

And you go on to say there that you – in the second paragraph.

> *I've attached the extract from the recent Knight Frank valuation that valued Hadley's, with the additional food and beverage component, exactly as what we are proposing now.*

Do you see that?---Yes.

And what was the – by way of summary, what was the difference between the way in which Matthew Page of Knight Frank had gone about doing the valuation with the valuation that was being proposed by Jones Lang LaSalle?---Two ways. One he took into account the trading and the projections by Simon McGrath. And the second one is that he valued it on its individual components because Knight Frank was involved in the presales. They could see the strength of the market and he knew that what they were selling for. And he valued the – knew what the strength of the car park would be, as well as the retail components and the penthouses. So it was valued taking into account each individual aspect of the motel.

And you – this email here you copied to Bankwest, did you not?---Yes.

And did you have other discussions over email and by phone with representatives of Bankwest about this issue?---There were multiple discussions. It wasn't something we just – we could see that it was set for doom. It was setting it up, and we are saying, "Hang on, you can't do it." And on one discussion with Darren Longmuir, I said to Darren – and Darren said to me – he said, "Look, let me speak to Nicole and Michael. It is what it is. It's a mixed use, it has always been a mixed use." And that was the last discussion I ever had with Darren Longmuir. He never came back to me after that.

Were the – and was there ever a response given as to the method that would be used ultimately be used by Mr Craig at Jones Lang?---Mr Craig, he said – on one occasion, he said, "My hands are tied. The instructions are it must be in one line and that's it." He said, "If I'm going to do it, that's how it has got to be done."

Did you pay for that valuation?---Yes, we did.

And did you see it at the time?---No. We were refused a copy of the valuation. So I went to Troy Craig and I asked him for a copy of the valuation and he said no, he couldn't do it. And then, after the companies were put into liquidation, both liquidator of Hadley's and the liquidator of hotels tried to get a copy of the valuations both directly or through the courts, and the bank always refused to give a copy of it.

So I take it then that you weren't asked to comment on any of the matters that you have just raised in a draft of the report or otherwise?---No.

And what were you told about the LVR covenant after the valuation had occurred?---We were told there by Michael Hogan, he said that – he said that Bankwest no longer had an appetite for this sort of development, especially in Tasmania. He said we would have to refinance. He said that there's a number of factors, including that the bank no longer wanted us as a client, he said, "The exposure is too big and it's not where we're heading." And he said also, "The fact that the valuation has come in and you are well exceeded your LVR." We said to him, "Well, what is the valuation?" And he said, "Look, I can't tell you." But he said, "You have well exceeded your LVR."

Well, by the time the valuation came in, I think the valuation – you obviously didn't receive it at the time, but you had discussions about it in about July 2011. This was around the time that the tranche 2 facility was about to expire, wasn't it?---It was – the building facility was about to expire, but we had already paid for the hedging of the funds out to 2013.

Why – you've mentioned about having hedged funds out to 2013. Why is that relevant to the refinancing?---Well, because we had never anticipated that we would have to leave Bankwest, and that's why we took the first tranche of the money to 2013. It was always of the opinion that that second tranche would be renegotiated on the completion of the building and then just rolled into one. And that's why, when we set the loan up with Treasury and with Darren Longmuir, the funds were all secured to 2013.

And did you have discussions about how you would manage that if you had to refinance with someone else?---There was no – never any discussion about it. It was always that we - - -

No. I'm now referring to around the time of the – and we will come to it in a moment, the completion of the development. Around that time did you have discussions with Bankwest about moving to another financier?---We were told we had to. So we went out and did everything we could, but it was extremely hard, with a building that's not completed yet, you know, to secure refinancing. And we were told we had to go.

And at that time, you were also – sorry, I withdraw that. The tranche 2 was to expire in, at the end of July, so that is the construction part of the facility. I think it's – to be fair, the company was struggling at this point to have enough money to meet its commitments and to get the project over the line; is that a fair summary?---Because we – the project had gone longer, we paid out all the money to additional professional fees, a higher interest bill, and the accountancy. We were running short of money, there was no qualm about that, but we could still see the project coming to an end and we had negotiated at that stage with Saville Hotels Mantra to come in as the management of the tower, and that was going to be marketed as Peppers of Hobart.

I see. And if Peppers was to run Inner Collins – that's the term I've been using – or the Tower, had you had discussions with them about a management agreement?---Yes, certainly. They were coming in on a 30 year management agreement. They were paying $3 million key money, at the – on taking over the property. Of that $3 million is – we had an outstanding liability to the ATO of 1.2 million and they entered into an agreement – a payment agreement with the ATO that they would pay out of their 3 million, settle our ATO debt. Now, the ATO debt was for importing goods from China for the development, and that's where – yes, the GST had not been paid on it, because we had spent it on all these other professional fees and that was where they were lined to come up. But for Mantra to settle, we needed a tripartite agreement signed – a non-disturbance agreement between the bank, ourselves, and the company Mantra, which is Peppers, for them to come in and operate the hotel.

Thank you. There are a number of issues that you just raised. Perhaps I can summarise them in this way: am I right, then, that in the middle of 2011, you've said that the company was having cash flow difficulties?---Yes.

And there was a debt to the Tax Office of about $1.2 million?---Yes.

And you were in the process of negotiating an agreement with Mantra to manage the serviced apartments?---Yes.

And you referred to the fact that there needed to be a tripartite agreement with Bankwest. Was that negotiated with Mantra and Bankwest at the time?---Yes, it was in negotiations.

And you refer in your – you produce in your statement – and I won't go to it – at MED21, a document, a payment agreement in relation to Peppers Hotel. Is that the agreement to which you refer by which Mantra was going to pay $3 million - - -?---That's correct.

- - - effectively on signing the management agreement?---Correct.

And those funds were going to be used – again summarising what you said, those funds were going to be used to pay the Tax Office and what other expenses did you have at that time that would have to be paid?---We had paid the builder who did the final works on the construction site, Voss constructions, which was about 500,000, to bring it up to Peppers' standard because it was all ready to open. And we would also knock out the business overdraft account.

And when was the – when was Inner Collins able to be occupied or when could Mantra have taken over?---There was a certificate of occupancy granted on 11 August. I note in Peter's comment saying, "There's no certificate of completion." But we don't know what a – there's no such thing as a certificate of completion. A certificate of occupancy is issued by the relevant building authorities to say that the property is fit for accommodation, ready to go into. So it was – they had also had their manager down there. They had their key staff on site.

Who is "they", sorry?---They is Mantra.

Yes?---The general manager for the hotel was there. They had advertised, they had their department heads. They were starting to fit out stores. The only thing in the hotel as way – a defect of note was that the washing machines that were delivered were top loading rather than front loading, so you couldn't lift the lid because the drier was on top, and that had to be changed over. That was the only significant thing that, you know, had to be changed over. And the TVs weren't yet hung on the wall, but they were on site.

So then we're referring here – you're referring to August as being the time when the certificate of occupancy was granted; is that right?---That's correct.

So from – just assuming September then, what was preventing you opening Inner Collins at that time?---Well, Mantra wouldn't go in and open it until they had their tripartite signed agreement, and they wouldn't pay the amount of money. So the hotel was sitting there ready to trade. We are coming up to Christmas, which is the peak trading time for Tasmania. We were desperate to get it open and get some revenue stream coming into it. We discussed the issues with Michael Hogan and Michael Hogan said to us, "Look, we are not going to sign that agreement because if you can't refinance we will probably want to put a receiver in and, you know, have it – sell it with vacant possession."

Did you have discussions with Bankwest about them signing the tripartite agreement?---Multiple discussions, yes.

And did you – you referred then to refinancing. You were trying to find other financing at the time; is that right?---That's correct, yes.

And did you have discussions with Bankwest about that and about what break fees - - -?---Yes, we – we were – everything was pretty transparent. There was nothing hidden. We were saying to them – we were on the phone every couple of days, if not more. And Harry Kelly was in constant contact with them from the credit aspect, and knowing the bank's procedures. And we said, you know, "We have got to get this signed, we've got to get it over the line, and we're trying to get refinance." And then Michael Hogan ..... out of the blue, a letter to us, saying, "Well, if you are going to leave us, you have still got to pay us $980,000 as a break fee." And we said, "Well, hang on, you are forcing us out and then you're saying we have got to pay $980,000 as a break fee." And I said, "But that has just made the refinancing impossible." And he said, "Well, we are not going to release our security unless you give us 980 grand." And he put that in a letter.

Well, I think you refer to that, and it's exhibit 23 of your statement?---Thank you.

Were you able to seek any other refinancing?---Not successfully, no.

And at this time the ATO was pressing for its $1.2 million, wasn't it?---Yes. In December when it got to the point where we couldn't – Peppers couldn't go in and operate the hotel, refinancing the – what we thought was going to happen, fell over. So at that stage we contacted the bank again and said, "Well, look, we are in this catch." You know, "What are we going to do? We can't refinance it. You know, you won't allow the hotel to open to retrieve some debt and pay the ATO off. If that's the case, we will have – we will be trading insolvently. Would they like to recommend an administer and we will liaise with that administer and put it into voluntary administration." Which would have fixed the ATO problem up, because they were an unsecured creditor, and we could have still liaised in selling the property or parts of the property to retrieve the debt over a structured .....

And what happened in response to that suggestion?---They gave us the name of two insolvency companies that we could go to. We spoke to PPB Advisory and decided that we thought they would be the best one to work with, as Michael Hogan worked for them and he knew the liaison of what was going on there. And we spoke to a gentleman in Sydney and he said, "Look, guys, I don't want to pull the pin out from you." But, he said, "The bank is going to appoint a receiver, so you are just wasting your money appointing us."

And were receivers then appointed?---That day, yes.

When were they appointed?---It was in early February 2012. Also, at that time we did have a binding heads of agreement from a company and we were negotiating that with Nick Codling at 333 for them to buy the Hadley's set of the property, which would have retrieved a massive part of the debt. And we welcomed Nick Codling to be involved with those discussions, so he could relay that through to the bank. In one regards it was a fire sale, because we knew that a receiver was, you know, breathing down our neck. We had no options. There was – we were pushed into a very tight corner. We couldn't pay the extra 980 grand to get refinancing, so the best way was to do a bit of a fire sale ourselves and try and retrieve something out of the embers. We went to the meeting with KordaMentha and we showed them the binding heads of agreement, how it had been done in discussion with 333, and David Winterbottom said "I see no cash on the table. I see no cash, that's irrelevant."

Who was Mr Winterbottom?---Winterbottom was the actual receiver, but his ..... were, "I just don't see any cash on the table, it's irrelevant."

And when the receivership commenced in early 2012, did you have any other further involvement in the hotels?---Well, when the receiver came in, we – we discussed with the receiver on the day that they came in, areas that there was some building defects, which although didn't inhibit the hotel from trading, we thought it was under our duty of care to say that I wasn't comfortable with some of the areas of the fireproofing in the building and they should, you know, get an external consultant to have a look at it. Saying, "It may be right, it may not be right, but I'm not comfortable with some of the work that has been done." Even though a full certificate of occupancy and a building permit had been issued.

And, to your knowledge, what happened then with the operation of the hotels after the receivers were appointed?---Well, that's where it even gets more bizarre, if you can say that. The building was built to a Peppers standard. There was over $180,000 worth of chandeliers on the ground and conference areas. They pulled all the chandeliers out and embarked on a refurbishing campaign. Now, the hotel had been built to Peppers of Hobart standard and for some reason the receiver decided they didn't like the décor. So the chandeliers came out, the café had a fit out of approximately 450,000 which was largely altered and thrown out. And the hotel had not traded yet, but it was already going through a major refurbish.

Are you aware when the hotel ultimately opened?---I believe the works they did on the refurbishing took them about five or six months and it opened in about May.

And you were in the process – during this time you also – you tried to stop the receivers doing various things through court action?---We did, and we just didn't want the build to be run up further. We were still very hopeful that we may be able to put together a rescue deal and buy it out. At that stage David Winterbottom barred me from entering the hotel. He said – and I had only been back once – he said I was a distraction and critical of him.

And as matters transpired, the property was sold, wasn't it?---The property was sold, yes.

And you weren't in a position to buy it back?---No. Unfortunately not.

And then thereafter what actions were taken against you personally?---Well, then, they called in intercompany loans. There was a hotel that we had in Ross, which was our last source of income there, and it was around April. They said that they were going to – we want to give them 14 days to get out of that hotel, because of the – they were drawing in all the intercompany loans. We expressed, "Look, we are still in a position to hopefully refinance." We still had some really strong prospects to be able to bring that to the table and they said that they would give us a six week extension on the basis that we sign a document acknowledging that they had done no wrong and the bank had acted always in a proper manner. When that was done, we thought it was done totally under duress. We were very stressed by it. We sent copies of that to Senator Williams and Senator Bob Brown and the feedback we had from them was, "Look, you have got nowhere to turn, you are being blackmailed, Michael. Just take it up and hopefully someday it may come back in a later forum."

And what steps were then taken against you and the other guarantors?---Well, we were totally bankrupted and lost houses, the whole scenario.

Thank you, Mr Doherty?---Thank you.

THE COMMISSIONER: What sale price did the receivers obtain for the property, Mr Doherty? What sale price?---I don't know. They wouldn't tell us.

Yes. Ms Collins.

<CROSS-EXAMINATION BY MS COLLINS [10.30 am]

Mr Doherty, my name is Elizabeth Collins, and I am counsel for the bank, and if I may I will just ask you a few very short questions?---Yes, certainly.

And if at any time you want me to show you one of the documents I refer to, please let me know, and I will have it called up. You recall that Mr Dinelli asked you some questions about an email that you sent to Mr Troy Craig which you annexed to your statement on 12 June 2011, which you started:

> *We are looking at all the options.*

Do you recall that he asked you some questions about that?---Yes.

And it's right, isn't it, Mr Doherty, that in June 2011 the options that you were looking at included selling parts of the Inner Collins development?---Yes.

And another option you looked at was retaining the whole of the Inner Collins development and refinancing?---Yes.

And it's the case, is it not, that you had some discussions in relation to refinancing with Tasmanian Perpetual Trustees Limited and you had those – had had those discussions with Tasmanian Perpetual Trustees by no later than Feb 2011; is that right?---By no later?

Yes?---Discussions were ongoing right throughout 2011.

I see. Do you recall that you in fact put a proposal to Mr Codling of 333 in February 2011, and I will just go through the three elements of the proposal that I want to ask you about. Firstly, you would sell levels 3 and 4 of Inner Collins for about $7 million?---Yes.

Secondly, you would obtain a loan from Tasmanian Perpetual Trustees of about $16 million. Do you recall that?---Yes.

And that would leave Bankwest remaining debt at about $30.3 million?---Yes.

And that was a proposal submitted to Mr Codling on behalf of the bank or as agent for the bank in about February 2011?---Mmm.

Do you recall then that some months later you indicated – in May 2011 you indicated to Mr Codling that you wished to retain the whole of Inner Collins?---Yes. In between that there was discussions with Michael Hogan and Michael Hogan made the comment "Hey, you're not going to sell half the building and leave us with half the assets sold. We won't – we won't have a bar of that."

I see. So that was a May 2011 proposal. And then can I suggest to you that by September 2011 you had put a refinance proposal to the bank, via Mr Codling, whereby you would borrow about $24.5 million from Tasmanian Perpetual Trustees; do you recall that?---Yes.

Of which you would pay $20 million to Bankwest, but you would use the balance, so roughly four or $5 million in order to funds the costs nest to finish and open the hotel; correct?---May you bring that up?

I can, yes. Can I just ask you this question: do you recall putting that proposal, or you don't recall it?---If you could bring it up. I would like to have a look at it.

So it's – I don't have a document from you which records you put that proposal, but I can show you a document that is annexed to Mr Clark's statement which was prepared by 333 recording you put that proposal, if that would assist you?---Yes. Because we weren't given access to Mr Clark's documents.

No. But I'm asking you about what you put to 333 and if you recall putting a proposal?---We put everything in writing, and if it's in a letter, we put it.

But you – is this your answer: you don't recall one way or another whether or not that proposal was a proposal you put?---As I mentioned, we had our chartered – our director of finance, Harry Kelly, who had 34 years as senior IA at the bank. Put everything documented, so if it's in his document trail, it will be there. If it's not documented from us, I would like to see who documented it.

I see. While we are just getting the document reference, I will just come back to that. You answered some questions from Mr Dinelli in relation to a liability to the ATO. Now, that was a liability of the company called Hadley's Proprietary Limited; is that right?---What's that, sorry, the - - -

I'm sorry. A liability of the company Hadley's Proprietary Limited?---No, I think it was Hampton Road.

I see. Do you recall that Hadley's – I will ask you this question, Hadley's Proprietary Limited was the registered proprietor of the land on which both the hotel and Inner Collins development sat?---No. I think it was KMC Investments.

I see. The liability to the ATO was in an amount of about 1.2, \$1.3 million; is that right?---Yes.

And that was in respect of GST liability and also PAYG?---You said the liability to the hotel, was it?

No.

THE COMMISSIONER: No, she said the liability to the ATO?---The ATO, sorry.

Was a 1.2 to 1.3 was the question?---Yes. That's correct.

MS COLLINS: I'm asking you about the make-up of the liability and I'm suggesting the liability comprised both GST liability and also pay as you go, or PAYG liability. Do you recall that that's right?---I doubt it would be PAYG, because the hotel accounts were done by Accor and as Accor do the standard accounts for hotels globally, and they were due – they were responsible for our compliance. So I doubt it would be PAYG.

Could I ask, please, that the document CBA.0001.0319.5402 be called up, please. Now, Mr Doherty, I think you indicated in questions to Mr Dinelli that you have read the statement of Peter Clark prepared on behalf of the bank; is that right?---Yes.

And have you read the annexures to Mr Clark's statement?---No.

I see?---They were not made available to us.

Thank you. So just to orient you, this is exhibit PNC26 to Mr Clark's statement and it's a report of 333 Real Estate, September 2011. And can I ask please the operator to bring up page 5408. And if you wish to take some time just to read for yourself, Mr Doherty, the bit in the box at the bottom under the heading Refinancing Proposals. That's what I'm going to ask you some questions about?---Yes. The 333 report that we were given is different to this 333 report.

Okay. Can - - -?---So this is a different document to the one that I've got here.

Can I just ask you this: can I ask you to read those three paragraphs in the last box next to the words refinancing proposals and then the question I'm going to ask you is if that was a proposal you recall putting to 333 in September or around September 2011?---Who is BABL?

THE COMMISSIONER: All I can come up with is Bendigo Adelaide Bank Limited, but that's a guess.

MS COLLINS: Commissioner, you are absolutely right. Bendigo Adelaide Bank?---Okay.

So Mr Doherty, my question is just if you have a recollection of putting a proposal to that effect to 333 or Bankwest?---Every people we put forward was in writing. There was no verbal communication of an important thing of that nature. If it's in our writing we put it through. I couldn't recall, on a document which is different to the document that I've been given, just been put in front of me there, exact – exact. But there are many options we were exploring with the bank to refinance. But as I say, this is not the document the bank gave me.

But I'm asking you about the substance of the proposal?---Yes.

And as I understand it, your – and tell me if I'm wrong, please. As I understand it, your evidence is that you do not recall putting a proposal of that substance to 333 or Bankwest?---We put many proposals forward to the bank of how we could work through the issue. To say that is exactly what was put forward, I would have to relay it back to our correspondence to the bank.

Thank you, Mr Doherty, and just one final question. You were asked some questions by Mr Dinelli in relation to the expenses that were left to the Doherty Group towards the end of 2012 in order to finish the construction and open up the hotel. And you indicated, I think, that you referred to the liability to the ATO in the sum of about 1.2, $1.3 million. Do you recall that?---Mmm.

Now, it's the case wasn't it, that at that time you also – the Doherty group also owed Accor about $1 million in outstanding fees; is that correct?---That Accor was a break fee.

I see. But do you accept that that – let me ask you this question: When you say that fee, do you accept that the fee outstanding - - -

THE COMMISSIONER: I thought he said a break fee. Can we work out what he said?---It's a break fee.

MS COLLINS: Can you explain to the Commissioner, please, what you mean by that?---If we terminated the agreement with Accor, there would be a break fee payable.

I see. And at that time, you also had a liability to Gunns who were the builder, or a Gunns subsidiary, through the arbitration process of about $1.2 million?---No, totally wrong.

I see?---Gunns – the other way. Gunns were on $5700 per day liquidated damages for any day after 10 December 2010 for the construction. So Gunns would have owed us somewhere in the vicinity of about $3 million. Now, that was an avenue that could have been explored, because we were holding $3 million bond from Gunns. However, Gunns went into liquidation. The liquidator was also KordaMentha, and KordaMentha refused to action on the bond that we were holding.

Thank you, Mr Doherty. And the solicitors you retained to act on your company's behalf in relation to the dispute with Guns over defective work was a firm called Page Seager; is that right?---That's correct.

And you retained them personally; is that right?---The company did, yes.

I see. And ultimately, you owed – or your companies owed Page Seager a sum of about $600,000 - - -?---Yes.

- - - towards the end of 2012, which was not paid?---That's correct.

Is that right? And it was Page Seager who took proceedings to the Federal Court to have you declared bankrupt?---In conjunction with Bankwest.

Well, I want to suggest to you that it was Page Seager who presented the creditors petition?---No. I think if you do further investigation you will see there's correspondence where Bankwest and Page Seager agreed to do it.

Thank you, Mr Doherty. I have no further questions?---Thank you.

THE COMMISSIONER: Thank you. Mr Stapleton, is there anything you have? No? Mr Hodge? Mr Hodge – Mr Dinelli, sorry.

MR DINELLI: No, no further questions.

THE COMMISSIONER: Yes.

MR DINELLI: If Mr Doherty can be excused.

THE COMMISSIONER: Thank you very much Mr Doherty?---Thank you. You may step down. You are excused.

<THE WITNESS WITHDREW [10.42 am]

THE COMMISSIONER: Now, Mr Dinelli, where now?

MR DINELLI: Thank you, Commissioner. The next witness will be Mr Peter Clark of CBA and I might invite my learned friend, Ms Collins, to call him.

MR SCERRI: It's not Ms Collins, Commissioner.

THE COMMISSIONER: Mr Scerri.

MR SCERRI: Can we have five minutes just to reorganise ourselves, please. It's Dr Collins, Commissioner.

THE COMMISSIONER: Right. If I come back at – is it, sorry, Dr Collins calling.

MR SCERRI: Dr Collins is calling Mr Clark – Dr Higgins is calling –

THE COMMISSIONER: Someone on behalf of CBA will call the witness.

MS COLLINS: I'm sorry. We will sort out our housekeeping, Commissioner.

MR SCERRI: It's my fault. I apologise.

THE COMMISSIONER: I think I need to take 5 minutes, Mr Scerri. I will come back at 10 to 11.

ADJOURNED [10.43 am]

RESUMED [10.50 am]

MR SCERRI: Commissioner, I apologise for that confusion before.

THE COMMISSIONER: Somebody on math of Commbank is going to call the witness. Ms Collins.

MS COLLINS: Yes. Hopefully I will get his name right, Commissioner. I call Peter Nathaniel Clark.

<PETER NATHANIEL CLARK, AFFIRMED [10.50 am]

<EXAMINATION-IN-CHIEF BY MS COLLINS

THE COMMISSIONER: Thank you, Mr Clark. Do sit down.

Mr Clark, your full name is Peter Nathaniel Clark?---That's correct.

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

And you are the chief credit officer of Commonwealth Bank of Australia?---That's correct.

You have received a summons to appear before this Commission?---I have.

I tender the summons, Commissioner.

THE COMMISSIONER: 3.100 summons to Mr Clark.

EXHIBIT #3.100 SUMMONS TO MR CLARK

MS COLLINS: Please the Commission.

Mr Clark, you have made two witness statements in relation to this Commission?---That's correct.

If I deal with them – I will deal firstly with the statement which is in relation to the Bankwest, Mr Weller case study of rubric 3-28. You have made a witness statement dated 27 May 2018?---That's correct.

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

I tender that statement together with its exhibits.

THE COMMISSIONER: Statement and exhibits of Mr Clark dated 27 May 18 relating to rubric 3-28, exhibit 3.101.

MS COLLINS: Commissioner, I have just been – I'm sorry, I made a mistake, it's actually 3-24, not 3-28. I do apologise.

THE COMMISSIONER: Rubric 3-24. Thank you.

EXHIBIT #3.101 STATEMENT AND EXHIBITS OF MR CLARK RELATING TO RUBRIC 3-24 DATED 27/05/2018

MS COLLINS: And Mr Clark, you have made another statement in the matter, rubric 3-25, in the matter of the Bankwest, Mr Doherty case study?---That's correct.

And you have a copy of both those statements with you in the witness box?---I do.

Is the contents of that statement true and correct?---It is.

I tender that statement together with its exhibits.

THE COMMISSIONER: Statement of Mr Clark and its exhibits relating to rubric 3-25 is exhibit 3.102.

EXHIBIT #3.102 STATEMENT OF MR CLARK AND EXHIBITS RELATING TO RUBRIC 3-25

MS COLLINS: Thank you, Commissioner.

THE COMMISSIONER: Yes, Mr Dinelli.

<CROSS-EXAMINATION BY MR DINELLI [10.52 am]

MR DINELLI: Thank you, Commissioner.

Good morning, Mr Clark, my name is Albert Dinelli, I'm one of the counsel assisting the Commission, and I would like to ask you a few questions this morning about the case studies of Mr Stephen Weller and Mr Michael Doherty. Have you been in the hearing room to hear their evidence, Mr Clark?---I have.

And am I right that you are the chief credit officer of the Commonwealth Bank?---That's correct.

And you've been in that role since March 2014?---That's right.

And in that role you are responsible for the credit management of facilities that have been classified as troublesome or impaired assets?---That's correct.

And you are also – in that role, you are responsible for a group within the bank called Group Credit Structuring; is that right?---That's right.

And am I right that Group Credit Structuring, some time ago, merged with – or CAM, credit asset management of Bankwest became part of that; is that right?---That's right.

And in your statements you've given evidence in response to the circumstances – in your two separate statements. One you've given evidence in response to Mr Weller's then outline of evidence, and Mr Doherty; is that right?---That's right.

Did you have any personal involvement in either of their cases at the relevant time, Mr Clark?---In Mr Weller's case I'm not aware of any personal involvement at all. In Mr Doherty's case I think, subsequent to the receivers' role, I think I had one or two emails in a final write off and the losses right at the end, but that was the extent of my involvement.

I see. And we will come to that. I might ask you some questions - - -

THE COMMISSIONER: I just ask you to keep your voice up a bit, Mr Clark, if you wouldn't mind?---Certainly.

Thank you.

MR DINELLI: Aside from those matters – which we might touch on – aside from those matters, your evidence in respect of both those former Bankwest customers is based on your review of the relevant material; is that right?---That's right.

And discussions you've had with other people?---Yes. Discussions with people within Bankwest and CBA.

Thank you. Perhaps I can start by taking you to Mr Weller's evidence. You heard evidence yesterday in relation to his business facility through a company known at Bainbridge Enterprises Number 1 Proprietary Limited?---That's right.

And that was the vehicle through which, initially with a business partner and later just he and his wife, purchased the Nambucca Hotel?---That's correct.

And that facility was initially entered into in 2005; is that right?---That's right.

And it was extended – sorry, it was increased, that is the level of the facility was increased in 2008 so as, amongst other things, Mr Weller could buy out his business partner?---I think that was the sole purpose for the increase, but yes.

And at that point the facility totalled $3.725 million?---I think that's right, yes.

Can I ask that the facility itself be brought up CBA.4000.0074.7956. And this is the facility that was entered into in 2008; is that right?---It looks like it. I can't see any dates on it, but - - -

It may assist you if we go to the signature block, just so you can properly identify it. Or, perhaps more conveniently, we just go to the page prior. It's a letter dated 2 June 2008 which was sent by Bankwest to the directors of Bainbridge?---That seems right, yes.

And just to be clear: CBA at this stage didn't own Bankwest?---I think – CBA purchased Bankwest I think in December 2008. So not at this stage.

So in June, before CBA became its owner, Bankwest had entered into this facility or these facilities, if I can go to the next page and in fact that's where I took you to, I think, initially and mistakenly. What does the expiry date of a – to which there's reference on this page about point 7 of the page, what is a facility expiry date?---That was when the facility finally expires, is due to be no more. I'm not quite sure how I can explain an expiry date. It is what it is.

Quite an existentialist answer, Mr Clark. Perhaps I'm overcomplicating it. The expiry - - -

THE COMMISSIONER: All I can hear is dead parrots, Mr Dinelli, I'm sorry.

MR DINELLI: 15 years from initial drawdown is indicated there. That's the date upon which the entirety of the facility is to be paid off, the principal and interest and, to use your term, it's to be no more?---That's correct.

Thank you. And there's an indication there of – and this is common in a lot of the documentation that you will have seen in preparing your statements, it says 15 years from initial drawdown date. What is the initial drawdown date for the purposes of these facilities?---So I think in relation to this particular facility, it was probably the settlement of the advance of the additional funds. So the buyout of the partner. So I think that was the additional $700,000, so it would have been the day that that actually occurred and the refinance of the existing debt. I think that's what that means.

I see. And that occurred, I think sometime in June. It matters not, I think it might have been 23 June, that that payment was made and that's the beginning of the 15 years; is that right?---That's correct.

Was it – and accepting that you personally, obviously, had nothing to do with this particular facility at all, but certainly at this time, do you understand it to have been the usual practice to have facilities of this length?---I think, from what I understand of Bankwest, it probably wasn't that unusual for Bankwest. In my banking experience it's perhaps a little more unusual.

Why is that? Why is it perhaps more unusual?---I think, you know, longer term, 30 years are for home loans. Project finance type transactions, where it might take a long time for repayment, could be 10, 15 years. Commercial transactions normally beyond five years is fairly rare, in my experience.

I see. And can I explore some other parts of this document with you briefly. If one goes to the next page, there is – so it's 7959, you will see – which again I imagine is the case with all such documents – there is a reference to the securities and there was security over the hotel itself as well as assets, as well as a fixed and floating charge. Do you see that?---That's right, yes.

And that included all assets and undertaking including liquor and gaming licences?---Yes.

We will come to this later, but that included poker machines for example, that were being operated at the Nambucca Hotel?---I think all the assets of that company were designed to be incorporated in that security.

I see. Mr Weller didn't give his home as security, did he - - -?---No, he didn't.

- - - on this facility. And there are what are described at 6.5 at the bottom, financial undertakings. Do you see that?---I do.

And if one goes over the page – and you would have heard Mr Weller give evidence about these covenants yesterday, perhaps at the top, if that can be increased. There's the interest cover ratio and the debt service ratio. What is an interest cover ratio?---So that's a ratio that attempts to measure the cash flow surplus above the interest obligations of a borrower. So in this case I think they're using EBITDA which is earnings before tax and amortisation of a borrower, so it's a proxy for pre-debt servicing cash flow, divided by interest. So an ICR above two times suggests the business generates two times as much cash as is required for interest payments.

So – and what's the purpose of that covenant from the bank's perspective?---I think it's part of prudent management by the bank of the credit exposure that it has written. It sort of allows it to compare the performance of the business to the forecasts and the expectations. I think it also is useful from a borrower's perspective as to how he is tracking. If his ratio is performing above that level he can feel comfortable, I think, in how his business is actually operating.

And then the debt service ratio, can you explain that, Mr Clark?---So that's similar. The enumerator, I think, should be CFADS, not CAFDS. I think that's a typo. But CFADS is cash flow available for debt service, which generally takes EBITDA, adjusts for working capital movements as well, to try and – EBITDA is more an accounting construct. CFADS is more a cash flow, attempt to more accurately measure cash flow. So CFADS is used as a proxy, in that sense, from EBITDA and divided by total debt service, which includes interest plus scheduled principal payments. So it's the entirety of the debt service obligations of the borrower over the period of time that we are talking about.

And does it have a similar purpose to the purpose of the interest cover ratio?---Yes. So it includes – the total debt service, obviously, is a higher number because it would include many scheduled principal payments. So that's why the ratio is slightly lower.

And – excuse me – an each of them have a requirement of, in this case, respectively two times and 1.5 times. Are those ratios set or are they worked out on a case-by-case basis in your experience?---I think the answer is probably both to those. So I think in some particular industries there may be a policy around requiring particular covenants and a particular level of covenants. In others there may not be those requirements, but I would suggest that prudent banking would suggest these are probably a good idea to have these type of financial covenants.

And, in fact – well, are they part of business loans currently offered by CBA?---Yes.

And essentially your evidence as to their purpose is it essentially it gives – it evidences the health of the business and relevantly the ability to pay off the relevant facilities?---That's correct.

And if you breach one of – if one breaches one of these, that's a breach of the facility?---In this case, yes.

In the same way that if you fail to meet a payment, that's fail to meet an interest payment or an interest and principal payment, that too is a breach?---They are both breaches. I think the importance of the two probably would be treated differently by a bank, but they are both breaches generally.

Well, why would they be treated differently by the bank?---So I think failure to meet a payment of interest or a scheduled payment of principal or failure to meet the amount owing at the expiry of a loan, I think is seen as a fundamental breach of the terms of the contract. The financial covenants we just talked about, ICR and DSCR or DSR are more indicative of the financial performance. I think they're seen as guidelines. They may – legally may well be breaches of the loan contract, but I think it's very rare, in my experience, for a bank to actually call a default and demand repayment as a result of a breach of one of these ratios alone.

And you're aware that during the time that Mr Weller had his facilities with the bank, he did indeed breach the ICR and/or DSR ratios on a number of occasions?---Yes, I did see that.

And you are also aware, however, that he never breached any of the repayments that were owing during the course of the facilities?---Well, I'm not sure that's actually correct, Mr Dinelli. I think there were significant payment breaches at the back end of his facilities.

Well, that was after the period that the bank said that the facilities, though, had expired, hadn't they?---I'm trying to recall the particular timing of when the breaches first occurred, but I think in – I may be confusing it with the other case, Mr Dinelli. So - - -

You wouldn't be the first to do that, Mr Clark, rest assured?---But yes, from memory there were significant financial breaches, arrears, non-payments, by Mr Weller.

Let's be clear about that, just so we can place it. But those financial breaches occurred – as I understand the bank's position, occurred on the non-repayment of the entirety of the loan at the end of the facility?---I think that is true, but from memory I think there were also something in the order of 226,000 of arrears at the time receivers were appointed in this matter. That's in addition to the non-payment of the principal.

That's – that is correct and that's the subject of your evidence, but those arrears arose, just to be clear, after – maybe I will place it for you. The deed of forbearance which was entered into between the bank and Mr Weller, which is part of your evidence and also was exhibited to Mr Weller's statement, was entered into in January 2013?---That's correct.

And the $226,000 of arrears to which you refer when the receivers were appointed were as a result of breaches – well, sorry, I withdraw that – were as a result of payments being failed to be made after that date?---You've jogged my memory, Mr Dinelli. So I think the facility expired around 10 January.

It did. 2013?---And so those breaches were after that time.

That's correct?---You're right.

So to return to the initial question, during the course of the existence of the facilities – and they changed in time, and obviously I'm going to ask you some questions about the length of the facility in a moment – but during the course of the facility from this date until January 2013, that is immediately before its expiry, there were no monetary defaults on the loan?---I think that's correct, yes.

And, in fairness, as you've said – you did say, however, you answered affirmatively that there were a number of non-monetary defaults?---After that time.

Sorry, the non-monetary defaults happened during the course of the facilities. Non-monetary defaults?---That's right.

Yes. But no monetary defaults?---That's correct.

Just one final question about the facility itself. It didn't have an LVR covenant. That's right, isn't it?---I think that's correct.

And in your experience was this something that was typically not included in Bankwest facility agreements?---Well, this was 13 or 14 years ago. I'm not sure I can really speak sensibly to that question. I'm surprised there was no LVR, but that's from my current knowledge, not from knowledge of - - -

Why were you surprised using your current knowledge?---I think lending to a pub with this amount of leverage I would have thought an LVR covenant would be a sensible covenant to have from a bank's perspective.

And in fact that would be the policy of CBA now?---I'm not sure it's policy. I think it's good banking practice, if I can put it that way. It may well be policy, but it's certainly good banking practice.

Now, what I would like to take you to is in 2010 there was a negotiation with Mr Weller about the terms of the facility. Do you recall that, from your review of the materials?---Yes.

And there was to be a variation of the facility?---That's right.

And to this time, the facility was – so in 2010, on the basis of your evidence that the financial drawdown was made around June 2008, there were still 13 years to run on the facility?---I think that's correct.

Before we go on, I might just provide some background. Around this time in the background there was – Project Magellan was occurring; is that right?---I understand so, yes.

I know you weren't involved in Project Magellan, but you're aware of its existence?---Yes.

And I will ask more questions of your colleague Mr Cohen about how that project worked and what it set out to achieve, but relevantly for the purposes of Mr Weller was – are you aware whether the Bainbridge facility was the subject of Project Magellan?---I understand it was reviewed as part of Magellan, yes.

And do you know what basis it was chosen as one of the facilities to review?---Not specifically, other than I think pubs, hotels generally, were part of that review above a certain amount of exposure. But why specifically it was identified, I'm not aware. But I'm not surprised it was part of that.

And are you aware what assessment was given to Mr Weller's Nambucca Hotel by Project Magellan?---I am.

And in fact it was recorded, was it not, in a document to which I will take you, PNC48, which you is CBA.4000.0029.8954. What's this document, Mr Clark?---It appears to be the Project Magellan review of Bainbridge and Nambucca Hotel.

And if one goes to the second page. I think it was Mr Goldsmith, who was then Mr Weller's business relationship manager, he said there:

> *Account conduct has been satisfactory and information provided in a timely manner.*

And skipping that next sentence:

> *We have a good relationship with the client.*

And, of course, he hadn't been in any monetary defaults at this time. If one goes to the next page – sorry that was just confirming that, of course, he hadn't been in any monetary defaults at the time of Project Magellan?---I think that's – that's true.

And then there was the review panel – sorry, the review that in this case was done by Ferrier Hodgson. If one goes to the second page of that, there's some conclusions under the heading Recommendation Summary. Do you see that?---I do.

And it says:

> *The hotel appears to generate stable earnings which are sufficient to service debt and scheduled principal repayments.*

Do you see that?---I do.

And then "security value in relative terms is holding". And then there's a reference here to "fixed interest rate ends in June 2010". Just recalling what we discussed previously, I think Mr Weller had an interest – a period where there was interest only, didn't he, for two years?---That's correct, yes.

And just to deal with the outcome of Project Magellan, it was green. What did green mean at the time for Project Magellan?---Well, I assume it means no issues, no problems, it passes. I think I've seen others in my extensive experience of two Magellan files that I've looked at was a different colour. So I think green indicates pass.

Well – and you will see in relation to Mr Doherty, reference to double red - - -?---That's right.

- - - and we will come to that?---Can I – sorry, Mr Dinelli, just the comment about the fixed interest rate ends.

Yes?---I think – just to be clear, I think Mr Weller had split the facility. So he had the ability to actually have part floating, part fixed. So I think that's what that's referring to.

Thank you for that?---The fixed interest rate ends in June 2010.

In fact it might be that, fairly, I should have taken you to where it says, Future Action, right down the bottom, the second dot point:

Ensure amortisation commences in June 2010.

That's a reference to the fact that there has got to be some principal repayments?---That's right. The fixed interest rate is a slightly different issue.

Yes. Correct. And that was my fault, I apologise. So at least at that time, when Magellan was done, the hotel did not need to be transferred to CAM – to credit and asset management by reason of Project Magellan?---That's correct.

Now, Bankwest made an offer to Mr Weller to extend the Bainbridge facility in August 2010. You're aware of that?---That sounds about right.

Well, it might assist you – and obviously we're talking about some time ago and also matters of which you don't have personal knowledge. But if I can take you to PNC51, CBA.0001.0318.1981. What's this document, Mr Clark?---Well, it appears to be exactly as headed: Credit Risk Facility Amendment. So that's a paper from the relationship team to credit, normally, for approval of some amendments.

I see. And when was this document produced?---I think, Mr Dinelli, I might need a little more help to answer that question. It doesn't seem to be on the face of the document, unless it's in the body of it.

No. And in your statement you say, if you will bear with me, in July 2010. So just to place this, this is about to be the period – it's about two years into the facility and this was prepared by, if I understand correctly, the business relationship manager, Mr Goldsmith. In light of the forthcoming expiry of the 24 month interest only period, a recommendation was put in the form of this – in the form of this document, the Credit Risk Facility Agreement. Who would this go to, Mr Clark?---So without being cute about it, I mean, this is one front page of a document that I can't see a date on. But assuming - - -

It's dated – according to your statement, it's dated 16 July 2010?---But as I said, I think before, this would normally be produced by the relationship manager for the relationship, and put to credit for approval.

I see. And would contain a suggestion – I'm speaking generally now, a suggestion from the relationship manager to credit as to what should occur with the facility going forward?---That's correct.

So if one goes to point 1983, under Approval for Restructuring Facilities Due to Upcoming Expiry of Fixed Rate Portion of the Flexi Protect Product; do you see that?---I do.

And the author says in the paragraph underneath the dot points:

The original approval –

perhaps that can be blown up, those two paragraphs, if that's not inconvenient.

The original approval allowed for a 15 year term in total with the first two years IO.

Which is a reference to it being?---Interest only.

Interest only, thank you:

As noted in previous papers amortisation is due to now commence for this facility. The amortisation is seen as crucial as the evaluation completed in August 2009 came in at 4.53 million, meaning that the LVR is 82.22 per cent.

And then there is reference:

Although Project Magellan has decreased this amount, 4.3 million, meaning the LVR should be 86.6.

Do you know what is meant there by Project Magellan decreasing the valuation?---Yes. I think if we went back to the Project Magellan pages you had up, I think somewhere in that there is a comment from the reviewer that they thought the valuation that we held was probably a bit high and that it should be the 4.3 figure, I think was mentioned in that Project Magellan paper.

I see. And then if one goes to, or if you can pick up the next two paragraphs, starting with bold "Borrower". So then – this is preceded by:

We seek business credit approval for the flexi protect facility to be closed and our TAE to be restructured as follows.

Now, then there's a reference to the facility, the size of the facility, and that the term be 13 years. Do you see that?---I see that.

And a reference to the commercial advance product rate being used plus a margin of 2.74 per cent. Do you see that?---I do.

And then a bullet payment. What's a bullet payment, Mr Clark?---So that's when a facility doesn't fully amortise over its term and there is an amount left at the end. So an interest-only five-year loan of $100 would have a bullet payment of 100 at the end, effectively the same amount. A facility that amortised, you know, to half over its term would have a bullet payment of half the amount left at the end. So that's what the bullet refers to.

And there was a realisation then by both the bank and by the client, by Mr Weller, that – or at least – perhaps I can quote what is said in the paragraph preceding that:

Our client Stephen Weller believes, and we agree, that they –

being the owners –

would not be able to service this facility without placing undue pressure on the business thereby affecting both our serviceability and security position.

So that was a relevant factor in deciding what would be the appropriate facility going forward?---Yes. I think to put it in some context, if I could, this facility originated at a smaller amount in 2005 as a two-year interest only with 13 year repayments. We are now, I think, in 2009 or 2010, there has been no principal payments over that period of time. So, effectively, it's grown and that interest-only period has been extended and rolled. At origination, the fully amortising was going to be about 30,000 per month on the original facility. The calculation in this document, I think, is something in the order of 39,000, I think, from memory.

That's right?---Per month. So, you know, higher than it was back in 2005, was the estimation, but the facility is larger. But Mr Weller is not comfortable and the business agrees, I think, that that's too much for him to pay to fully amortise. So that's why this bullet structure was proposed to accommodate that.

Now, that wasn't put to – that offer that was discussed here wasn't actually put to Mr Weller, was it?---I'm not sure whether that was actually put to Mr Weller. I think there were a series of negotiations - - -

There were?--- - - - and counter-proposals and comings and goings, if you like, before a final agreement was reached.

And in fact, if I can take you to the next document, PNC52, CBA.4000.0075.1407, this is a further submission which seems to have been made by Mr Goldsmith; is that right?---This looks like an approval paper, I think.

Well, this is only a two page document and I was going to ask you about it and how it fit with what was in the previous document. If one goes to the next page, and you will see on the fourth dot point down, "Max term: five years." Do you see that?---I see that.

Are you aware as to why the term that had been suggested in the previous document of 13 years was now being suggested to be five years?---I don't – I don't know.

And then if one goes to the next document, PNC53, which has just come up, you will see that there's an email from a Mr Greentree to Gary Goldsmith, who is the person who put in those submissions. And the main paragraph there says:

As discussed yesterday, may you please approve the change in term from five years to two years for the proposed CADV.

So this suggests that the term was being then approved down from five years to two years. Do you see that?---I do see that, yes.

Do you know why that change was being made?---I don't know. As I said, in response to an earlier question, there was lots of toing-and-froing conversation with Mr Weller. I don't know whether this was in response to that or not.

There were discussions with Mr Weller but, just to be clear though, at this point there hadn't been anything put to Mr Weller yet. Are you aware of that?---Not specifically, in terms of the timing of when that happened.

The first offer that Mr Weller received, which is the one upon which he gave evidence which you heard, that he was unhappy about the length of the term, was sent on 4 August 2010. My question to you is – and it might be that you cannot assist – but why it appears that the documents internally within Bankwest accept the 13 years, which was still to run, then it became five years, and then it became two years. Are you able to assist as to why that occurred?---So I think I responded on the five year one. I don't know.

Yes?---On the five to two, again I don't know, unless there had been communication with Mr Weller around that change and I don't know if that was the case or not.

Well, his evidence where the discussions occurred I think will become apparent now. I don't know. He didn't give evidence as to exactly in July what discussions?---And they may well have been subsequent to this date. I - - -

The offer that was made on 4 August is the next document, PNC54. You've seen this document before. This is PNC – in preparing your statement, of course. This is the variation that was sent and if you go to the second page, one sees that the facility expiry date there is 24 months from the initial drawdown date. Do you see that?---I do.

Now, you heard, then, the evidence of Mr Weller yesterday about the discussions that occurred, and I won't take you to the emails unless you would like me to, but there was discussion then in emails between him and Mr Goldsmith about why there was – why the period had been shortened from 15 years to two years. Do you recall that – do you recall those emails that Mr Weller referred to?---Well, I have a general understanding of that conversation and those – that communication.

And I can take you to them if you wish, but you have them in your statement?---Yes.

And, in essence, I think it's fair to say that Mr Weller said the original documents noted the expiry of 8 June 2023, and inquired why that wasn't the case, and then there was some email correspondence about that and presumably what then occurred is that Mr Goldsmith prepared this document, which is PNC57. This is a Bankwest credit risk form. Do you see that?---I do.

And if you go to the second page, under the heading Margin, it says:

The current margin for the client is 2.24 per cent.

You recall that figure is the figure from the facility, which is the margin, and there's a reference:

In our letter of variation this was increased to 3.19. In our discussion the client asked we consider a margin of 3 per cent.

Now, I didn't take you to those emails, but that was part of that email correspondence as well?---Mmm.

Continuing:

However, to do this is not possible to meet client's requirements for the original loan term to be detailed in the new LOV.

And then there's reference to the attachment. But can I take you to the next page where, having set out consideration of Mr Weller's position, it says:

Consequently, in order to strike a balance between what the client has requested and believes is affordable and what we require by way of debt reduction I propose we structure our TAE as follows.

And you see the reference is have – to reinstall the 12 years, nine months terms; do you see that?---I do.

But if that be the case then the relevant margin is going to be 3.95 per cent. Do you see that?---I do.

And then that met with some concern, you heard the evidence that Mr Weller gave about that. Sorry, I should say that was sent then in the form of a letter of variation on 19 October and that met with some concern from Mr Weller because of the very high margin that was to be imposed. Do you recall that evidence?---I do.

So then the next stage, obviously what is happening then in terms of the next iteration is Mr Goldsmith goes back to the same body by way of a further version of this document, or a further update, PNC60, and if you go then to the second page of that, and under the heading Term of Facility:

As noted previously, client wanted to have the original term reiterated in the new LOV, despite my advice that due to LFTP considerations –

what is that again, Mr Clark?---Again, it's a slight typo, so it's LTFP, is what it should be, which is long term funding premium.

Continuing:

> *…considerations, the pricing would increase. The client was adamant on this point, however, following production of the letter he now understands more fully the effect of the –*

I think you would say it's LTFP?---Yes.

Continuing:

> *Two per cent for 10 years, as opposed to zero per cent for one year, and has requested we amend the term from one year to 1 December 2012.*

Do you see that?---2010. Yes, I do.

And then there's a reference in the next paragraph to:

> *Given our preference for facilities over a shorter term and our desire to review performance of the hotel in 12 months to increase both payments and step up ratios, I see that a 12 months term is a perfect fit and will be a benefit to BWA and consequently recommend approval.*

Do you see that?---I do.

Where there's a reference to "our preference for facilities over a shorter term" what does that mean?---I think that's just a general banking comment that longer tenor comes with longer risk. So bankers always prefer shorter tenors, if possible.

And why is that?---Well, I think the longer the term of the commitment you make to a client, the higher the risk, involved because over time more things can happen, more things can go wrong. And so shorter tenors associated with – you know, there is risk associated with longer tenor and so bankers prefer shorter tenors; there's less risk involved.

And you would accept they knew that, from a borrower's point of view, factors might militate in favour of having a longer term facility as well?---There are some conflicting views between borrowers and bankers, yes.

And, well, Mr Weller certainly would have preferred a longer term, wouldn't he?---Well, we offered a longer term to Mr Weller, which he said he would want, and so we made that offer to him but the long term funding premium associated with that made the pricing unattractive to him and he, in the end, I think, was – preferred to go with that one year tenor with a lower pricing.

Can I take you ahead to May 2012. Perhaps before I do, I will take you to a further update from 2010 just to – which is PNC-64. Before I come to this document, one of the other things about a shorter term is, of course, it also increases – it increases the ability of the bank to exit a facility if it doesn't wish to be – lend any longer; is that correct?---That's true.

And that was not an irrelevant consideration at the relevant time within Bankwest?---I'm not sure that was particularly more relevant at that point in time. As I said before, I think generally for banking, shorter tenor is lower risk, and so banks always prefer shorter tenor.

Now, one of the issues that was raised by Project Magellan, of course, was decreasing exposure to this type of lending, wasn't it?---Well, I can't really comment on Project Magellan in the broad theme. I mean, this particular – Mr Weller was passed green by the project – Project Magellan review, so - - -

What I'm asking you, though, about, is in the bank generally – and it's not – it may demonstrate that – and if you can't assist me with Project Magellan, that's fine. But within – is it fair to say that around 2010 there was a desire on the part of the bank to look very carefully at its business loan book and carefully manage its exposure?---I think it's common knowledge within the bank and banking generally that post-GFC there were concerns about property books of all banks and Bankwest, you know, was heavily invested in property. So I think there were concerns about the exposures generally.

Thank you. And if I go to the second page of this document, there's a number of dot points that are referred to – or there's a reference to:

> *Whilst we acknowledge the performance of the hotel has declined, we believe the client does not belong on a weak list. Our reasons for this are –*

and can I deal with those. The first is that:

> *The decline is in line with the industry.*

You heard Mr Weller's evidence about that and you would agree, would you not, that around this time there was less consumer spending as a result of, among other things, the GFC?---Yes.

And:

> *The facility is due for amortisation and term for facilities is 12 months, so any exit could be looked at then.*

Do you see that?---I do.

And if it hadn't – had it been still a 15 year loan, of course that would not have been available in the same way; is that right?---That's correct.

And there's reference to client having:

The client has a first class servicing record to date with BWA.

Do you see that?---I do.

Continuing:

Management position considered very strong and client has a good record with regard to provision of information in a timely manner.

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

And you would have no reason to doubt those statements, would you?---I don't.

Now, in – if I jump ahead, as I said I would, to May 2012, the file was transferred to CAM. Are you aware of that?---I am.

And in fact part of your evidence at PNC-96 is – and what's called an inward transfer credit paper. Do you see that?---I do.

Are you familiar with such a document?---I am, yes.

Did you – have you – did you see the evidence of your colleague, Mr Perry, earlier this week? It matters not, but he gave some evidence about this?---I heard briefly Mr Perry's evidence, I haven't seen the totality of it, so - - -

He gave some evidence about this. But I'm right to say, am I not, that an inward transfer credit paper is when the file is transferred to credit and asset management?---That's true.

And if one goes to .0357, the reason for impairment, it says:

The only shortcomings we can see are as follows: decline in trade of the hotel and this would have an effect on the valuation of the hotel.

Do you see that?---I do.

Whose handwriting is that there to the right, do you know?---I have no idea.

There's no reference to the fact that Mr Weller wasn't able to pay at that time all his interest and principal repayments as they fell due?---If the question – and I'm not sure it was – but if the question was had he been unable to make any payments, I think we've agreed that that wasn't the case. He had made all his payments. If the question was, you know, was there an increased concern about his future ability to do that, I would look at the last column in this document. EBITDA, at 286, is getting very close to the actual level of interest payments. And so I think there would be a concern about the ongoing ability to meet his payments.

And in fairness, the person in handwriting said:

What about declining trade's effect on ability to repay loan?

There might have been some concern about what might occur in future; is that right?---Yes.

Now, you heard evidence from Mr Weller that - - -?---I'm sorry, just – I'm sorry, just to be clear about that: the decline appears to have happened, not to an extent already where he couldn't meet his payments, but the decline in trade had already occurred. This wasn't a future forecast. It was – it seemed to have actually started to deteriorate over a period of time.

I see. Now, one of the things that was done at around this time was obtaining a valuation for the Nambucca Hotel. Were you aware of that?---I am.

And Mr Weller was asked to pay for that, wasn't he?---He was.

And you've heard his evidence that he wasn't shown that valuation at the time?---That's true.

And you would agree, would you not, that valuations would have been carried out on many files including Mr Weller's, and we will come to Mr Doherty shortly, at or around the time they're transferred into CAM?---That's probably true, yes.

And also they would be undertaken by way of the file review process, the general file review process, even if they're not in CAM?---So that generally doesn't necessarily dictate the need for a valuation. So I think I would just be a little bit reluctant - - -

Sorry, my point is – I'm not trying to trick you in that regard. My point was simply that valuations were carried out on many files when they were transferred into CAM, would you agree?---I agree.

And I said but they could also be obtained at other times, including as part of a file review process?---That's right.

And you would agree that significant decisions were made about Mr Weller's facility on the basis of that valuation?---I'm not quite sure what you mean by that.

My question is: as you know, the facility wasn't renewed, and one of the reasons that was given for that was that there was a breach of the LVR covenant; is that right?---I think there were probably a number of reasons that the facility was not renewed. I think the breach of the LVR covenant – you know, I think as we've talked about through the history of Mr Weller's relationship, he breached many of those financial covenants along the way. They were never used as a termination event, and I think they weren't in this case either, but the breach of the LVR indicated LVR was very high and that was one of the reasons why we didn't want to renew the loan. But there were other reasons as well.

But the valuation – you would accept though the valuation was a relevant factor in making those decisions on behalf of the bank?---It was part of the decision process, yes.

Now, in your statement, you say that it's no longer the policy of CBA to withhold valuations from a customer who has paid for the valuation?---That's true.

And that policy, if it had been in place at the time, would have been breached by what occurred in this case to Mr Weller?---That's right. There was not – the same policy didn't exist at that point in time.

This has also been an issue that has been the subject of regulatory reform as well. Are you aware of changes that are proposed to be made to the Banking Code?---I am.

One of the concerns that's raised is, if significant decisions are made in relation to customers without them seeing valuations, there's a lack of transparency. Would you agree with that?---I would.

And perhaps I can call up the Code – sorry, the proposed final version of the Code. We heard some evidence about this from Mr Khoury last week. WIT.0900.0003.0290. Perhaps if I could take – sorry, perhaps if I can take – introduce this. This is the document than has been subject of – is not presently in force. It has been provided to ASIC for the purposes of being approved and will become, in due course, subject to its approval, the new banking code of practice?---That's correct.

If you go to page 18 of that document, it's 18 please, which is chapter 24, you see here that there's a reference to:

> *Our processes in relation to external expert valuations will be fair and transparent.*

Do you see that, at 88?---I do.

And at paragraph 90:

> *We will provide copies of property valuations and valuer instructions (except where enforcement proceedings has already been commenced)*

Do you see that?---I do.

And there were no enforcement proceedings in – and I'm obviously asking you about this. I'm not saying this was in place, it's not even in place now. And in fact what I'm going to say is that, even if amended in this form. it wouldn't apply to Mr Weller because his borrowings were over $3 million?---I think CBAs policy, irrespective of that, would be – going forward now, we would still provide a valuation to him.

And that would be on the basis of the sort of concerns about transparency would apply to people like Mr Weller just as much as people under $3 million?---It just seems a fair thing to do.

And you accept, although we haven't got to Mr Doherty's circumstances yet, but you would accept that that would have – would be a fair thing to have done in his case too?---Yes.

A deed of forbearance in – thank you, we no longer need that document – a deed of forbearance was entered into in January 2013, you will recall?---That's right.

And I'm asking, in your experience, is it common for – is it common for steps like that to be taken in periods – you know, six or seven months after a file has gone into CAM or now GSC?---I'm not sure I would use the word "common". It's not uncommon is probably how I would respond to it. I think forbearance – I think in this case we didn't want to extend the loan itself, but also we didn't want to take enforcement action. So a deed of forbearance was both for our benefit and for the client's benefit to codify, if you like, the agreement between the two parties.

Well, if not for the deed, you wouldn't have been enforcing on the basis of non-monetary defaults, or the only defaults before the expiry were non-monetary defaults, though, weren't they?---That's true.

And Bankwest first met with Mr Weller and his wife in September 2012 and the deed of forbearance was entered into in January. Again was that, in your experience, expeditious or normal or how would you describe that period of time?---It's very difficult to respond on timing. I mean, what were the circumstances, what was the availability, what was the relationship like between the parties? It – if the question is related to the deed of forbearance being provided to Mr Weller on 8 January, when the loan expired on 10 January, that doesn't seem very – the timing of that is unfortunate. That doesn't seem very – very fair.

Can I ask you a couple of questions before we come to Mr Doherty. There's evidence from one of your colleagues from Bankwest, Ms Taylor, Sinead Taylor, which sets out the current standard forms that are used in relation to business lending by Bankwest. Are you familiar with what's used by Bankwest as distinct from CBA?---I think "familiar" would be the wrong description. I mean, a broad awareness would be probably as good as I would sort of claim, I think.

I see. Perhaps I can just take you briefly to a document and that is CBA.0517.0052.0259. Now, the first – this is correspondence that had been written by Bankwest to ASIC. Now, I'm not putting to you that the Unfair Contract Terms provisions would have even applied to Mr Weller at the time, because his loan was in excess of the relevant limit, but one of the issues that was raised by Mr Weller's evidence, if one goes to .0263, was the issue of unilateral variation, and the relevant Bankwest employee who wrote this letter deals with that there. And are you aware that at least for general terms to which those provisions apply there's no more review clauses?---I am, yes.

And there's also amendments that have been made to the unilateral variation clause 18.21, and it's explained 18.21 – I didn't take you to, but you might recall, I think – and I'm not sure Mr Weller went to it in evidence – but that is a clause which entitles the bank to make unilateral variations. Are you familiar with those clauses?---In broad terms, yes.

And have you had any involvement with this particular project of updating standard form clauses?---So, in relation to this letter, which I think was to ASIC around - - -

Yes?--- - - - unconscionable conduct, I've had no involvement at all in that. The Carnell involvement and the broader amendment of the general terms that CBA and Bankwest have been gone through in recent times, I've had involvement in that process.

And in your own view of – in your own experience, these – the changes in relation to unilateral variations, is that something that has a positive impact on the treatment of customers?---Could I answer the question in a slightly different way. I think unilateral rights to change the terms and pricing, absent any sort of evidence of credit deterioration or other things like that – which is why I like financial covenants, because that sort of evidence that you can use – I find hard to justify. That's a personal view. I think we would recognise that below 3 mil, but I'm not sure it's particularly different above that. But, as I said, that's a personal view.

And, in fact, you might say that Mr Weller's circumstances weren't that significantly different from someone under $3 million. It was one property, it was one business that he was running, yet a limit of $3 million would have meant that those sort of protections aren't in place for him?---But I don't think the unilateral changes were an impact on Mr Weller. I mean, I think that's quite different. I think in Mr Doherty's case that might be a factor that you will probably take me to, but in Mr Weller's case I don't think they were relevant or used at all.

THE COMMISSIONER: Because – could you expand your answer?---We didn't make any amendments or any changes using those – relying on those clauses. The changes that happened were as facilities were renegotiated and renewed. I'm not sure with Mr Weller that we actually triggered a pricing increase or a change to the terms unilaterally relying on those clauses.

Thank you.

MR DINELLI: Can we go to – can I ask you some questions now about Mr Doherty. You've heard – you were here in the Commission – I think you said you were here when Mr Doherty gave his evidence this morning?---That's right.

And in fact last – yesterday evening as well?---That's right.

Obviously this is a complex case, and we won't be able to deal with all of the issues that arise, but I would like to take you to some aspects of it, if I may. The facility to fund the hotel construction was entered into in – I think there might be some dispute as to the exact dates, but it was either 2008 or 2009. In any case, before the construction commenced; is that right?---Some of the construction may have commenced, some initial work perhaps was funded by the company before the loan was drawn down, but fairly close to the start, I think is correct.

I see. And in fact Bankwest had provided a facility to Mr Doherty beforehand or at least to Mr Doherty's companies, hadn't it?---That's right.

And those facilities were advanced to Mr Doherty's companies before CBA acquired Bankwest; is that right?---That's right. I think 2007 they were advanced.

That's right. And, from your review of the material, there were no obvious concerns in relation to the risks that might be involved in the types of development that Mr Doherty's companies were doing at that time?---2007, you're referring to?

Yes?---I don't think so, no.

And Mr Doherty's evidence is that he was introduced to Bankwest by a Mr Craig from JLL. Did you hear that evidence?---I did.

Is that a common way in which business is brought to Bankwest or, in fact, to CBA?---I think both consumer and business banking brokers are involved and I think, effectively, that gentleman was performing a broking-type – type role. I think there is a specific channel within the bank that deals with brokers. So it's not uncommon that that would happen.

Now, Mr Doherty explained in general terms, although we came – at the start of his evidence, and we returned to the issue today – the difference between in one line and mixed use valuations. Now, putting aside the specifics of this case, do you agree broadly with what he said about the differences between those two methods of valuation?---I thought, listening to Mr Doherty yesterday, his description of the differences was as good as it gets. So I think that was – I'm happy to rely on that description.

Thank you. And you, no doubt, from your experience, are aware of the differences? The difference between those two forms of valuation?---I'm a lot more aware of the differences today than I was a few weeks ago, but I am aware, yes.

Now, do you know – do you know of – no doubt you do know of Knight Frank?---Yes.

Do you know a Mr Page who performed two valuations in 2010?---I don't.

In your experience, does it matter – when a valuation is performed by a valuer who is properly registered and provides the valuation, is there a difference in the valuation depending on who engages the valuer to do the valuation?---I think banks prefer when we instruct valuers. I think, you know, the scope of the valuation is important. I think, you know, the extent of it – the scope, I think is – banks have their standard sort of things that they require. I think sometimes clients will get sales valuations, short form valuations, you know, other types of valuations that may not necessarily be adequate from a bank's perspective.

Now Hadley's and Inner Collins, the combined development, was valued a number of times between 2007 and 2011. Just for present purposes I want to focus on two of the valuations. There had been a valuation of the property which Mr Doherty described as a check valuation. Do you recall - - -?---I do recall that, yes.

And in fact I might take you to that valuation. It's at PNC-5, which is CBA.0001.0319.4980. Have – you've obviously seen this valuation for the purposes of preparing your evidence today?---I have.

And you recall, if one goes to .4984 – you will recall we went to this particular page as a summary with – and I will ask that the table be blown up, if I may. This valuation was done in August 2008. And as I understand it, it was done for the purposes of Bankwest deciding, amongst other factors, on whether or not to enter into the facilities with Mr Doherty?---That's correct.

And the – from reading this summary you will see that the in one line valuation that was given was $53.5 million. Do you see that?---I do.

Now, if one looks at the – there's various other permutations, if one looks at the Collins Street alone in one line valuation, do you see that has $39.7 million?---I do.

And you would agree that if you look at the gross realisation, the final figure Collins Street gross realisation of lots, level 8 as residential apartments, that has a valuation of $49.39 million?---I do. Can I help, perhaps, Mr Dinelli. I recall a conversation you had with Mr Doherty around this table, and I agree with where you got to on that. So - - -

Thank you?--- - - - 15 plus 49, 74, 75 as a mixed use. I agree.

I think you might find 64.59 million?---I'm sorry. 64. But I agree with that.

Okay. Thank you. And your evidence, is it not, is that Bankwest relied on the in one line valuation for the purposes of determining whether or not to fund Mr Doherty's facilities?---I don't think that's probably a fair summary of my evidence.

At paragraph – I'm sorry, at paragraph 20 of your statement you set out the valuation, or you summarise the valuation there, with the figures that we've just got to and that you've agreed with, $53.5 million and $64.59 million?---Yes.

And I might have misled you in this regard. I think I was relying on what you had said in an earlier draft. But is it the position, or do you accept, that the bank relied upon – or relied upon a higher figure than the in one line valuation; is that right?---I think the bank's view about this changed over time. So I'm just reluctant to give you a yes or no answer to that. So I think in the credit paper that followed the CBRE thing, I think it's fair to say that Bankwest used the multi-use valuation the Mr Longmuir, I think who was writing that paper – so I think the bank did accept that. That's what he put forward and that was what was approved. I think subsequently, from what I've seen in the files, the bank appeared to change its mind.

Can I just return to 2008, though, and we will come to later, of course. And I accept you weren't there, but the use of the mixed use amount as at 2008?---Mmm.

That would be consistent, would it not, with the evidence that Mr Doherty gave about what Mr Longmuir had told him as well.

MS COLLINS: Well, I object to that. Perhaps he could be asked about what Mr Longmuir told him, because there's various different bits of what Mr Longmuir has alleged to have told him.

THE COMMISSIONER: There's a deal of baggage in the question.

MS COLLINS: Just would be a bit fairer, with respect.

THE COMMISSIONER: Mr Dinelli, you might do better, I think, to unpack it or rephrase it.

MR DINELLI: Thank you, Commissioner.

You heard Mr Doherty's evidence in relation to discussions that he had with Mr Longmuir, his relationship manager in 2008. Do you recall that Mr Doherty gave some evidence about that?---I do.

And he said – or perhaps if I can go to what Mr Doherty says in his statement, which I understand is consistent with what he gave orally. But, in essence, it was that he said that Mr Longmuir had said to him that Bankwest had accepted the mixed use valuation of 64.59 million during the loan approval process. Do you recall the evidence that Mr Doherty gave to that effect?---That's not what I heard Mr Doherty say.

He said, in his oral evidence, he said that he said to him, "It is what it is", do you recall?---I recall those words but I think the relevant comment around Mr Longmuir was Mr Longmuir had said if we didn't use that he would have to go back to credit, which I think is at odds with what I remember in Mr Doherty's statement where he said if we used in one line the deal would not proceed. So quite different, was my take.

But is it right to say – and am I right to say that the – and we can go to the relevant approval if you wish, but that approval, at least in 2008, did proceed upon the basis of the multi-use - - -?---That's true.

Thank you. And is it also right to say that, at least when we came to the second valuation that I would like to deal with, the July 2011 valuation, and you will recall that's the one that was done by Jones Lang LaSalle. And that was done on an in one line basis, wasn't it?---As I understand, yes.

And is it your evidence that the bank, by the time it got to July 2011, took a different view as to what was the appropriate valuation of the properties?---It's not entirely clear to me, Mr Dinelli. I think what I did see from the credit papers was that earlier paper we just talked about, the bank accepted the multi-use valuation methodology. In subsequent ones it does appear that the bank wasn't prepared to do that and wanted in one line as the valuation methodology. I don't know why that changed. I could perhaps provide some help in the bank's general view about multi-use and how we actually proceed with transactions, if that helps.

We might come to that, but if I can understand – but you accept that if a valuation is done on in one line it leads to – it leads to a – or at least in this case, it leads to a significant lower valuation, doesn't it?---In general terms, I do not agree with that. In – specifically in relation to this matter, I think that is true. It's not a general proposition that it automatically flows to be the case, but in this case, I think that is a true statement.

Can we just unpack that a little bit. So it's your – so I understand what you say about this particular case, but can there be circumstances where an in-one-line valuation can achieve a higher figure than a multi-use valuation?---I'm not a valuation expert, but my understanding is yes. I mean, there can be circumstances where in one line is the best way of selling something. It may be, you know – I'm thinking of an example. You could have a – what's a terrace house split in two. So you could have – you know, if you tried to sell them individually, you know, you may get lower than if you sold them as a combined. So there's an example.

And - - -?---A very rough one where in one line could actually give a higher result.

What I'm trying to explore with you, though, is – but in – so applying that analysis, though, in this particular case, though, you would accept that a multi-use valuation would lead to a higher value than an in-one-line valuation?---I simply rely on the evidence I've seen, that valuations that were undertaken – and there were a lot of them – they seemed to indicate that the multiple use valuation was a higher figure than the in-one-line in this particular matter.

And there may be circumstances akin to the answer you just gave previously where it might be the opposite and we can put that to one side, it doesn't arise here. But the relevant difference that was identified by, in the check valuation, that is that was done by CBRE, by Mr Grieve in August 2008, resulted in an $11 million or an $11 million higher valuation if it was done as a mixed use rather than as an in one line; that's right, isn't it?---That's what the valuation said, yes.

And you're also – the valuation that was done by JLL, perhaps if I can go to that, is at PNC-22, and no doubt you've considered this document for the purposes of preparing your statement?---I have.

Now, Jones Lang LaSalle was asked to value the property on an in one line where basis; is that right?---I would probably prefer to go to the instructions to see if that's actually true. I'm not doubting that, but - - -

And in fact there's quite a number of documents, but if one goes to the document ending 1990, that's the appendices, and you jump ahead two pages. You find the letter of instructions and standard terms and conditions. And in fact it might be easiest to do it in chronological order, which means we start from the back. But 1998 are the actual instructions that were provided on 18 March 2011. And Mr Craig, if one goes to the substantive text:

> *You are requested to carry out a valuation on our behalf of the above property in accordance with the following instructions.*

Now, there's no reference – or perhaps I will take you through it. But the report is to be provided. You see how there it says:

> *Please provide one original report and one copy for release to the client.*

Do you see that?---I'm sorry, where is that?

About halfway down the page?---Yes, I do.

But the valuation wasn't given to the client, was it?---I think that's correct.

So the basis of the valuation was described as current unencumbered market value. So you see about point 7 of the page?---Yes.

And it's Hadley's Hotel as is, subject to the existing management agreement, and Inner Collins as is, and as if complete, and at the end, "and in one line". Do you see that?---I do.

Then - - -?---I don't want to be pedantic here but "and in one line", does that suggest.

No we will have to come to the later correspondence, because I think there was – because the next – if one goes to 1997, this might assist in resolving the query that you raise. So this is some months later, and there was evidence that it took some time for the valuation. Let's leave that to one side. But Mr Craig said:

Hi Nicole, as discussed, we will value the property on the following basis: as a freehold going concern, in one line, comprising all elements of both Hadley's and Inner Collins.

Do you see that?---Yes.

And then same as, and then number 2 was same as number 1 above, but excluding the following components, and there are some components set out. And it then goes on to say:

The number 2 scenario would require strata title being available, and I will ask one of my Melbourne based colleagues to quote on valuing the elements.

Do you see that?---I do.

Then on the next page there's a response from Bankwest, or Ms Tartaglia, from her to Mr Craig:

Thank for your email and time today.

Do you see that?---I do.

It says:

Instead of proceeding with option 2, can we discuss a further scenario to include Hadley's Hotel and the conference areas and all commercial areas.

And:

I understand the proposal is for these areas to remain under Accor management.

And then it says:

As I understand the in one line valuation for the entire complex is now complete. I would be happy to receive this valuation. However, would like to discuss a further fee quote, timeframe, and information requirements for an addendum.

Do you see that?---I do.

Now then going to 1993, at the bottom, Mr Craig indicates:

Before issuing the final report –

so this is on 26 July. It was ultimately signed in July, but I don't think our research has worked out exactly the date, although the valuation was produced as at 26 July. There's a reference:

> *I wish to confirm the final basis of our valuations for the Hadley's Hotel and Inner Collins.*

And the first is that all elements, leaving aside what is in brackets, contained within Hadley's and Inner Collins, operated as one consolidated concern in one line. As instructed, this valuation will be hypothetically done both subject to the Accor management agreement and assuming vacant possession. However, we note that subsequent to our original instructions, Mantra has been appointed to operate the Inner Collins development and our valuation does not take this into account.

Do you see that?---I do.

And then (2):

> *All elements of Hadley's Hotel plus conferencing only elements of Inner Collins operated as one consolidated going concern in one line.*

And that would be done subject to Accor management assuming vacant possession. So they're the two. The first is everything in one line?---Yes.

And on the basis that Accor will manage everything, whereas – and we will come to this shortly – Mr Craig notes, but doesn't deal with the fact, that Mantra could manage Inner Collins. And then the response from Nicole is:

> *Thank you, that's great. I tried calling earlier to obtain verbal confirmation of the value under option 2. Can you call me when you are free to confirm.*

And then if one goes to 1992, Mr Craig says:

> *We have been focusing on the Hadley's plus Inner Collins conferencing valuation and have not obtained the Mantra forecasts. In any event, they would not be a like with like comparison. The Accor forecasts I have are for HH and IC operated as one asset, whereas the Mantra forecast would relate to running to running Inner Collins as a standalone operation, excluding the conferencing components of course. This would make it another basis of valuation and above that we have been instructed to carry out at this point in time, per my email below.*

Do you see that?---Do I.

And then the bank says:

Agree with your comments. Can you advise the valuation of Hadley's only, per valuation 2, as soon as possible.

And then the report itself was provided. Now, as you know, the evaluation that was provided, if one goes to .1887, it valued – and perhaps if I can ask it to be blown up – there are two market values as if complete and one sees that the in one line valuation is $55 million. Do you see that?---I do.

Assuming vacant possession. And presumably in answer to the email we've just seen from Ms Tartaglia then we have another one which is all of Hadley's and the conferencing area only, that's $20 million. Do you see that?---I do.

Now, the bank was aware at this time that – or Mr Doherty had raised on a number of occasions, I think it might even be fair to say that he was badgering Mr Craig, the bank, regularly about the fact that he was concerned that this valuation was going to be performed in one line, wasn't he?---I don't think I would use the term "badgering", Mr Dinelli, but I think he was frequently pursuing that view and sharing it.

That was kind of you to describe it and probably more accurate. And he said on – and I won't take you to these emails, you refer to them – sorry, I won't take to all of these emails, but if I can just take you to a summary of it, perhaps, in Mr Doherty's material, at MED-13 and Mr Doherty says there, to – sorry, on the second page, .0203, he says:

Re the valuation, we are not trying to be difficult in any shape or form, but like you we just want it done as soon as possible and make sure it is the right valuation. My only concern with Craig doing the valuation is that he can only do it in one line, as he told me he doesn't do strata title units. If we go with option two, which looks like the most likely scenario, we will then want somebody else to value the strata title units.

Do you see that?---Mmm.

And he made similar – he expressed his concern in a number of later emails too, didn't he?---I think that's correct, yes.

And it was Mr Doherty's position that the true potential of the property would only be realised on a mixed use development valuation approach, wasn't it?---I understand that's the case. Perhaps this is a good time to come back to my offer I made previously about explaining about how banks think about mixed use development, because there are some permutations of that that are relevant here, I think.

Yes. And I don't want to stop you giving relevant evidence. So - - -?---So just quickly – so the valuation is one thing and I'm not a valuation expert. You know, we have two or three of the top valuers providing these valuations. For banks doing mixed use development, though, one of the things that we would be very conscious about for apartment penthouse type sales is presales. And in the current market we generally would require 100 per cent of those presales to be contracted with deposits before we would lend against them. So a valuation is one thing. It doesn't – it's not the same thing as saying that's what the bank would happily lend against. I just wanted to make that distinction. So in terms of the multi-use development in this particular case there were various permutations, I think, that Mr Doherty looked at, in terms of penthouses and apartments and various other ones. But for us to be comfortable lending against those, we would normally require those contracts or those presales to actually be contracted rather than just a valuation on its own.

Not to be difficult – and you are explaining it – but you've accepted though that in this particular case, and I accept that not only is 2008 a long time ago but so is the relevant time we are talking about now, 2011, but in 2008, you did however – that is Bankwest, you have conceded – accepted the mixed use valuation as a basis upon which to borrow?---That absolutely is true. I guess I'm trying to explain, I think, why the bank shifted to in one line, why there was this divergent sort of change in the bank's perspective through this process and I think that's part of the explanation, I suspect, behind that. I don't know. I don't have any facts or – around that. But that strikes me as one of the reasons, perhaps, that the bank kept insisting on in one line as being the appropriate basis.

You would accept though that at this time we are very close to completion of the project. In fact, the certificate of occupancy was issued the month after, wasn't it?---I think that's true, yes.

And I think, to use your language, if I may, one might say that a lot of the risk that existed in 2008 has been derisked by the fact that the development is now at an end, isn't it?---Well, it's not quite an end but the risk has diminished significantly.

It has. And Mr Doherty's evidence was that once this valuation was obtained he was told that he was in breach of the LVR. Do you recall his evidence to that effect?---I think that was what he said, yes.

And do you accept that the basis for that breach was the JLL valuation?---I can't recall whether we actually called that as a breach specifically in relation to this matter. We may well have. I can't recall.

The valuation itself – sorry, just to return to that before moving on from that. Sorry, is it your evidence that you're not sure whether or not Mr – from your review of this material, you are not sure whether or not Mr Doherty was told there was a breach of the LVR. Is that - - -?---I think what I'm saying is I'm not aware we called the breach of LVR in a formal notification. I think Mr Doherty's evidence was around a conversation he had with someone. I'm not disputing that. I'm just unsure in my mind whether we actually issued a formal letter of LVR breach.

There were letters that were ultimately issued because by then the tranche 1 facilities had expired so there was a demand for payment that was required. They didn't refer to LVR, they just required the repayment of the expired facilities?---I just want to be clear about your question. You asked me whether I was aware of the LVR breach being communicated with Mr Doherty, and I heard his evidence that he was told verbally by someone in Bankwest. I'm not disputing that, I have no basis to dispute that. I was just questioning whether we formally sent a notice of breach. It wasn't clear to me. So - - -

No. I understand your evidence in that regard, and you are right that there was no formal notice on that basis. Rather, the notices were issued on the basis that the facilities had expired and required repayment. The valuation – have you had regard to – have you considered in the course of preparing your evidence the valuation prepared by Mr Craig in detail?---In detail would probably be more than I provided – I've read through it.

Yes. Are you able to assist the Commission by explaining why Bankwest, at the time, didn't use CBRE who had completed the earlier valuation?---I don't know.

Can you explain why Mr Craig didn't deal with the previous method of valuation?---I don't know.

Now - - -

THE COMMISSIONER: Just before you go on, Mr Dinelli, can I just try to understand this a little better than I am.

At this stage, the facilities have expired; is that right?---That's correct.

The valuation is sought in connection with – using that as a very broad term, in connection with discussions about whether there will be an extension or new facility; is that right?---I think that's true, yes.

Therefore, what is the – I was going to say the purpose of the valuation. What is the relevant basis of valuation that bears upon whether to extend or renegotiate the facility?---I think, Commissioner, there are probably two factors that would be relevant. One is the actual valuation and what is our loan to security margin. We would be of – that would be relevant. I think the other issue is actually helping with forecasted cash flows because, as part of the valuation, a valuer will look at what he thinks asset can generate in terms of cash flow. So I think that is also a relevant piece of information that we would like to use.

Because my question is prompted by two probably disconnected observations that may themselves be misplaced. I see the email chain passing between bank and valuer about basis of valuation. Do I find in that set of communications any clear articulation of what the bank is asking the valuer to do?---I think it's confusing to me, when I read the scope. I think in the subsequent emails it's – the bank is toing and froing. In one line, "plus have a look at these sort of other permutations". I think when I think about the timing of this, you know, the facility has expired. It's not as though we are looking for the valuation to provide us with some trigger, you know, in a LVR covenant breach. That's not – so from the bank's perspective, it really wants the most accurate valuation, I think.

And the second and, as I say, probably disconnected thought is: what's the customer being told about the valuation process and what the bank is looking for the valuation to inform them about?---My understanding, Commissioner, in this particular case, is Mr Doherty was concerned about exactly what the bank was asking for in terms of in one line rather than mixed use and he was very open, I think, in his views about the basis that the valuation should take.

He had a view and he made it quite plain to the bank what that view was?---Very clear. And so there was toing-and-froing and there was open discussion around that. I guess at the end of the day I sort of look at this issue and it seems a little moot to me because I'm not sure, at the end of the day, it was actually relevant to the outcome here. And I don't know whether the valuation should have been in one line or mixed use. I'm not qualified to respond to that. What I do seem to see from my review is it actually didn't have any bearing on the outcome.

You will need to explain that more to me than you have so far, I think?---Perhaps if I could try and do it very briefly, and I'm sure you will tell me if I'm not successful.

There's a chance of that?---So I think the facility had expired. Why didn't we renew the facility? And there's some evidence, I think, we have brought to that point. The high LVR was certainly one of those things. The LVR breach was just indicative of high LVR. It wasn't in itself the reason that we didn't renew. It was concern about the creditors, the time it would take to get this done, you know, where this was heading. The information we were getting from the Doherty group, there was a lot of concerns, I think, about – we just didn't feel we had a good understanding of the borrower. And these issues, the credit deterioration that we were seeing, that we didn't want to renew the facility. So the LVR, in itself, was a factor. It was relevant. But it wasn't the reason. It wasn't because of whether the valuation was 75 or 65 that was determining whether we were going to extend this loan. The other factors were more important in this particular case, from what I've seen from the file review.

Thank you. Yes, Mr Dinelli.

MR DINELLI: Can I explore two further issues. Just in relation to that, you knew that there was a certificate of occupancy in August 2011, don't you?---Yes.

And you've heard Mr Doherty's evidence that he was waiting on the $3 million that would be paid on execution of a management agreement by Mantra?---I heard that, yes.

And the bank was aware, was it not, that Mr Doherty was in financial difficulty, or his group of companies?---I think that's true, yes.

And that he owed money to the ATO?---Yes.

And that he required those funds to finalise the hotel so that it would be ready to – so that Mantra could commence operation?---I heard the evidence, yes.

And it was Bankwest's position that it wasn't willing to sign the management agreement?---So I think the - - -

The tripartite agreement, I should say, I'm sorry?---Is this the non-disturbance agreement?

That's right?---That's correct. We weren't. Bankwest weren't prepared to sign it.

And you've heard Mr Doherty's evidence that if the $3 million had have flowed that would have been sufficient to discharge his debt to the ATO?---I did hear that, yes.

And various other debts, such that the Inner Collins could have commenced operation under the Mantra name?---I heard that evidence, yes.

And the refusal of Bankwest to sign that agreement had the effect that that wasn't able to happen?---Well, there's a long sort of build-up of subsequent events. I think the refusal of Bankwest to sign that non-disturbance agreement stopped the Mantra agreement from being signed. I think that is a fair comment. Can I touch on why we would have refused to sign that non-disturbance agreement?

Of course?---For a secured creditor, effectively postponing our rights to the operator of the hotel – that is what was required under a non-disturbance – agreement basically means we can't – if we were to sell that asset, we can only sell it to the holder of that who has the benefit of that non-disturbance agreement. And that's something we are very loath to do. That creates one buyer, effectively. and that goes to the value of the security. You know, if we got a valuation on the basis of only one potential purchaser, you know, that would have a significant impact on valuation. So that's something that we are very loath to agree to, not just in this case, but as a broad general comment on hotel-type non-disturbance agreements.

Excuse me for just a moment. Excuse me. Sorry, Mr Clark?---I'm happy to stop any time you would like, Mr Dinelli.

I'm sure – I'm sure you are. Can I deal with, briefly, going back in time. As a result of Project Magellan, Mr Doherty's – Mr Doherty's file was listed as double red, wasn't it?---That's correct.

And would it be fair to say that Project Magellan saw a significant shift in the attitude of the bank to risk generally, and also specifically in relation to Mr

Doherty?---I wouldn't agree with that comment. I don't think Project Magellan resulted in any significant shift in risk. I think Project Magellan was a result of a perception or a concern that the risk had already shifted in the book that was being looked at. I mean I didn't – sorry, I forgot the second part of your question.

No. Then I said specifically resulted, did it not, in ultimately the appointment of investigative accountants?---You will get much more fruitful evidence on Magellan, I suspect, from subsequent witnesses. But my broad understanding, I think there are 1000-plus files reviewed in Project Magellan, which was, I don't know, 10 or 20 per cent of the Bankwest portfolio. So it wasn't the entire portfolio, but there was a significant material part was reviewed.

And, just finally, can I just go back to the period in about August 2011. The hotel obviously didn't operate during that period until January 2012?---I think May 2012, I think the hotel opened.

I see. The receivers were appointed in January?---I think that's true, yes.

And, in fact, the receivers sought some further funding from Bankwest soon after their appointment?---Yes. I think the receiver overdraft got up to almost $4 million, I think, during that time.

And, in fact, ultimately the receivers appointed Accor to operate the Inner Collins and it opened in 2012; is that right? April 2012?---So I'm not aware who they appointed to manage it, but certainly May 12 is my understanding of when it opened.

And it operated for about a year before it was sold?---I think there was an endeavour to bed in the operations, I guess, before the sale process commenced.

And ultimately the – and this, Commissioner, answers a question that you put previously – in your evidence, you set out what the property sold for?---You're not going to ask me for the sum of those, are you?

No?---They are in my – they are in my statement.

Thank you. And it's my way of assisting the Commissioner through you, Mr Clark. If you go to paragraph 85?---I should apologise, we should have totalled them, I think.

No, that's fine. Perhaps if I can ask paragraph 85 to be put up on the screen, of Mr Clark's statement. And the relevant property sold in September 2013, Hadley's for 8.325 million and Inner Collins for 24.9 million; is that right?---That's right.

Ultimately, Bankwest suffered a significant – a very significant loss on this file, didn't it?---We did, yes.

And what was that loss?---Something in the order of 38 million, I think. $38 million.

No further questions.

THE COMMISSIONER: Yes, thank you, Mr Hodge. Mr Stapleton, you say you have – if you have no questions, we need not get to any question of leave, need we?

Ms Collins.

MS COLLINS: I have no re-examination, Commissioner.

THE COMMISSIONER: Yes. Thank you. Just before you leave the box, Mr Clark, a question of more general application, taken away from these two particular case studies. A facility comes to its end. The bank, for whatever reason, decides it does not wish to renew that facility or negotiate a new term with the customer. Are you able to identify what would be important considerations which might affect whether refinancing that debt would be realistic?---So two things jump to my mind to respond to that question, Commissioner. One is a return question. So is the pricing on the facility, or the lending transaction for the risk involved and the tenor the client wants, is that providing an acceptable return to the bank? So it may be that, for whatever reason, it's suddenly less attractive commercially to that current lender. Whether that's the case for every other lender, or whether it would able to easily refinance is a question, I think. But that would be one reason why lenders would decide they didn't want to roll over. Competition in that particular industry or sector may be intense, and therefore they weren't able to get the returns they wanted. Their cost structure may be out of line. There are a whole host of reasons, but returns could be one. The second one I guess is credit deterioration, so if a lender was of the view that the credit had deteriorated or was going to deteriorate in the future and that, therefore, they didn't want to continue with that client, that would also be a factor. The third one that jumped to mind as I was answering the – articulating the first two responses was the relationship. So it may be that the relationship with the client sometimes breaks down and it may be the trust and the understanding between the bank and the client is not – from either side, not where it should be. And so the bank made decide to let it go at that stage.

Yes. Does anybody have anything arising out of that exchange? No. Thank you very much. You may step down and you are excused.

<THE WITNESS WITHDREW [12.53 pm]

THE COMMISSIONER: Now, Mr Dinelli –

MR DINELLI: Perhaps before we break for lunch, it might be a good use of time for Ms Taylor to be called. I say that, Commissioner, because there will be no cross-examination by Counsel Assisting of Ms Sinead Taylor. And so if her statement can be tendered, I understand there's some minor oral amendments. Then Ms Taylor can be on her way back to Perth.

THE COMMISSIONER: Yes.

MR SCERRI: Yes, your Honour. That suits, Commissioner.

THE COMMISSIONER: Yes.

MR SCERRI: Mr Paul Jammy will be calling her and there are only two minor corrections.

THE COMMISSIONER: Yes.

<SINEAD TAYLOR, AFFIRMED [12.54 pm]

<EXAMINATION-IN-CHIEF BY MR JAMMY [12.54 pm]

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

MR JAMMY: Ms Taylor, could you state your full name and business address?---Sinead Taylor, 300 Murray Street, Perth.

Ms Taylor, is your appearance at the Commission today in answer to a summons issued by the Commission?---Yes, it is.

Do you have a copy of that summons with you?---Yes, I do.

Commissioner, I tender the summons.

THE COMMISSIONER: Exhibit 3.103, summons to Ms Taylor.

EXHIBIT #3.103 SUMMONS TO MS TAYLOR

MR JAMMY: Ms Taylor, have you prepared and sworn a statement dated 17 May 2018 in response to rubric 3-13 of the Commission?---Yes, I did.

Do you have that statement with you?---Yes, I do.

I understand you wish to make some changes to that statement?---I do yes.

Is the first of those changes to the table in paragraph 12?---Yes, it is.

Could you tell the Commission would that change is?---The change is to the 2014 aggregate limits for the number of business lending customers changing from 12,999 to 11,999.

Just to confirm. That's in the second row of the third column; is that correct?---It is yes.

Could you make that change in the manuscript and initial it?---Yes.

Is the second change that you wish to make to the table in paragraph 35 of your statement?---Yes, it is.

And what is that change?---So that is a change to the third column in, which is relationship manager, is a change to the people measure from 10 to zero.

Could you also make that change and initial it. Subject to those two changes, is the contents of your statement true and correct?---Yes, they are.

Commissioner, I tender the statement?---Exhibit 3.104 will be the statement of Ms Taylor, 17 May 18 in response to rubric 3-13.

Mr Hodge, you said there was no examination of Ms Taylor.

MR DINELLI: I won't ask Mr Hodge to answer the question, Commissioner.

THE COMMISSIONER: Sorry, Mr Dinelli. Old habits die hard.

MR DINELLI: There will be no cross-examination of Ms Taylor.

THE COMMISSIONER: Thank you very much, Ms Taylor?---Thank you.

You are excused.

<THE WITNESS WITHDREW [12.56 pm]

THE COMMISSIONER: If we adjourn until 2 pm.

ADJOURNED [12.56 pm]

RESUMED [2.01 pm]

THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Commissioner, the next witness is Brendan Stanford, I call Mr Stanford.

THE COMMISSIONER: Yes.

<BRENDAN JOHN STANFORD, SWORN [2.02 pm]

<EXAMINATION-IN-CHIEF BY MR HODGE

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

MR HODGE: Thank you, Commissioner.

Your name is Brendan John Stanford?---That's correct.

And you reside at an address that you've given to the Royal Commission?---That's correct.

And do you currently work as a hospitality contractor?---Yes, I am. I'm a hospitality contractor. I've been off work for a period of time, though, just with illness. But that's my main job.

All right. And you received a summons to attend to give evidence before the Royal Commission?---That's correct.

Do you have a copy of that, or do you have that summons there?---I do.

Thank you. I tender the summons.

THE COMMISSIONER: Exhibit 3.105 will be the summons.

EXHIBIT #3.105 SUMMONS TO BRENDAN STANFORD

MR HODGE: And, Mr Stanford, you've made a statement for the Royal Commission dated 24 May 2018?---I have.

And you have read through that statement?---I have.

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

Thank you. I tender the statement, together with the exhibits.

THE COMMISSIONER: Exhibit 3.106 will be the statement and exhibits of Mr Stanford.

EXHIBIT #3.106 STATEMENT AND EXHIBITS OF MR STANFORD

MR HODGE: Now, Mr Stanford, I want to just take you through a series of events. We are going to start before the relevant hotel and begin in 2005. In 2005, you and your brother were working as the owners and licensees of a pub; is that right?---That's correct.

And where was the pub?---In the Hunter Valley, New South Wales.

And did you own it together?---No. I owned it in partnership with my wife at the time.

And what was your brother's role in it?---He was manager, basically. General manager.

And how long had you held the pub for?---Since 2001.

And before you had bought the pub, you had been working as an officer of the Australian Federal Police?---That's correct.

How long had you been in the AFP for?---Since 1991.

All right. And then once you bought the pub, were you working in the pub, the Cessnock pub?---Yes.

Your brother was also working in the pub for some time?---Yes. He – he joined me at the hotel in early 2003.

What had he been doing before he came to the pub?---He worked with the CSIRO down here in Melbourne.

And was the pub profitable?---Very.

All right. But you sold it?---Sold it, yes.

And why did you want to sell it?---At that time, I thought we had been there long enough. It's a very full-on commitment, seven days a week, and not many days off, long hours, running basically, you know, a hands-on operation. There four to five years, I think would bring just about anyone unstuck, unless you step back and just take a – you know, an overseeing role, but I was very hands-on with what happened and I thought it was time for a break and to move on.

And after you sold that pub were you looking to buy another pub?---Not immediately, no.

All right. But you did eventual buy another pub?---I did.

How did that come about?---We just sort of always had a look in the marketplace to see what was around. We sort of had a bit of criteria about how far we wanted to be from the major centres. It doesn't matter where it was, what major centre but just, you know, with good industry around. So unemployment – possibly a growth area as well. So just the normal sort of due diligence you would look at to know that the area was going to sustain you going into business and it would be profitable in the long run.

When you say "we", does that mean you and your brother?---Absolutely, yes.

And eventually you found The Coronation Hotel in Portland?---That's correct.

And how did you become of that hotel?---I just saw it advertised. We looked at a number of others, but we saw this advertised. It seemed to be a good performer on the figures that we saw initially. We did – you know, we visited the hotel at different times as well, and understood – to understand what they were doing there and you know, just to make sure that the trade that was happening was backed up by the figures that they were displaying.

When you say the figures they were displaying, you were provided with access to the books of the pub?---Yes. The broker gives you, you know, a certain snapshot of what's actually going on.

And was it a profitable business?---It seemingly was a profitable business.

All right. And you ended up buying the hotel; is that right?---We did.

All right. And that was in 2006?---That's correct.

And who were the buyers of the hotel?---Myself and my brother.

Right. So you – as individuals, you bought it?---Yes. The land and building, like, we set it up, a company, to run the business and land and buildings as a partnership.

The two of you who owned it?---That's correct.

And did you need a loan to buy it?---We did.

How much was the purchase price, can you recall?---It was – they were asking 1.75 and we negotiated 1.6 million.

All right. And you applied for a loan from Bankwest?---That's correct.

And how much did you apply for, from Bankwest?---We applied for 1.2 million, which was the maximum LVR I think that they were sort of offering at that stage. So - - -

And how did you fund the difference?---Personal savings or own cash.

And Bankwest gave you a loan over the property?---That's correct.

And was there a valuation that was done of the property?---There was a valuation done.

And who prepared the valuation?---Robertson & Robertson, panel valuers for the bank.

And what was it valued at?---At 1.6 million.

The price you were paying for it?---That's correct.

And Bankwest offered to lend you the $1.2 million?---That's correct.

And can you recall what the security was that you provided for the loan?---The hotel, basically.

And do you remember whether there was also some security granted by the company that was going to run the business?---Yes, there was. The company provided security as well.

And was the company called Let It Rain Proprietary Limited?---That's correct.

But the business loan itself was taken out in you and your brother's names?---That's correct.

And just so the Commissioner can get some sense of the structure of the business, what was the reason for incorporating Let It Rain?---It's just over time, if you ever want to lease the business, that was just a structure that seemed to work where you could own the freehold and actually a new entity could come in over the top as a lessee, should you want to go that way. It was just a general structure that sort of worked with hotels. And it was a long-term sort of strategy for us to – with the hotel. We were going to be there for a long term.

And how long was the loan for?---20 years.

And was it an interest only loan?---No.

What were the nature of the payments you were making?---Well, it was principal and interest.

And do you recall at some point in time your loan was split into a fixed interest and variable interest part?---I do. That was possibly not too long after we had gone into the hotel; maybe 2007, 2008.

All right. And the company in Let It Rain, which was running the business, were you a director of the company?---No, I wasn't.

Were you a shareholder?---Yes, I was a shareholder.

And after you bought the pub, who was operating it on a day-to-day basis?---For the first 15, 16 months, we both did, while we set everything up and our structures and internal and then training and everything else and understood what – how the business would function. Yes, so basically I was there until the end of 2007 and my brother assumed responsibility running the pub after that.

Okay. And you went to work in another job; is that right?---Yes, that's correct.

Right. And when you started operating the business, how was it running, how was it performing?---Virtually in line with the figures that we were provided. I noticed that in the first 12 months we had sort of – turnover had been up around 10 per cent on what we had initially seen, so positive.

All right. Now, over time, the performance dipped off?---Yes. Not in the first number of years. I think around first half of financial year '11 so towards the end of 2010, that's when it was a bit noticeable that – but – but, you know, there was a lot of other factors in the marketplace that were causing concern. And yes, I don't think it was an unusual set of circumstances to see a downturn.

And at that stage, late 2010, early 2011, what was your brother's role in the business?---Yes, he was still running the business as a manager.

And what was your role in the business by that stage?---I just helped out whenever. So I actually had a job in Bathurst from 2010, so I sort of travelled in between the hotel and Bathurst and where I was living at the time and I just – you know, we spoke virtually daily about how things were going and what we need to do and I just helped out where I could. So whatever was required, I would just pitch in.

Who was responsible for the financial accounts of the business?---Overall Michael was, because he was there the whole time but, as I said, when I came in, I would just look at where things were at and what creditors needed paying and just talked about what we were going to do and how we were going to arrange the – you know, turnover for the week and just the normal discussions you would have around finances in any business.

And did the business have accountants?---We did, yes.

Throughout the whole period?---Yes.

All right. I think at some point you changed accountants; is that right?---Yes, we did; after – in 2011.

I will come to that in a moment. So the licensee of the hotel throughout this time was whom?---My brother, Michael.

Okay. And in 2009 Bankwest asked for the hotel to be revalued?---That's correct.

And that was consistent with what was required under the loan?---Yes.

Which was a valuation every three years?---Three years, yes, that's correct.

And did you arrange for a valuation to be done?---We spoke to the valuer and arranged, you know, a rate and then that time in a period, like we had to make sure that that he could do it, but Bankwest commissioned the valuation.

And did you see that valuation at the time?---Yes, I did.

And can you recall – we don't need to guess, we will bring it up. It's CBA.0001.0285.0567, it's exhibit 2 to Mr Stanford's statement. This is the valuation dated 30 October 2009?---Yes.

That's right?---Yes.

And you see it's instructed by Mr Gary Goldsmith. He was the relationship manager that you were dealing with at the time from Bankwest?---That's correct.

And if we go to the page .0571, we see the valuation as at 30 October 2009 was $1.55 million?---Yes.

And you understand that one of the ways in which the business is valued is by capitalising the maintainable net profit of the business?---I do.

And so as the profit falls, depending on what the capitalisation rate does, you would expect that the value of the whole enterprise would fall?---Depending on market conditions, yes.

All right. And you referred to what then happened in 2010, in terms of trading and you said there was a decrease in performance of the business?---Yes. I – towards, I think, the end of the December half of 2010, you know, it was fairly common knowledge that the flow-on effects through the GFC, I think – also there was – the smoking changes in hotels had sort of run its full course, and so there was changes as far as – that you couldn't smoke in the venues as well. So, yes, there was plenty happening, you know, in the industry as far as, you know, reasons for a downturn in trade, I would say.

And in 2010, do you know whether the business or whether you and your brother were maintaining your principal and interest payments?---To the best of my knowledge, yes.

But one thing that did happen was that you, or at least Let It Rain, fell behind on commitments to the ATO?---That's correct.

And are you aware of what was done to try to address that?---Yes. We contacted the ATO and just formalised a payment plan to rectify that shortfall.

And do you know whether you made payments in accordance with the payment plan?---Yes, I believe so.

Now, do you recall that the business applied for an overdraft facility?---Yes, I do.

And can you remember what the reason for that was?---Around the same time, we - - -

So just around the same time, you mean in 2010, is that right?---Yes, sorry in 2010. We always operated like on a continuous improvement for the hotel. Like, they're old establishments. There's always things you can – you know, you can do to keep the look and the feel of the place in the way it was. We had shops associated with it as well. So lettable businesses that – four shops that were part of the premises. And so we spent money on doing them up, so we could have tenants in them. We set up a function room. We had a separate entrance to the – to the function room through the hotel. We actually put holes in the walls and a walkway through so we could have a separate space to have bigger events. We increased the floor size in the hotel as well. We took out an airlock and just so – it was just, like I said, a continual sort of arrangement that we had. Plus the fact that things had sort of – there was an identified slowing down. We just didn't want to be caught in a place where, you know, you sort of – you couldn't meet your commitments.

And do you know how much the overdraft was for?---$20,000.

Okay. And that was something you sought then in 2010; is that right?---Yes. Well, we had actually asked previously to go interest only for a period. But that wasn't an option, as explained by our relationship manager.

Okay. And you were, though, given the $20,000 overdraft?---We were.

And in terms of the operation of that overdraft, at some point that became overdrawn; do you recall that?---Yes, I do.

And do you remember why that was?---Not 100 per cent. I would only be speculating but the way things worked with Bankwest, we didn't have a branch close by, so our closest branch was Orange. So we would have our EFTPOS system set up that our payments through EFTPOS went directly into that account, so we would always have funds going on. So in line with the slowdown of the business of that period, there would be less going into that account and that would be what I would say is why it became overdrawn.

Do you recall, in 2010, a discussion with Mr Goldsmith about signing a new document or a new loan document?---Yes, I do.

All right. And can you tell us what you can remember about that?---I remember I was obviously working in Bathurst at the time, as I mentioned, and we had gone across and he had arranged for a lunch to meet at one of the other establishments in Bathurst, and it was explained that the facility that we had was no longer available, and it needed to change. And we thought, "Oh well." I thought that it sounded reasonable under, you know, the explanation from – from Mr Goldsmith.

Can you remember what changes you understood would happen as a result of the new document?---The only thing that really stands out to me was the fact that our reporting would change. So where it was annually before, it would go to quarterly.

And you knew that at the time you were signing the document?---Yes, we did. That was basically explained by Mr Goldsmith to us.

All right. Do you remember any change to your interest rate at about that time?---I don't.

Okay. And you signed the document to change the loan over?---We did.

And that didn't change the term of the loans?---No. No, not to my knowledge.

Okay. But it did introduce, as you understood it, this reporting covenant?---That's correct.

And that required you to provide quarterly reports?---Quarterly reports.

And do you know whether that obligation was being met?---In the first instance, no. I think it just – it's one of those things that it takes a bit, you know, where you provide your information to your accountant once a year, to do it quarterly. It's you know, new systems have to be implemented, and that didn't happen straightaway. So - - -

Do you recall that, before you signed this document, under the old loan agreement that you had other reporting requirements you had to meet?---We would get a letter, I think annually, from our representative from Dubbo and that sort of set out what we needed to do. So that's as simple as it was.

And do you recall there was sometimes some difficult in meeting those annual obligations?---Yes. Well, it's a very busy time of the year for accountants. So a lot of the time, we you know, rely on, you know, their peaks and troughs as far as things go. So we can – we can ask for it as quickly as we can, but sometimes it just doesn't come.

And after the new loan agreement was made with the quarterly obligation – quarter reporting obligations, I think you've explained you had an issue or you weren't always meeting those obligations; is that right?---Yes. That happened in the first instance.

And, in fact, you didn't manage to provide it on time the very first time it was due after you signed the agreement?---Yes, that's correct.

And you received a letter from the bank?---Yes, we did.

And perhaps if we just bring up one of those exhibits 3, CBA.0001.0285.1281. Sorry 1231, not 1281. CBA.0001.0285.1231. So this is the first notification of breach you received after having failed to provide the quarterly reports?---Yes.

And that's on 30 November 2010?---That's correct.

Now, it says that there's a breach fee of $250, but also that that's waived in this instance; is that right?---That's what it says, yes.

And you don't remember having been charged $250?---No, I don't.

Okay. Was this – or do you remember receiving this letter at the time?---Not – not personally, not exactly that I can say that – I know that there was a discussion around the breaches and – but not exactly receiving that letter.

Do you recall your brother talking to you about what dealings he was having with Bankwest?---Yes.

All right. Do you recall what he had said to you about what he understood Bankwest's attitude to be to the business?---At the time, there was nothing that would have given any other indication. It was business as usual. Even when we transferred from Dubbo to Orange that was the quote from our relationship manager, our business manager from Dubbo was, "It's going to be business as usual, once your account goes across to Orange."

Can you recall at some stage Michael – I'm sorry, your brother Michael becoming suspicious about whether Bankwest wanted to sell the business?---From the outset, when we had the meeting in Bathurst, he said to me a number of times over the years that he wasn't comfortable with how things transpired that day with the meeting with Gary Goldsmith. But – so there was suspicions obviously there.

From him, you mean?---From him.

But not from you?---No.

And the meeting in Bathurst, do you remember what year that was?---2010.

Now, there was then another type of breach letter that you received. Can we bring up exhibit 7 CBA.0001.0285.1728. This is a letter received on 8 April 2011?---Yes.

Can you recall receiving this at the time?---No, I don't.

Okay. You understand there are two types of breaches being identified here. One is failing to maintain an ICR ratio. The other is failing to maintain a DSR ratio?---Yes.

Do you understand what that means?---Yes, I do.

All right. So if we start with ICR, could you just explain what that means and what you are required to do?---Well, it's the – it's basically your EBITDA divided by your interest, and that's my understanding. So - - -

So your EBITDA has to be more than two times the interest payable?---More than two times, yes.

And DSR, do you understand what that is?---No, not exactly.

Okay. And do you recall what happened after this letter was received?---No.

Okay. Do you know whether, by April 2011, you and your brother were still making your principal and interest payments?---No, I don't.

Do you know whether you were still making your payments to the ATO?---Yes. My assumption is yes, we would be because we – as far as I'm aware, we never faulted from the payment schedule.

All right. Do you remember whether, as at the beginning of 2011, you and your brother were contemplating selling the hotel?---We had had discussions in regards to it, similar to the previous hotel. I thought, you know, four to five years in a place was time for a break. You know, it's energy, it's focus, it's marketing, it's, you know changing the way you're going to do things. Everything about it. You know, it needs to be invigorated again and you've got to work out whether you have got those energy levels or you can see enough blue sky to actually continue on, you know, in the same vein. So we definitely had a discussion around it.

And what did you decide to do?---Michael wanted to stay.

He wanted to stay?---He wanted to stay.

All right. And I may have asked half of this question at the beginning of your examination, but you were borrowing money for 20 years. How did you foresee this investment in the pub turning out?---As I stated before, it was a long-term play for me. As far as I was concerned we would get to a point where we could comfortably lease it out and use those funds to pay off the rest of the facility that we had. That was probably the ideal plan. If the market was strong enough again, you would contemplate selling as well. It's very cyclical. Like, I've seen the ups and downs over 20-odd years with it, and you know that for every down there's the ups as well. So it's just how you can deal with those downs.

Now, you know that in the second half of 2011 Bankwest appointed PPB Advisory to perform a function in its investigative accountants?---Yes. Prior to them turning up to the hotel, no, I didn't know that they - - -

No, sorry, let me break it down. At the moment – you know now that they appointed somebody to go and be investigative accountants?---Yes.

And I think you were then talking about when you first found out that they had appointed somebody to do that; is that right?---Yes.

And when did you first find out that they had appointed investigative accountants?---When my brother rang me to tell me that they just showed up at the hotel.

And what did you understand they were there to do?---A report for the bank.

On how the hotel was going?---A report for the bank.

And - - -?---There was no mention of an investigative report or anything of that nature.

So you just knew that PPB Advisory had turned up at the hotel, is that what you mean?---Yes.

And then were you subsequently told that they had prepared a report?---Not – not until we were made aware that – down the track that there was a problem.

Yes, but you know that at some point in time they told - - -?---They were preparing a report for the bank.

Yes?---Yes.

After they had gone away; is that right?---Yes.

And did they ever speak to you?---No.

And at that time, then, the person who was responsible for managing the business though, was your brother?---That's correct.

And what sort of role were you playing then in 2011?---Just similar to before. I would be there every second week and we would discuss, you know, where things were at, how we were tracking in regards to, you know, different ways we saw opportunity to increase revenue. And as I said, we had – we were looking at, we had changeover in some of the tenants in the – in our shops, shopfronts that we had. We had approaches from an employment agency in Lithgow to utilise the space, as well, in our shops. We were doing refurbishment of our accommodation room upstairs. So we – after the financial 2011, we went a lot harder with entertainment and all that sort of stuff to bring people into the hotel. So, you know, we had a fair few irons in the fire in trying to rectify the situation from the end of the financial year '11.

If you just go back to that point in time where your brother called to tell you that PPB Advisory were at the hotel, did the two of you have a discussion about what that meant, what the significance of that was?---The suspicions, I guess from Michael's point of view, were raised again in relation to what was going on with the bank. But there was no wording or anything that was said in that scenario that would have raised a flag that there was an issue forthcoming.

Now, then, if we go to exhibit 8 to your statement which is CBA.0002.1973.7265. So this is a letter sent to you dated 3 November 2011?---That's correct.

And it's from Gadens Lawyers?---That's correct.

And they were the lawyers acting for Bankwest?---Yes.

All right. You see it refers to "our letter of 15 August 2011"?---Yes.

You're not sure what that is?---No.

Okay. And it explains, if we go over the page to .7266, at the top of the page that Bankwest has received an independent investigative accountant's report into the trading position of the hotel?---Yes.

And as a result of reviewing the report, Bankwest is concerned that a change has occurred in the business's financial condition?---Yes.

And you were required, within seven days, to say whether you were prepared to acknowledge that there had been a material adverse change in the financial condition of the hotel?---Yes.

And if you weren't prepared to do that, to outline the reasons why in your opinion there had not been a material adverse change and provide financial records to support your position?---Yes.

Now, had you received a copy of the independent accountant's report?---No, we haven't.

Did you ever receive a copy of the independent accountant's report?---No, didn't receive a copy.

Did you provide a response within seven days to explain why you disagreed with the report you hadn't seen?---From memory, I don't believe there was seven days to actually provide a response. I think that, by the time we received it, it was just a couple of days. But we, as per the last line, took their advice to speak to a solicitor ourselves and we got them to draft a letter to – in response to try and work out what was actually the basis of what was going on.

All right. And before we come to what happened after this letter, you were also asked to pay the investigative accountant's fees of $9900 within seven days?---That's correct.

Do you know whether you did that?---I believe the charge was applied to our overdraft at some stage.

All right. And you referred then to having sought legal advice after getting this letter?---That's correct.

And if we then go to exhibit 9, CBA.4000.0037.5293, this is a letter back to Gadens to Lands Legal?---Yes.

Is Lands Legal your lawyers?---Yes.

Or they were your lawyers; is that right?---Yes, that's correct.

And did they send this letter on your instructions?---Yes, they did.

And you will see in the letter that they ask for a copy of the investigative accountant's report?---That's correct.

And also a copy of the tax invoice?---That's right.

And you've already said you didn't receive a copy of the report. Did you receive a copy of the tax invoice?---No, we didn't.

And can we then go to exhibit 10, which is CBA.0002.1973.7271. So the other letter that you received from Gadens was about a termination of the overdraft account?---Yes.

And do you recall what happened with the overdraft account?---To my knowledge, nothing.

All right?---It still existed and, because – as I said before, our EFTPOS earnings kept going into the account and, as I said, those – the charges that Bankwest had for the investigative report and also for Gadens were applied to the same account as well.

Now, at about this time, did you also make a complaint to the Financial Ombudsman Service?---I believe so.

And do you recall that you had contact with Bankwest about trying to arrange a meeting?---Yes.

Was this at about this time in November of 2011?---That's correct.

And did the meeting go ahead?---Yes, it did.

And can you remember who attended the meeting?---For our side, there was Andrew Wennerbom from Lands Legal, there was representatives from accountants, the two parties there, and my brother and myself. And for Bankwest there was Matthew Maxwell as their representative. There was a couple of people from Gadens and a couple of people from BBP Advisory as well.

And do you remember what you were told at the meeting about Bankwest's intentions?---Not – the discussion was basically we were trying to ascertain what the investigative report actually showed, and the fact that we didn't receive any information around it, like, it just cast a shadow over the whole transparency of what was going on. So they highlighted the fact that there had been a downturn in trade which was obviously highlighted at the end of the 2010 quarterly report, but I don't see how else there was information available for them to come up with this situation that we found ourselves in. So basically they identified there was an issue with the hotel, and we identified that all businesses go through peaks and troughs, and we should be allowed to continue to trade through this.

Can you remember whether, by this time, you were still paying your principal and interest payments?---To the best of my knowledge, we were.

And you say in paragraph 31 of your statement that after the meeting you remember thinking that Bankwest was going to "sell you up:?---Yes.

Can you just explain what you mean by that, and why you thought that?---Well, it was fairly common in the industry that there was a number of receivership sales going on. And Bankwest were – formed part of that. And we had some in the vicinity of us as well that was going through those situations. I had friends in finance that were talking about not just hospitality but agribusinesses as well, and it just seemed like – that we were easy targets in that relation, in the fact that, you know, we're high asset businesses but we're low cash flow. So at the end of the day, you know, we have – on the back of, you know things like poker machines which provide a good capital value in your asset. So, you know, if they were sold, they're going to realise a decent price on the marketplace compared to some other businesses.

So I just want to understand, or help the Commissioner to understand that. Was it something that was said at the meeting that caused you to think you were going to be sold up or was it just your sense about the situation, not to do with something that was specifically said to you?---Yes. The demeanour – the way that was portrayed by Matthew Maxwell, he – it was sort of – I would even frame it as arrogance, that – that we – you know, we were genuinely looking to what has gone on in this situation and how we arrived at this point, and what's the transparency or the proof and the communication with how we – why we were here? And he wasn't forthcoming in relation to anything that was a positive sort of way out. The fact that when we – I said that we should be allowed to trade through it, that that wasn't going to be an option that was on the table. So, again, it's the way we received the communication back to us that made it difficult. I vaguely recall that, you know, that they were trying to push the accountants for a value on the – on the property as well. And because there was no sales, you know, at that time because the market was fairly soft, even right back to when we received the second valuation, I think three out of the four hotels that they used as guides for the valuation were receiver sales. So in country hotels there wasn't a vibrant market at that stage of things. So the fact that they said our hotel was only worth $250,000, we said there was something else at play here. Why – how could you value that – and even more, we pressed for how you could come up with that sort of figure.

After the meeting, did you and your brother talk about what you were going to do?---Not that I can recall. We obviously would have, but I can't recall any discussions. It was – it was a high anxiety type thing, like, coming down out of it – after it because it was – you know, it wasn't a good feeling to be on someone else's turf and be told that your business is worth $250,000 and, "We are not going to show you why."

And do you remember whether you were intending to keep trading or try to sell the business?---Yes. We decided – with that information, we thought that the relationship with the bank was at a point where I don't think it was recoverable. We – in the first number of years that we were with Bankwest, we didn't have a lot of contact with our relationship manager, but by the same token we were aware of what was required and all that sort of thing. Basically, the communication in the sense that, you know, "This is what the bank is thinking, this is how we see things in the future or this is how we can help you." You know that collaborative type thing you would expect from having a relationship with someone that you've got a loan of 1.2 million or whatever it was at that stage, you would think there would be a bit more involved. But there wasn't – it wasn't a two-way street. We had to press for – you know, the meeting ourselves, and trying to get that information to understand, you know, what really was going on.

And so if we just go back to what I want to understand in terms of what your intention was, after the meeting then, what was your intention to terms of – obviously there's at least two options, one is you keep trading, the other is you look to try to sell the business. There may be others. What did you want to try to do?---We wanted to bring the reports into line to actually show that the – you know that that situation happened for financial year '11 was only a – you know, glitch in the – in the five years that we had been there. So we instructed the accountants to get the books up to date as quick as we could. And we were going to, you know, make a decision from then. But we needed – if we were going to sell anyway, we needed to have that information readily available. We also, you know, over time contacted a broker to market the hotel. We instructed our solicitor to arrange contracts for sale of the hotel. We had done the inventories, done all the steps that you generally do to bring a hotel to market.

And were those steps you were taking in 2012?---That – that was – yes, in 2012 some of those steps had happened.

Now, one of the things that I need to put in context is in 2012 you stepped away from being involved in the business?---That's correct.

And that was because you were receiving treatment for leukaemia at the time?---That's correct.

And that treatment stopped at some point in time?---It – it basically – the follow-on from it didn't end until early into the 2013.

And do you recall that the complaint that you had made to FOS lapsed?---I do.

And then at some point in time you sought to reopen the FOS complaint?---Yes. We had an issue in trying to get our figures done through the accountants. Because they were basically starting from scratch with everything, it was a continual information transfer and that type of thing, and it took longer than I would have anticipated to create a set of accounts and that type of thing. From memory, I think it was still going in to 2013, we were still waiting for these figures. So it just delayed everything and caused even more, you know, issue with us.

Was it when you were able to again turn your attention to what was going on in the business that the FOS complaint was re-enlivened or are they independent things?---No, it was – from memory, it was in 2013, and I had gone through my treatment and recovery. Also, you know, I tried to do what I could in the background, but I was housebound for a fair part of it. So I could only do what I could do in relation to most things.

But once you had re-enlivened the FOS complaint there was then a telephone conciliation that FOS convened?---Yes, that's correct.

And do you recall what the outcome of that was?---That we would have enough time hopefully to list the hotel and sell it by, I think, June 2014.

Be 30 June 2014?---Sounds fair, yes.

And do you remember whether you tried to sell it going up to 30 June 2014?---Yes. We got to the point where the market was still quite soft. There wasn't a lot of sales in the marketplace. What the general consensus was, when we spoke to brokers and that, was that people didn't need to offer money for hotels because if they were distressed assets they were going to come on the market anyway. So, you know, you had trouble justifying your capitalisation rates and that type of thing. So at the start of the exercise, I think we had a paper valuation from the broker of around 1.2

million. And as we got closer to that point in 2014, you know, we are looking at a capitalisation rates of over 20 per cent which brought it down to in the 900s which just made it a difficult type of scenario to – to sell.

Do you know whether the performance of the business had continued to go down during this period?---Look, I can’t recall. I remember back to financial year ’12, to the best of my knowledge and things were back to what they were. I think over that period of financial year ’11, we had a dip of somewhere around 10 per cent. But back to financial year ’12 it was back to what it was before. And you know, so I had confidence that we – you know, that things were, you know, on the mend as far as things went.

It was still your brother, though, who was managing it day-to-day?---Yes, that’s correct.

So in the first half of 2014, when you were trying to sell it, and this was when you were talking about a paper valuation of 1.2 million and then being told on a capitalisation of over 20 per cent it’s only worth nine hundred something thousand dollars?---Yes.

I want to just make sure we can understand the way you were looking at it at that point. How much were you looking to try to get out of the sale or to achieve with the sale?---We – well, we really just wanted to pay back what we owed the bank. That was as simple as that. It was – there was no other sort of outcome that we would have been comfortable with. But, yes, you know the realisation came fairly quick once we started looking, you know, seeing where the capitalisation rates were actually sitting at that time. So we went from like 15 per cent from the previous valuation which was, you know, three, four, five – three or four years before to, you know, 20 per cent basically based on not a lot of sales. So that that was the reality.

And do you remember whether, in the lead-up to June 2014, your brother wanted to sell the hotel or not?---I think that he had had enough of what had gone on as well. So definitely he was happy to sell. That was our aim of the exercise in going to FOS the second time.

When you say he had had enough, had enough of what?---The scenario that had played out. It took – it takes its toll. You think that you are going okay, and then this is thrown into your business and you are trying to deal – like, you’re little battlers in a small country pub and you can’t turn things that quickly. You have to work towards increasing turnover. It doesn’t just happen over a short period of time. It takes, you know, 12 months to realise some things, to put plans into action and actually get some traction and move forward with it. So to see all that work that you’ve done over, you know, an extended period just to have a rug sort of pulled out from under you, I think it affected him more in that sense than me, even though I was going through, you know, a different set of circumstances myself.

And as it got to the end of June 2014, you obviously hadn't managed to get a contract on the hotel?---Yes. Well, we had everything ready to go, but we realised we were just going to waste our time.

When you say you had everything ready to go. You didn't have a buyer who was willing to pay what you wanted?---No, no. But we had everything in play that we required to do it. So we had a marketing campaign. We had our – like, through our broker and all that sort of stuff, we had our figures done, a contract done, inventory done. So we were at that point where you could press a button and more forward in that sense.

And do you remember giving instructions to your accountant to make an offer to the bank?---Yes. So we changed back to our original accountants. So that was our original accountants in Dubbo and they took up the charge to assist us in trying to come up with a separate resolution.

And if we bring up CBA.0001.0315.6409. Michael Medway is your accountant; is that right?---That's correct.

And the email address has been entirely blocked out, but the Alison is the person at Bankwest that you had been dealing with?---Yes.

And if we go to the bottom third of the email, and blow that up from the words:

> *In light of our position –*

so the offer that you were making was that you pay $200,000 to the bank by the following Friday. That's the first part; is that right?---Yes.

And then the second part was a further $100,000 to be deposited 30 days after that?---Yes.

And that was to reduce the principal that was owing?---That's correct.

And it says there the money is coming from – that's your brother; is that right? Your brother's partner?---That's right, yes.

And she was going to put up the money in order to reduce the principal debt; is that right?---Yes. She felt strongly enough to do that, that the business was viable.

And then the – what was requested was that the remainder be refinanced over 15 years?---That's correct.

And if we go over the page to .6410, and then blow up the paragraph in the middle of the page beginning – I'm sorry, the two paragraphs beginning "The brothers", and then the second paragraph. So one of the things that your accountant was trying to explain was that you thought there had been some improvement in the performance of the business?---Yes.

And in terms of what was thought about as a strategy, if we then bring down that pop-up and pop up the next part, you will see what was then being proposed was to try to improve the financial results and then sell it off over three to five years; is that right?---That's correct.

Now, do you – I'm sorry, I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 3.107, email Medway to Bankwest, 26 June '14, CBA.0001.0315.0409, is it, Mr Hodge?

MR HODGE: 6409.

THE COMMISSIONER: 6409.

EXHIBIT #3.107 EMAIL MEDWAY TO BANKWEST DATED 26/06/2014 (CBA.0001.0315.0409)

MR HODGE: Thank you.

THE COMMISSIONER: Thank you.

MR HODGE: And then you received a response to that email the next day? I will show it to you. CBA.0517.0118.0001.

THE COMMISSIONER: I think we need the numbers again.

MR HODGE: CBA.0517.0118.0001. Would it assist if I said it again? CBA.0517.0118.0001. This is the response that you received back from Bankwest the next day?---Yes.

Where the bank said it was unable to accept your proposal?---Yes.

And noted that it had already provided numerous concessions to you and your brother?---That's correct.

And pointed out that, pursuant to the agreement you had entered into on 30 January, you agreed to sell the hotel by auction by 30 June 2014?---That's correct.

And attached a copy of the signed agreement?---I assume that's what was attached.

You can see - - -?---Yes, I can see attachments there.

That's right. And then reserved the bank's rights?---Yes.

And then said she would be on leave for the next few weeks, so please contact somebody else at the bank if you had any further queries?---Yes.

I tender that document, Commissioner.

THE COMMISSIONER: Email Bankwest – between Bankwest Medway and Stanford and others, 27 June ’14, CBA.0517.0118.0001, exhibit 3.108.

EXHIBIT #3.108 EMAIL BETWEEN BANKWEST MEDWAY AND STANFORD AND OTHERS DATED 27/06/2014 (CBA.0517.0118.0001)

MR HODGE: Did you sell the hotel by 30 June 2014?---No, we didn’t.

And, after that date passed, did you make a further offer to the bank?---Yes, we did.

And can we bring up RCD.0024.0015.0001. And this is the chain of emails that have been forwarded on to you by your accountant; is that right?---Yes.

Mr Medway is your accountant?---That’s correct.

If we go to the page beginning .0002 and can we bring that page up together with the page which is .0003. So you can see the date of this email from Mr Medway to Mr Hornstra at Bankwest, which is 1 July 2014. Can you make that out down in the bottom half of the first page?---Yes – yes, I can see it.

And then it sets out what had been sent in the previous email to the other person from Bankwest?---Yes.

And then if you go then to the bottom of the page ending .0003, you will see that a further offer was made and it explains that you had managed to secure outside moneys of $400,000?---Correct.

Can you recall where you secured those moneys from?---That was my brother’s partner again.

And, again, this was seeking as a first option to try to pay down the capital by $400,000 and then refinance the balance?---That’s correct.

And the response from Mr Hornstra, which is at the top of page .0002, was:

> *In short, we will not engage in a further banking relationship and simply require to be repaid.*

?---Yes.

Should you, however, wish to repay $400,000 before 4 July 2014, the bank may consider a period of eight weeks to allow you to seek refinance with the full residual debt being cleared at the end of that period.

?---Yes.

And I tender that document, Commissioner.

THE COMMISSIONER: Emails between Bankwest, Medway and others, 2 July 14, RCD.0024.0015.0005 exhibit 3.109.

EXHIBIT #3.109 EMAILS BETWEEN BANKWEST, MEDWAY AND OTHERS DATED 02/07/2014 (RCD.0024.0015.0005)

MR HODGE: You – I take it didn't pay the $400,000 in order to have able to have an extra eight weeks to be able to refinance with someone else?---No. No, we didn't.

And what did the bank then do?---I think it was not long after PPB turned up to the hotel again and closed it.

They had been appointed as the receivers; is that right?---That's correct.

And they sold the property?---Yes, I understand they did.

Do you know what they sold it for?---I didn't until well after the event.

What do you understand they sold it for?---I think it was 525,000, including stock.

And they haven't pursued – Bankwest hasn't pursued you, though, for the balance of the debt that you and your brother owed?---No.

And are you able to explain to the Commissioner what was the effect on your brother of the selling of the hotel?

THE COMMISSIONER: Do you want to take a break?---Just a short one. Thank you.

Thank you. I will come back at shortly before quarter past 3.

ADJOURNED **[3.08 pm]**

RESUMED **[3.14 pm]**

THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: I just have a few more questions. I'm just going to ask you again the question I asked you just before the break. What was the effect on your brother of the sale of the hotel?---Yes. Basically I think from the time this was instigated, I saw him struggle and even after it all happened, I saw him depressed for, you know, for a few years. That's why I'm here today, because he couldn't come in, but - - -

Now, you made a public submission to the Commission?---I did. I did.

And that was how the Commission contacted you, after your public submission?---That's correct.

And you've already explained why you made the submission?---I did.

I just want to ask you one other thing which is about the offers that you made at the very end and what I wanted to suggest to you is that one potential issue for you, if these offers had been accepted was that, if the business's performance had gone down rather than up, then the consequence might have been that your brother's partner would have lost the substantial amount of money that she was investing in the business?---That's true. She felt strongly enough about it. Like, she voiced her concerns that she thought the business was viable. There was opportunity around the area. She worked locally. She was there the whole time, so she had just as good an overview as anyone on the opportunity within the region. She's – she wouldn't have made that commitment unless she thought it was a viable option.

I understand that, and what I just want to suggest, though, is it's possible – one possible outcome of that offer having been accepted by the bank is that you and your brother and your partners would end up – could have ended up being worse off than what ended up in the situation that you were?---That is a possibility. Three of us were working elsewhere full-time in good and gainful employment. You know, there was other options that, you know, should that sort of happen, that you know we could have been in a different position as well. So I wouldn't say that's categorical.

I don't have any further questions, Commissioner.

THE COMMISSIONER: Yes, thank you. Mr Scerri.

DR HIGGINS: There's no cross-examination, Commissioner.

THE COMMISSIONER: Yes. Thank you, Mr Stanford. You may step down. You are excused from further attendance.

<THE WITNESS WITHDREW [3.17 pm]

THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Commissioner, the next witness is Mr Cohen, and Dr Higgins will call Mr Cohen.

THE COMMISSIONER: Yes, Dr Higgins.

DR HIGGINS: I call David Antony Keith Cohen.

<DAVID ANTONY KEITH COHEN, SWORN [3.18 pm]

<EXAMINATION-IN-CHIEF BY DR HIGGINS

THE COMMISSIONER: Thank you, Mr Cohen. Do sit down. Yes, Dr Higgins.

DR HIGGINS: Your full name is David Antony Keith Cohen?---Yes.

And your business address is 201 Sussex Street, Sydney?---That's correct.

And you are presently group chief risk officer of the Commonwealth Bank of Australia?---Yes, that's right.

Have you received a summons to attend the Commission hearing today?---Yes I have.

Do you have a copy of that summons with you?---I do.

I tender the summons.

THE COMMISSIONER: Exhibit 3.110 summons to Mr Cohen.

EXHIBIT #3.110 SUMMONS TO MR COHEN

DR HIGGINS: And you have prepared two statements in relation to rubric 3-13, Mr Cohen?---That's correct.

The first is dated 17 May 2018 and addresses questions 8 to 34 of that rubric?---That's correct.

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

I tender that statement and its exhibits, Commissioner.

THE COMMISSIONER: That statement dated 17 May '18 with respect to questions 8 to 34, I think you said, Dr Higgins, will become exhibit 3.111.

EXHIBIT #3.111 STATEMENT OF MR COHEN WITH RESPECT TO QUESTIONS 8 TO 34 OF RUBRIB 3-13 DATED 17/05/2018

DR HIGGINS: And the second statement is also dated 17 May 2018 and provides supplementary evidence in relation to questions 23, 29 and 30 of rubric 3-13?---That's correct.

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

I tender that statement and its exhibits, Commissioner.

THE COMMISSIONER: Statement, 17 May '18, in relation to questions 23, 29 and 30 and accompanying exhibits, exhibit 3.112.

EXHIBIT #3.112 STATMENT OF MR COHEN IN RELATION TO QUESTIONS 23, 29 AND 30 OF RUBRIC 3-13 AND EXHIBITS DATED 17/05/2018

DR HIGGINS: Do you have a copy of those two statements and the exhibits with you in the box, Mr Cohen?---I do.

Mr Hodge will now ask you some questions.

THE COMMISSIONER: Yes, Mr Hodge.

<CROSS-EXAMINATION BY MR HODGE [3.20 pm]

MR HODGE: Thank you, Commissioner.

THE COMMISSIONER: We are going to run out of real estate in the witness box, unless we are careful, Mr Cohen. Before we begin, can you get yourself in a position where you feel comfortable that you've got access to whatever documents you need?---Thank you, Commissioner, I think I'm right.

THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Thank you, Commissioner. Mr Cohen, the first issue I want to deal with and take you through is some documents relating to Project Magellan. So we are going to start just by going through some general issues in relation to the history of that project?---Certainly.

And you've given some evidence in your statement about that. What I want to do is show you some documents that are documents that aren't exhibited to your statement and you may or may not be able to comment on them. Can we bring up first CBA.0002.2076.7461. So this first document is dated 25 March 2009, Mr Cohen. And what I'm going to do is I'm just to step through a number of documents starting from about this period of time. I just want to put – so in that temporal context, I just want to put in context what your position is. You are now the chief risk officer of the Commonwealth Bank; is that right?---Yes, that's correct.

Back as at March 2009 what was the position you held then?---I was the group general counsel of the Commonwealth Bank group.

And you never worked for Bankwest?---No, I did not.

Did you have some involvement in the acquisition of Bankwest by the Commonwealth Bank?---I did, yes.

In the sense that you were no doubt advising them as part of your role as general counsel?---Initially, in broad legal capacity, yes, and then secondly and more specifically in the actual negotiation of the acquisition documents.

And after the acquisition was completed in December 2008, you then had some involvement in relation to the expert determination in relation to the price adjustment mechanism?---Yes, I did.

And beyond that what involvement, if any, did you have in Bankwest?---The next level of ongoing involvement with Bankwest was in connection with the surrender of Bankwest's banking licence which was, in effect, a requirement of APRA following the acquisition.

And that happened in 2010 or 2011?---So the actual surrender occurred in October 2012 but there was a lot of work for about 18 months or so leading up to that point.

And the issue, as I understand it, was that APRAs preference was that there be only one licensed ADI within the group; is that right?---That's correct. That was its policy at the time.

And one of the issues that you needed to work through was that legislation in Western Australia seemed to require Bankwest to hold its own ADI?---That's correct. That was one of the tensions between APRAs requirement that the Bankwest licence be surrendered and Bankwest's ongoing compliance with the Bank of Western Australia Act.

And ultimately that was resolved?---Yes. Ultimately the Western Australian government passed some amendments, or Parliament passed amendments to the Bank of Western Australia Act.

And that, to be clear, had absolutely nothing to do with Project Magellan?---No. It was - - -

And it was just an issue between the tension of the requirements of APRA in relation to how many ADIs you could have within a group and the legislative requirements of Western Australia?---That's correct.

And there was an issue, which was whether or not APRA would continue to allow certain concessions that allowed you to take into account Commonwealth Bank capital in relation to Bankwest; is that - - -?---Not capital, no. But Commonwealth Bank funding of Bankwest. So one of the conditions that, in effect, APRA waived for a period was that Commonwealth Bank could fund Bankwest to the extent of 30 per cent, which was above the normal level that APRA would have allowed for one ADI to fund another ADI.

And, but for that concession, it would have been necessary for Bankwest to go to the market to raise capital or something like that?---It would have needed to go to the market to raise debt funding. Not capital per se, but debt funding, yes.

But as it was, that issue got sorted out?---Yes, that's right.

So then if we come back to what was going on in 25 March 2009?---Sorry, Mr Hodge.

Sorry, yes?---Is it possible for me to look at a hard copy of the document. I'm finding it hard to read it on the screen.

I'm not sure how practical that will be?---Okay.

We will do the best we can, and we will try to blow it up for you, and if we can over - - -

DR HIGGINS: Commissioner, we have copies of these documents, if it assists my learned friend.

MR HODGE: That would be very helpful.

THE COMMISSIONER: Very well?---Thank you.

MR HODGE: Now, one of the things that you explain in your statement is that there are a number of re-examinations of the portfolio of Bankwest?---Yes, there were various reviews carried out.

But you weren't involved in those reviews?---No, I was not.

You've gone back and informed yourself, looking at the documents that are available?---That's correct.

All right. And I want to just take you through a timeline, then, of what happens in terms of those documents. You see – or you are aware now that one of the issues that was identified relatively early after the acquisition of Bankwest was how much of Bankwest's total committed exposure was in commercial property?---Yes. I am aware now, yes.

And what is set out in the second dash under Portfolio Structure is that commercial property was representing 50.3 per cent of Bankwest's total committed exposure for the non-retail assets?---Yes.

And in addition to the level of exposure, there was also an increase in what are referred to as troublesome and impaired assets?---Yes, that's correct.

And perhaps if we just take those concepts separately. Could you just explain the way in which Bankwest and CBA defines an impaired asset?---Yes. An impaired asset is an asset in – for example, a loan, where the bank does not expect to recover the full proceeds of the loan. So it expects to make a loss in respect of that loan.

And a troublesome asset is what?---A troublesome asset is a level of risk grade that is not as serious as an impaired asset, but it is an asset where there is a concern about the health of that loan, and it derives from a view that the likelihood of loss from that loan has increased.

Now, this document, is it one that you've reviewed in the course of preparing to give evidence? Or you're not sure?---If you can just give me a minute, I will tell you. I've looked at thousands of documents and I just need to familiarise myself. I believe it is.

All right. And – but it's not a document that you've exhibited, it's not from within the selection of documents that you've included as part of your statement?---That's correct, yes.

All right. So these are other documents that the Commission has identified and we are now going to take you through that?---Yes. Yes.

And the point about the increase in troublesome assets, you can see that made in the second last dash under Key Findings. You see:

> *Across all sectors there has been a notable increase in the concentration of troublesome assets over the past nine months.*

?---Yes.

And then if we go to page .7469, which is page 9 of 15 in your hard copy version - - -?--- - - -?---Yes.

- - - Mr Cohen, and you see there's chart 15 which is impaired assets and IFRS. What does IFRS stand for?---That's an accounting standard.

Specific provisions, and we see that in the preceding year there had been a three times increase in gross debt from impaired assets?---Yes.

And also that over the same period the value of specific provisions against assets had increased by 13 times?---Yes.

And could you just explain to the Commissioner the distinction between general and specific provision?---Yes. A specific provision is – or sometimes known as an individually assessed provision, is a provision made in respect of a specific loan taking into the circumstances of that specific loan. And it is made on the basis, or taking into account, information that is specifically available in relation to that loan. A collective provision or a general provision is a provision calculated on the basis of an expected loss that will be incurred in respect of a loan, but also in respect of a body of loans with like tenors in like industries with like risk grades, and is also based on a general deterioration in the loan book arising from economic circumstances prevailing at the time.

And so what this is explaining to us that there has been an increase in the gross debt allowed for impaired assets and there's also been specific provisions that have been raised against quite a – 13 times, in terms of value of the assets. I put that very badly but - - -?---I think I understand. and I think the answer is yes.

And you think you agree?---Yes.

That's very comforting. And then one of the other issues in relation to risk is the concentration of the loan book in any particular issue. You agree with that?---Yes.

And if we go to the page ending .7475, we see in the second dash under the line:

> *Points of interest from the CBA industry sector concentration policy review include –*

you will see the acquisition of Bankwest added a further $13.7 billion to the existing CBA commercial property concentration of $45.2 billion?---Yes.

Bringing the new CBA group total to 58.9 billion?---Yes.

So that the group concentration had risen from 8.5 per cent to 9.9 per cent?---Yes.

And that was against a limit of 10 per cent?---That's correct.

And could you just explain to the Commissioner why a bank wants to have a limit on the concentration of its lending in any particular industry?---Yes. Primarily because of the value of diversification across the portfolio of loans, the theory being that it was prudent to avoid excessive concentration in a particular industry sector in case that industry sector suffers a rapid or even gradual deterioration or decline.

And then we – I think I've already tendered that document, Commissioner, a few days ago - - -

THE COMMISSIONER: Have you?

MR HODGE: I thought I might have tendered it yesterday when I was examining Mr Perry, but I am getting both a nod and a head shake from my instructing solicitor. So I will tender it again. Not the same solicitor at the same time, I should say. That would have been very impressive.

THE COMMISSIONER: Exhibit 3.113 will be submission to risk committee, 25 March 09, CBA.0002.2076.7461.

EXHIBIT #3.113 SUBMISSION TO RISK COMMITTEE DATED 25/03/2009 (CBA.0002.2076.7461)

MR HODGE: And one of the – I'm going to take you to another document which again is in part of your statement, so I might – I will tell you what the document is. We will see whether Dr Higgins can just continue to magically produce them to me. It's CBA.0002.2092.4133. It's a strategy memorandum dated 1 April 2009.

THE COMMISSIONER: Sorry, what date?

MR HODGE: 1 April 2009. Again, if you want to have a quick look through that document, Mr Cohen, and then I will ask you if that is one you have had a look at in the course of preparing to give evidence?---I believe it is. I believe I have seen it, yes.

And you will see it's a document that's prepared by Mr Sutton as the managing director of Bankwest?---Yes.

Do you know how long Mr Sutton had held that position at the beginning of 2009?---My recollection is Mr Sutton was appointed as the manager director of Bankwest shortly after CBAs acquisition on 19 December 2008.

All right. And then if we go to the page ending .4135 you will see there's a heading Reducing Risk?---Yes.

And then a paragraph 4.8 which is:

The quality of the Bankwest business asset book is poorer than original expectations and we are actively derisking the portfolio.

?---Yes.

And then in 4.9:

We are also repositioning the business bank to reduce the high exposure to commercial property and lowering the maximum potential single name exposures.

?---Yes.

And that, as I understand it, is consistent with your understanding of one of the things that was being learned by CBA within the first few months of having acquired Bankwest, which is that the quality of the loans were not as good as CBA had perhaps expected them to be?---In respect of business banking.

Yes?---That's correct.

Yes?---Yes.

The retail – the retail banking was a bit different?---Yes, that's right.

The retail banking seemed to be okay; it was just the business bank?---Correct.

All right. I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 3.114 will be strategy memorandum, 1 April 2009, CBA.0002.2092.4133.

MR HODGE: And then the next document that we will go to is CBA.0002.2077.2173, which is a Bankwest business portfolio review, dated 7 April 2009, and if you look at the last page of that document, Mr Cohen, you will see that's prepared by Peter Deans, the chief risk officer of Bankwest. I'm sorry, the last page of the memorandum, which is .2175?---Yes – yes.

So Mr Dean held the position in Bankwest at the time equivalent to the position that you now hold in CBA; is that right?---That's correct.

All right. And in terms of his responsibilities, which presumably reflect your responsibilities for CBA, what would they involve?---Broadly speaking, the chief risk officer's responsibilities encompass leading the risk management team which is responsible for identifying and managing risk across the bank.

And could you explain to the Commissioner two things. First, what's the type of process that you would go through in order to identify risks to the entity?---Well, the first step is to organise a risk management function into specialist teams. The specialist teams would deal with the different risk types. So credit risk, market risk, liquidity risk, operational risk, compliance risk, for example. Those teams would be comprised of specialists in those – in those areas. Then those teams would normally be assigned to business units, such as the retail banking or the business banking or the institutional banking teams. And they would work closely with the business teams in those business units as those businesses undertake their day-to-day business. And they would advise the business team members on risks that were being taken, they would advise on how to mitigate those risks, they would challenge – they should challenge business unit team members on steps taken to mitigate risk. And they would also advise and challenge on the controls that a business has in place to manage those risks. And in some cases, the risk management teams would actually test those controls as well, or give a view – an assurance view on the effectiveness of those controls.

And so would something like a concentration cap on a particular industry, would that be the type of control that you're talking about that might be implemented by the risk function?---Yes. So a risk function in its credit risk team, for example, one of those specialist teams that I mentioned would have as one of its responsibilities to design policies to deal with credit risk. One of those policies would be a risk – a credit concentration policy, for example. Another might be an industry sector concentration. Another might be a geographic concentration, for example.

And this memorandum, is it one that you've reviewed in the course of preparing to give evidence, or you're not sure?---No, I am sure about this one because I received it at about 8.30 am this morning. So it's more recent in my memory.

Then that's perhaps convenient in some ways and not in others. Can we then have a look at the bottom of page .2173, which is the first page. So you will see there's – it starts with a summary of the type of review work that's being undertaken?---Yes.

And that's what you would expect the risk function to carry out for a bank?---A risk function would carry it out or participate in the carrying out of it, yes.

And then you will see there's then in section 3 some specific sector reviews that were underway at the time?---Yes.

And one of those was in relation to land bank exposures?---Yes.

And the other was in relation to hotels and clubs in New South Wales?---Yes – yes.

And they seem to be two sectors that Bankwest had been very active in making loans to?---Yes. So those respective paragraphs say, yes.

Yes?---And that's my understanding as well.

And then you see in 4.2 there's an explanation that the industry concentration cap for Bankwest for property services was 50 per cent and 15 per cent for construction?---Yes – yes – yes.

In 4.2?---Yes.

And what was being considered at that time was revising down the concentration caps?---That's correct, yes.

And you're aware that that's what occurred?---Yes, I am.

And, in terms of prudent risk management, that's something that makes sense to you. You obviously weren't involved in it at the time, but looking at back on your experience now as a chief risk officer, that makes sense?---Yes, it does.

Given (a) the high concentration of the total committed exposure for Bankwest in particular industries?---Yes.

And (b) the extent of the effect and potential effect of the global financial crisis?---Yes. Those would be two reasons.

And are there other reasons that you would identify as well?---Well, perhaps associated with the first reason that you identified is the, because of the high concentration in one area, the relative lack of diversification across the remainder of the sectors. So, therefore, leading to less of an ability to ride out difficulties in one sector because of the heavy concentration in that sector.

And I will tender that document, Commissioner.

THE COMMISSIONER: Bankwest business portfolio review 7 April 2009, CBA.0002.2077.2173, exhibit 3.115.

EXHIBIT #3.115 BANKWEST BUSINESS PORTFOLIO REVIEW DATED 07/04/2009 (CBA.0002.2077.2173)

MR HODGE: The next document is an executive risk committee memo dated 11 September – I'm sorry, a memo to the executive risk committee for a meeting on 11 September 2009, CBA.0002.2081.8557. Now, is this a document that you've seen, Mr Cohen, in the course of preparing to give evidence?---Yes, it is.

All right. And is this a – as I've just suggested, a memo to the executive risk committee of the Commonwealth Bank?---Yes, it is.

For what appears to have been a meeting to occur on 11 September 2009?---Yes.

And the memo is setting out certain proposals in relation to the commercial property section or commercial property loans of Commonwealth Bank?---Yes.

And then if we go to page .8558, and pop out paragraph 4.2, this is explaining what was proposed in relation to Bankwest's investment in commercial property?---Yes.

Which was to reduce its exposure and cap it through to 31 December 2010?---Yes.

And were you aware at the time of the introduction of these caps?---No, I don't recall it.

All right. But in looking back at it now, presumably this seems like a prudent response to the over concentration in commercial property of Bankwest?---I believe so, yes.

And I tender that document, Commissioner.

THE COMMISSIONER: Memorandum to executive risk committee, 11 September 2009, CBA.0002.2081.8557, exhibit 3.116.

EXHIBIT #3.116 MEMORANDUM TO EXECUTIVE RISK COMMITTEE DATED 11/09/2009 (CBA.0002.2081.8557)

MR HODGE: Now then, by – this is September 2009. Once it gets into 2010 there continue to be concerns about the quality of the Bankwest loan book; is that fair?---That's correct, yes. The business loan book, yes.

The business loan book, I'm sorry. And if we bring up your statement at paragraph 122 – sorry, that's – if it assists, CBA.9000.0045.0001, and the page is .0028. It might actually be helpful to blow up paragraphs 121 and 122. One of the things that had happened during the course of 2009 was that the provisions being made for the Bankwest loan book had been – Bankwest business loan book had been increasing; is that right?---That's correct, yes.

And again just so we are clear about this: the provisions is what Bankwest is recording as the loss that it is expecting to make on a particular loan, is that an accurate summary?---Broadly speaking that's correct, yes.

It is not concerned with whether or not the loans have actually been defaulted at the time?---That's correct – that's correct.

And the point you make at 121 is that based on, presumably, your review of the documents and looking back through the corporate memory, there had been this increasing concern on the part of CBA and Bankwest about its collective provisioning models. That was one concern?---Yes. My statement is based on, as you say, looking back and the documents, but also my personal knowledge from the time.

I see. You can recall, by early 2010, there was this issue that people were very conscious of, with the bank?---That's correct, yes.

All right. And so one of the issues was about the effectiveness of Bankwest's collective provisioning models?---And their collective provisioning processes as well.

And the processes?---Yes.

And is it fair to say it appears as if there was a limited number of people within Bankwest that had skills in relation to collective provisioning?---Not that I knew it at the time. But in preparing for today's appearance, yes, I've become aware that there were a limited number of people with sufficient provisioning skills.

Yes. And also that there were concerns, both for CBA and Bankwest, about the extent to which the business loan portfolio was being managed – I'm sorry, was being monitored?---Yes, that's correct.

And then the final point you make is there was also a concern about whether the Bankwest business loan portfolio was being credit rated and managed in accordance with the applicable equivalent CBA standards?---That's right.

Could you just explain to the Commissioner what you mean by that third points?---Yes. The concern was that potentially the credit ratings used by Bankwest when it was rating particular business loans were perhaps not as diligently applied as Commonwealth Bank applied credit ratings. And secondly, that the ongoing management, that is the day-to-day management of a loan by the business relationship managers, was not as active, and the loan and the progress of the loan through its life cycle was not as actively monitored by the relationship managers as it should have been.

And the risk rating that's given to a particular loan has an effect on, amongst other things, whether it's considered to be troublesome or impaired?---That's correct, yes.

And also has effect on the pricing that needs to be applied to the loan, having regard to the risk involved?---It can have that effect, yes.

And are there other matters of significance that arise from the risk rating, apart from the two we have just mentioned?---I think those – I think certainly the ongoing management of a loan during its life cycle is influenced particularly by the risk rating as well.

THE COMMISSIONER: I think you told me that risk rating affected collective provisioning?---Risk rating is a factor in collective provisioning as well, yes, Commissioner.

Yes.

MR HODGE: And it was this concern – or this concern that led to what's referred to as Project Magellan?---That's correct. Primarily a concern about the – whether collective provisioning was being adequately undertaken.

And there were, it appears from the documents we have reviewed, a few different projects that were put in place by Bankwest, but effectively CBA into Bankwest, in order to deal with different aspects of the risks and concerns?---There were a number of reviews undertaken by Bankwest.

What I would like to just so – that the Commissioner can understand – is there are a number of reviews that have been undertaken and I will come to a couple of those in relation to, for example, property finance. You are presumably familiar with that?---Yes.

And we will come to that. But in addition – in addition to, say Project Magellan, there was a Project Columbus; is that right?---That's correct.

And there was, I think, at least one other one flamed after an explorer, although I can't remember the name of the explorer now, but also designed to address some aspect of the risk and management within Bankwest. Can you recall that?---Well, the only two explorers that I am aware of that had projects named after them were Magellan and Columbus.

All right. Could you – we will come to Magellan in more detail, but can you just explain to the Commissioner what project Columbus was?---Yes. Project Columbus was primarily a project to add additional resources and improve the operating procedures of the credit management asset team within Bankwest. The credit assess management team is the team that specialised in looking after troublesome and impaired loans.

It is the equivalent of what is now the GCS within - - -?---That's correct.

- - - CBA; is that right?---That's correct.

And in 2012 CAM, from Bankwest, was effectively merged into CBAs GCS team; is that right?---That's correct, yes.

Now, before Project Magellan, which happened in about April and May of 2010, or at least started really getting going?---Yes. It commenced in – its planning commenced in February 2010 and it concluded approximately early June 2010.

And one of the reviews that was underway, we might be able to see by having a look at a document, which is CBA.0002.1564.1319, which is a presentation from March 2010. Is that a presentation you've had the opportunity to look at in preparing to give evidence?---Yes, I have.

All right. So this appears to be an internal presentation of Bankwest?---Yes, it does.

And if we go over the page to .1320, it's providing a summary of the introduction of a watch list process?---Yes.

Could you just explain to the Commissioner what a watch list is?---Yes. A watch list is a list of loans where the credit rating of the loan has not yet got to the stage of being classified as a troublesome or impaired asset. But the credit health of the loan has started to deteriorate and is causing a level of concern, but not to the point where it becomes a troublesome or impaired asset.

And is one of the reasons why you would want to have, or a bank would want to have a watch list in place in order to identify and manage loans before they reach the point of becoming troublesome or impaired and being passed over to CAM?---Yes, it is, because the intent would be to try and prevent a loan reaching the – a level of downgrade in credit rating, such that it became a troublesome or impaired loan.

And it appears as if Bankwest didn't actually have a comprehensive watch list process in place at the time that it was acquired by CBA?---That's what I have taken from the first box there on the right-hand side of the document.

And that wasn't implemented until April and May 2009?---Yes.

And then you will see, if we come over the page, to .1321, that in the box in the right-hand corner, over the period from July '09 to February 2010, 250 new groups with a value of 1.4 billion dollars were transferred into CAM?---Yes.

That would mean they had been identified as being troublesome or impaired?---That's correct.

And there was, as explained in the second box, a net portfolio – net CAM portfolio increase of point 7 billion dollars?---Yes.

Which would mean logically that was because quite a number of groups or borrowers already within CAM had either been repatriated back to business units or had been exited in some fashion from the business?---That's correct, yes.

And when we use those terms repatriated and exit, CAMs goal, is it fair to say, is to manage the loans to the point where they are no longer in CAM?---Yes, that's correct. Either through rehabilitating a loan so that it is what we would call a pass grade again, so that is it's is a better credit grade than a troublesome or impaired level, Or work with the customer to end the relationship in a normal way, such as when a loan matures, when it reaches expiry or through repayment by refinancing for example. Or if none of those were available then through enforcing as a last resort.

And when the loan – when we use the term repatriated, that is a situation where the loan has been rehabilitated and is passed back to a business unit for management by the ordinary business unit?---That's correct.

And the rehabilitation or an important part of the rehabilitation is to reduce the risk grade of the loan so it's no longer troublesome or impaired?---That's correct, yes.

And then the point made in the third box on that page is that of those 1.4 billion dollars transferred over, 1.2 billion dollars had been on the watch list?---Yes.

And this increase of loans becoming troublesome or impaired, that was consistent with or what is set out here as to that increase in loans becoming troublesome or impaired is consistent with what you understand now as to what was happening with the Bankwest business at the time?---It is consistent with what I understand now.

And also with what you understood at the time?---Certainly at the time, in 2009, my understanding was that, and as I've alluded to in your statement, there were a number of unexpected provisions being made for business loans and so, yes, at the time I understood that those provisions were increasing.

I tender that document, Commissioner.

THE COMMISSIONER: Presentation March 2010 watch list troublesome and impaired account update, CBA.0002.1564.1939, exhibit 3.117.

EXHIBIT #3.117 PRESENTATION MARCH 2010 WATCH LIST TROUBLESOME AND IMPAIRED ACCOUNT UPDATE (CBA.0002.1564.1939)

MR HODGE: And then the next document is CBA.0002.1564.4782 and this is a set of emails between some people within Bankwest. And there should be – I just indicate there should also be an attachment which we will come to in a moment, but I will just give the identifying doc number. It's CBA.0002.1564.4782 – sorry, 4784. We don't need to bring that up yet, but this is an internal email from the 17 March 2010. You see that at the top of the page?---Yes.

And, again, is this a document you have reviewed in the course of preparing to give evidence?---Yes, I received this document and the attachment this morning as well.

All right. And the email is from the managing director of Bankwest to Mr Blair at CBA?---Yes.

What was Mr Blair's role?---Mr Blair was the group executive responsible for the international financial services business unit of CBA and, despite the name of his business unit, had responsibility for the Bankwest business.

Okay. And this is an email that described some things that followed a review of the Property Finance Unit?---Yes.

The Property Finance Unit was a unit of Bankwest that made loans of whether borrower group was borrowing – was it more than $5 million for property finance?---I believe so, yes.

And Mr Sutton's summary of it is the credit review of the property finance unit makes for very poor reading, and highlights a few things. One was that there was no real credit review process in place. And he had asked for the team to be strengthened?---Yes.

And he say, "This is a third line of defence." Can I just pause on that. Was Bankwest implementing a three lines of defence model in its risk management?---Well, if I could just clarify one point. The three lines of defence models is not a mould that applies just within risk management. It's a model that applies across the whole business. The first line of defence is the business itself so in the business line. The second line of defence is the risk management function and the third line of defence is the internal audit function and the external auditors.

Yes. And so in this case he is talking about strengthening that third line of defence?---Yes, that's correct.

All right. And presumably that indicates in some fashion, though perhaps not a very good fashion, Bankwest had been implementing something like a three lines of defence model?---Yes. It suggests that that third line of defence needed to be stronger.

And that reflected your understanding of one of the concerns that CBA had by 2010, which was the inadequacy of risk management at Bankwest. Not necessarily after CBA had acquired it, but before CBA had acquired it?---No, my understanding today, as a result of reviewing the documents for the appearance – my appearance today, is that while there were concerns about some aspects of the risk management function, there were also concerns about the operation of the business itself when it was assessing credit. So it was both at the business level and at the risk management function level.

Yes. And if – and perhaps is the first point at the business level, is that was them being called out in that next paragraph, which is:

> *This confirms what has been called out in the past about previous management and strategy on the east coast.*

?---I believe so, yes.

And is it fair to say that one of the issues that was identified by CBA after it acquired Bankwest was that Bankwest had adopted a very aggressive strategy in lending on the east coast in relation to business?---Yes. And if I could be a little bit more specific, specifically in relation to commercial property as well.

And - - -

THE COMMISSIONER: Sorry, especially with respect to commercial property Australia wide or especially with respect to commercial property on the east coast?---Australia wide, but exacerbated on the east coast.

Thank you.

MR HODGE: And if we go to the attachment, which is CBA.0002.1564.4784 can we blow up the second and third paragraphs under Credit Quality. This reflects the points you're making, Mr Cohen?---Yes. Largely with a focus on New South Wales and Victoria, yes.

That's the eastern states problem that Bankwest seem to have?---That's correct.

All right. I tender those two documents, Commissioner.

THE COMMISSIONER: Email from Sutton to Blair of 17 March 2010 CBA.0002.1564.4782 and the attachment property finance unit national survey credit review, CBA.0002.1564.4874 together become exhibit 3.118.

EXHIBIT #3.118 EMAIL FROM SUTTON TO BLAIR DATED 17 MARCH 2010 (CBA.0002.1564.4782) AND ATTACHMENT PROPERTY FINANCE UNIT NATIONAL SURVEY CREDIT REVIEW (CBA.0002.1564.4874)

MR HODGE: And then the next documents I want to show you, Mr Cohen, are an email of 17 May 2010 which is CBA.0002.1533.1262 and an attachment which is CBA.0002.1533.1265. Do you have just the email or do you have the attachment as well?---No, I have the attachment.

Your attachment looks different to mine, which is concerning, but we will see as we get to it. The first thing – the first document we are looking at is an email that is sent internally by one Bankwest employee to other Bankwest employees?---Yes.

And you've reviewed this email and the attachment for the purposes of giving evidence today?---Yes, I have.

And the email – thank you, now you've got the attachment – the email is setting out what is described as the executive summary of overall project reviews for Bankwest business with a breakdown for Project Magellan?---Yes.

And if we then go to the attachment, which is the PowerPoint slide CBA.0002.1533.1265. This is setting out the extent of existing reviews and the proposed review by Project Magellan of the Bankwest business book?---Yes, I believe so.

And you will see in the top left corner it explains that 61.2 per cent of Bankwest business will have been reviewed by the time Magellan is completed?---Yes.

And does that reflect your understanding of the extent of the reviews that were undertaken of the Bankwest business book?---Is my understanding since my review of the documents for preparation of today, yes.

All right. So - - -?---There are – there various percentages that float around in different documents but - - -

Depending on how you calculate - - -?---Yes, exactly.

- - - and which particular figure you use?---Yes.

But broadly more than half of the Bankwest business book ended up being reviewed across various reviews?---Yes.

And, as we will see, those reviews identified what had already been suspected and was of concern, which was that there was inadequate provisioning that had been made by Bankwest?---Yes. I can't speak to each of the reviews specifically. I can, of course, speak more specifically about the Project Magellan outcomes. But broadly speaking, each of the reviews uncovered some concerns around the level of provisioning.

I tender those documents, Commissioner.

THE COMMISSIONER: Email 17 May 2010 ..... to Pike and others, CBA.0002.1533.1252, and attached presentation concerning Project Magellan CBA.0002.1533.1265 together are exhibit 3.119.

EXHIBIT #3.119 EMAIL DATED 17 MAY 2010 TO PIKE AND OTHERS, (CBA.0002.1533.1252) AND ATTACHED PRESENTATION CONCERNING PROJECT MAGELLAN (CBA.0002.1533.1265)

MR HODGE: Now, the Project Magellan review was a review of what has been described in inverted commas as the "good book" from - - -

THE COMMISSIONER: Sorry. Was the – described as?

MR HODGE: The “good book” from Bankwest’s business portfolio; is that right?---Yes.

And because this term can perhaps lead to some understanding, can we be clear about what that means: that means the book that had not been classified as troublesome or impaired at the time that the review was undertaken?---That’s correct.

And so what caused or was the genesis for Bankwest was a concern about whether the classification of all of those loans as part of the good book, that is not troublesome or impaired, was accurate?---That’s correct, with the only qualification to that being that the focus was on whether the classification was accurate and, therefore, most importantly, whether that led to a shortfall in collective provisioning.

And so what was sought to be done was to review these files, quite a lot of files, in order to - - -?---Yes.

- - - that was part of this good book in order to determine whether there had been proper rating of the files. That is the first part of it?---Yes.

And then the second part of it was to then determine whether there should be an adjustment to the amount of collective provision that should be made in respect of what was described as the good book?---Yes, that’s correct. For two reasons.

Yes?---If I can explain those.

Yes?---One was because of a prudential obligation to accurately provision, and the second was in order to include in the financial statements for the period ending 30 June 2010 the accurate provisions so that the loan impairment expense could be accurately calculated and then deducted from retained earnings so that the profit for the period ending 30 June 2010 could be accurately stated, particularly for market purposes.

And I want to attempt to summarise the way in which Project Magellan was approached. The first way was that there were certain criteria set in order to identify what files were going to be reviewed; is that right?---That’s correct, as set out in my paragraph 125.

And so, for example, it was decided to review all hotels and pubs?---That’s correct.

And then also to review anything with a security valuation over $5 million where the revaluation was more than two years old?---That’s correct.

And various other criteria that were used, for example, about aged care and overdue annual reviews; things like that?---That’s correct.

And then once those criteria had been applied, there were then independent reviewers brought in to review files?---Independent, as I've described in my statement, namely independent of the business relationship managers.

Yes. And perhaps we should just be clear about what that means. The business relationship manager in relation to a loan within the good book might be a relationship manager who sits within property finance, for example?---Yes.

Or a relationship manager who sits within the commercial business unit?---Yes, that's right.

And that relationship manager would have the task of managing the relationship with a certain number of borrowers in a certain region, typically?---That's correct.

And so the idea was to review these files independent of that relationship manager who is supposed to be having the day-to-day dealing with the borrower?---That's correct. That's correct.

And there were involvements of some external accountants in the carrying out of the reviews?---That's correct.

And, for example, Ferrier Hodgson, I think, were appointed to review one particular set of types of loans?---That's right, yes.

And just to help us to understand this point about independence, are you – I had understood, perhaps mistakenly, that it was somebody like an accountant from Ferrier Hodgson who was being referred to as the independent reviewer. Is that not quite accurate?---No, not quite.

All right. Could you just explain that to us then?---Yes. So the team that carried out the review was a team of some – I will just find the exact number for you – yes, in paragraph 139(b) of my statement, approximately 42 business credit specialists. So these were people from the business credit team within the risk management function, including some CBA people, as well as people from external firms, formed the 42 people who carried out what I described here in 139(b) as step 2 of the review process. So it was a combination of internal people and external people who were seconded in to assist.

All right. So they would, again just so we make sure there's no confusion, it doesn't mean that there was a step where somebody independent of the relationship manager within Bankwest would review it. Then it would be reviewed by an independent accountant. Then it would be reviewed by the panel. It just means that in some cases the independent review would be carried out by the accountant from an external firm, in some cases it would be carried out by someone else with credit experience, independent of the relationship manager?---That's exactly right.

And then once that review and report was completed, that would then be passed up to a panel?---That's right. There was a review panel which was effectively two panels.

And sorry, when you say there was effectively two panels, what do you mean by that?---Yes, sorry, just to explain. The – there was a review panel which was the third step described in 139(c) of my statement. It was actually two panels, two separate panels. But together they formed the review panel for the third step of the review process.

All right. And they could either accept or reject or modify the recommendations that had been made by the independent reviewer?---That's correct.

And then - - -

THE COMMISSIONER: Were the panel members internals or externals or both?---They were – from memory, Commissioner, they were all internals. They were generally senior people within the business and the risk management teams.

MR HODGE: And once that review had been undertaken, one of the things that would be finalised was the risk grade that was allocation to the particular borrower coming out of the panel's finalised recommendation?---That's correct.

And that was one of the things then that would be taken into account in determining whether adequate collective provision had been made?---That's right, yes.

And so what the business, that is the Bankwest business, was trying to get done by 30 June, is to make sure that it had as best it could, made adequate collective provision in relation to these loans?---That's correct.

And, as far as it could, it did that?---Yes. As far as I know, yes.

And that is a separate issue from the management of the files after that part of Project Magellan was completed?---That's correct.

And what then would happen is that some files, based on the recommendations that were made by the panel, might be transferred over to CAM?---That's correct.

And request we bring up your supplementary statement. You've – not personally, obviously, but you've asked people within CBA to conduct an analysis of the files that went into CAM coming out of the Project Magellan reviews?---That's correct.

And of the recommendations that came out of Project Magellan there were 161 files that were transferred into CAM?---Yes.

And if we bring up paragraph 9 which is on page .0002 and also the table on the following page; we bring both of them up on the same screen. What the analysis shows is that of the 161, there were 31 that, over the course of the next seven years, ended up being rehabilitated and returned to the business unit?---That's correct.

There were 37 that were terminated by enforcement action?---That's correct.

And just to pause on that, just in the first financial year, FY11 after Project Magellan, it was 17 that were rehabilitated or returned back to the business, what's referred to as repatriation in some documents?---Yes.

And 15 that were terminated by enforcement action?---Yes.

And then of the remaining – you've said of the remaining 124 - - -?---Yes.

I'm not sure the maths quite works on that. If there were 161 files transferred into CAM - - -

THE COMMISSIONER: Minus 37?---Sorry. The - - -

MR HODGE: I'm sorry. It's 31 – no, go on?---No. I was just going to say the 124 is arrived at by taking the 161 that were transferred in first and then deducting from that the 37 that were terminated through enforcement action.

All right. So of the 31 referred to as continuing on the same terms, means 31 that were transferred, rehabilitated back into the business units; is that right?---No, they're not necessarily the same 31, unfortunately. It's a coincidence.

All right. So of the 124 left, does that mean they weren't necessarily transferred back to the business unit?---That's correct. Of those 124, over the period of time, the 124 either continued and then just met their normal expiry. Some may have ended early through refinancing. Some may have ended early through repayment before expiry.

Commissioner, is that a convenient time?

THE COMMISSIONER: Yes. How long do you think we will require for Mr Cohen? I just have in mind how the program is going, Mr Hodge.

MR HODGE: I think perhaps an hour and a half to two hours in the morning.

THE COMMISSIONER: Yes.

MR HODGE: I should point out that Mr Dinelli constantly tells me that you need to add 50 per cent to any estimate of time that I give. I don't think that - - -

THE COMMISSIONER: A cautious man, Mr Dinelli, is all I will say. The usual multiplier when I was a judge was double it, Mr Hodge, I hate to tell you. We won't do that this time.

But I'm afraid we will have to ask you to return at 9.45 tomorrow morning, Mr Cohen?---Certainly.

<THE WITNESS WITHDREW **[4.23 pm]**

THE COMMISSIONER: We will adjourn until that time.

MATTER ADJOURNED at 4.23 pm UNTIL WEDNESDAY, 30 MAY 2018

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