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TRANSCRIPT OF PROCEEDINGS

O/N H-911844

THE HONOURABLE K. HAYNE AC QC, Commissioner

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

DARWIN

9.30 AM, FRIDAY, 6 JULY 2018

Continued from 5.7.18

DAY 39

**MS R. ORR QC appears with MR M. COSTELLO as Counsel Assisting with MR M.
HOSKING and MS S. ZELEZNIKOW
MS K. WILLIAMS appears for ANZ**

<CROSS-EXAMINATION BY MR COSTELLO

5

THE COMMISSIONER: Mr Costello, just before you begin, there's a matter which I need to deal. It will be remembered that on 29 June in Brisbane there was some discussion about production of some documents by CBA in response to a notice to produce. At page 3507 of the transcript, and later page 3531, I said that I would consider what course I would take in relation to the matters that had arisen. Page 3536 of the transcript records that I said to counsel for CBA that if further investigations were to reveal that some additional change were necessary to reflect the position, I interpolate about when documents were received, I would expect that the solicitor assisting the Commission would be informed of those matters in writing by no later than close of business on Tuesday, 3 July. On 3 July, the solicitors for CBA wrote to the solicitor assisting the Commission – and I quote from the letter:

20 *To correct two matters and provide some further clarity about the late production of documents.*

Having considered what was said in the letter of 3 July, I have asked the solicitor assisting the Commission to seek further explanation from the solicitors for CBA regarding some questions which arise from the terms of their letter. A letter to that effect was sent soon after yesterday's hearings finished. In the circumstances, I am not yet in a position to decide what course I should follow in relation to these matters. Yes, Mr Costello.

MR COSTELLO: Thank you, Commissioner.

30

Mr Tapsall, I think you agreed with me yesterday – and you say in your witness statement – that it was an ANZ Access Advantage account that was initially opened, and ANZs records show that an account of that type was opened at 3.03 pm?---Yes.

35 And the account was changed about an hour later to a Pensioner Advantage account?---Yes.

40 And you will recall Ms Do's evidence that, towards the end of the meeting with the banker, she realised that an Access Advantage account had been opened, raised the issue of fees with the banker and her intention that an Access Basic account was to be opened. Do you recall that?---Yes.

45 Thank you. Is one way of explaining the change from an Access Advantage account to an Access Basic account that the banker initially opened an Access Advantage account, handed the introductory letters which mentioned an Access Advantage account to the clients and then, towards the end of the meeting, or even shortly after

the meeting concluded, changed the account type to a Pensioner Advantage account following the conversation with Ms Do that I've just outlined?---I'm sorry, you're going to have to repeat the question, Mr Costello.

5 All right. An Access Advantage account was initially opened?---Yes.

On Ms Do's evidence, towards the end of the meeting, she expressed some concern about that?---Yes.

10 She repeated that there was a concern about fees?---Yes.

And that the desire had been to open an Access Basic account?---Yes.

15 ANZs records show that at 3.03 pm an Access Advantage account was opened, and at 3.57 pm that account was changed to a Pensioner Advantage account?---Yes.

20 Do you think that it's possible that the banker changed the account to a Pensioner Advantage account towards the end of the meeting or shortly after the meeting after Ms Do had made those statements to her?---I – I don't know.

Did you ask the banker that when you met with her in Melbourne?---If the account was changed?

25 Why the account was changed?---Yes.

And what did she say?---He couldn't recall.

30 I see. Would it make sense that it was changed to a Pensioner Advantage account, rather than an Access Basic account, because a visa debit card had issued and if it was to be changed to an access basic account, the visa debit card would have to be closed, and that card would not have to be closed under the Pensioner Advantage account?---I believe on the banker's version of events, the Pensioner Advantage account was the one that she intended to open, off the back of the discussion around the – the visa debit card, during the conversation with the customer. So I don't know
35 that – and I think that's why it was changed post the initial – I think that she opened it in error.

The Access Advantage account was opened in error?---I believe so, yes.

40 And do you accept that if the access advantage account, having been opened in error, was to be converted to an Access Basic account it would have been necessary to cancel the visa debit card?---If it was to be changed from an advantage to a basic account, yes.

45 But if it was to be changed from an advantage to a pensioner – sorry, from an Access Advantage to a Pensioner Advantage account there would be no need to cancel the debit card?---There would be no need, no.

5 Yes. Thank you. You will also recall Ms Do's evidence that when she asked if the Access Advantage account was subject to dishonour and overdrawn fees, the banker said that it was, but then said something to the effect of, "So long as – it won't be an issue so long as you don't overdraw the account." That was Ms Do's version of events. Do you recall that?---Yes.

10 And the banker's version of events was that she suggested that if Ms Do's clients incurred overdrawn fees she could contact the banker to have the account changed?---Yes.

15 Yes. Do you accept that for a client who has expressed concern about overdrawn fees and is in the process of opening a new account it's not good enough for the banker to suggest that the customer can wait and see if any charges are incurred and then contact the bank if they are?---I'm sorry, Mr Costello, can you repeat that for me.

20 Yes, I can. Do you accept that for a client who has expressed concern about incurring overdrawn fees, and that concern has been raised with the banker, that it is not good enough for the banker to suggest that the customer wait and see if any charges are incurred and, if they are incurred, then contact the bank?---Yes, I agree.

25 Thank you. And if Ms Do's account was correct and the banker said that, "It shouldn't be an issue so long as you don't overdraw your account," that was certainly not good enough, was it?---No.

Thank you. It would be better for the customer if the most appropriate type of account was set up immediately?---It would be better for the customer, yes.

30 And that would be even more strongly the case when it's a one and a half hour drive from the community to the branch?---Yes.

Because changing accounts and interacting with the bank is all the more difficult?---Yes.

35 The banker also set up a direct debit arrangement to a progress saver account that was also set up on that day?---No. I don't believe a direct debit arrangement set up that day.

40 You think there was no direct debit arrangement set up?---As I recall, no, there wasn't.

All right. Thank you. ANZ branch staff are subject to performance measures?---Yes.

45 And you give some evidence about that in your witness statement in answer to rubric 4-13?---Yes.

Do you recall that?---Yes.

And branch staff are incentivised to meet their targets. Do you agree that
-- -?---Sorry, can you repeat that.

5

Yes. Do you agree that branch staff are incentivised to meet their targets?---Their targets are part of their performance measures, with which then they may receive an incentive, yes.

10 Thank you. And they're judged against various criteria, and those criteria are grouped broadly into what are described as "pillars"; is that right?---Under one specific KRA, yes.

What's a KRA?---Key result area.

15

Thank you. And one pillar by which performance is measured is called the deposits pillar?---Yes.

20 And exhibit TCT-10 to your statement in answer to Rubric 4-13 is a bundle of documents relating to branch performance measures. Can I just show you one of those. It's ANZ.800.638.000.

THE COMMISSIONER: 0001, I think, is it?

25 MR COSTELLO: Yes. Thank you, Commissioner.

These – this is the document, we can see there, 2017 performance measures – Management and Performance Measures. And it says under there 2H17 updates, April 2017?---Yes.

30

This is the document that would have applied at the time these accounts were being set up; is that right?---Sorry, just one minute.

Are you looking for the hardcopy?---Yes.

35

Can I assist you. It's a large bundle of documents. Does yours have pink pages dividing it?---Yes. Sorry, I have it now, thank you.

40 You have it now? Thank you. Is this the document that would have applied at the time these accounts were being set up?---No, sorry. It would be the first half '18 documents.

The first half '18 document would have applied?---Yes. For the account that was set up in December.

45

I see. That's because the first half '18 document took effect in September 2017, is it?---October, yes.

October. If we move through this document, I think the relevant part is the same in both – yes, the '17 and the '18 document. If I'm wrong about that, I will correct it with you soon. Could we move to 0008, please. It's a bit easier to work from this document, Mr Tapsall, because the '18 document has some sensitive information in it, whereas this one is historic, so it doesn't. Can you see there – this is product weightings for 2H17. So that's the second half of 2017; is that 2H17?---Yes.

Okay. It says here deposits, access sales, access nine per cent for a banker, six per cent for a manager. Could you just explain, to begin with, what this page of this document is doing?---Yes. So part of the performance measures for staff members includes two components to their overall balance scorecard outcome. One of those is the key result areas, of which there's a number of KRAs – sorry, a number of KRAs within that KRA side. One of those being the financial KRA. Underneath that there are a number of pillars, as you've mentioned. This is the weightings given to particular pillar under the financial KRA.

I see. And so deposits is one pillar?---Yes.

Is home loans a separate pillar?---Yes, under the financial KRA it is, yes.

Yes. And wealth is a separate pillar?---Yes.

And business, is that a separate pillar?---Yes.

And borrow lifestyle?---Yes, that's a separate – they're all separate.

And are there five pillars?---Yes.

In total. That represents the whole of the pillars?---Under the financial KRA document, yes.

Thank you. And the first one under deposits is Access Sales. And then it says access 9 per cent. What does that mean?---So the deposit there for the banker is a total of 30 per cent within that financial KRA. The access component of that is weighted at 9 per cent.

And access sales means the establishment of new bank accounts, does it?---Yes. One of – one of the three access products.

Which are the three?---Access Advantage, Pensioner Advantage and the Access Basic.

All right. And so that takes 9 per cent of the – of the deposit pillar?---Yes.

And the Access Basic account is one of the accounts that counts towards that pillar?---Yes, it is.

All right. Thank you. And what's access quality mean?---That's a measure that's utilised when a – an access account is opened, the quality component is you must have three credits come into that account in the first month.

5 Three deposits?---Yes.

In the first month?---Yes.

10 All right. And then other deposit sales?---Other deposit sales is made up of a mixture of the sub-pillar you can see there, which is offset account, assured, progress saver, and the other – other sub-products there listed.

15 So by establishing an access account of any variety and a progress saver account, a banker contributes towards the access sales sub-pillar and the other deposit sales sub-pillar?---Yes, if they open a transaction – an access transact account and a progress saver, yes, you're correct.

20 All right. And then if we could go to 0049 in that document. This concerns the A to Z review that you and I had some discussion in respect of yesterday. ANZ – the A to Z review is our point of difference - - - sorry, do you want to get your hardcopy? I will give you a moment to find that?---Sorry, is this in the previous – is this in the '17 pack update?

25 It's in the same document, I think. It's in the appendices to - - -?---Yes, sorry.

That document?---Yes, I – I will just up front, I don't know if this has changed half to half - - -

30 Yes - - -?---Basically.

Thank you. So this is the A to Z review. And A to Z – it's described:

What is the purpose of this objective?

35 Now, when it says "this objective" is the A to Z review a measure against which bank branch staff are measured?---Yes.

40 Right. And how does that measurement work?---The A to Z review fits under the customer pillar - - -

Yes?--- - - - within the KRA component of the document.

45 I see. And is it a question of how many A to Z reviews are done?---That – that is one – one component of the measure, yes.

Right. So it says there:

How is this measured quantity number of A to Z reviews completed?

?---Yes.

5 And that's why it's important for an ANZ branch staff member to book a meeting with a client so that they've got sufficient time to meet with them to do the A to Z review?---I'm sorry, I missed the start of that, Mr Costello.

10 One of the reasons why it's important for ANZ to book a meeting time with somebody who wants to set up a new account is so that there's sufficient time to conduct the A to Z review?---Yes.

15 And is that the principal reason why you've got the booking system that you now have?---That would be one – one reason for it. The other one is to allow better staff scheduling within the branches as well, to understand the number of appointments through the day to ensure that we have the right people in the branch at the right times of day to see the customers.

20 Yes, I see. And so a branch staff member who is approached by a customer that wants to open a transaction account is, under this policy, incentivised to deal with the client at a latter point when a meeting is booked, conduct the A to Z review with them. You agree with that?---Sorry, you're going to have to repeat that to me.

25 A customer comes into a branch?---Yes.

Imagine it's a busy time?---Yes.

The – and the customer wants to open a transaction account?---Yes.

30 Under the current – at least under this version of ANZs system, the branch officer was incentivised not to deal with the customer there and then, when there may not have been time to do an A to Z review, but to deal with them at a latter point in time and to conduct the A to Z review because the number of A to Z reviews conducted by each branch member – sorry, each branch employee counts towards their meeting the customer pillar?---That's not the – that would not be the sole purpose of booking an appointment with a customer.

40 No, no, no. My question is not whether that's the purpose. My question is that the branch officer is incentivised to do that because ANZ views A to Z reviews as an important step that ought be done and incentivises its staff to do them?---It's a strategic objective of the network and, yes, we want our staff to do them with our customers, and part of one of the KRAs, being customer, a portion of that is attributed to the number and quality of the A to Z reviews we do.

45 Yes. So an ANZ – a person that works in an ANZ branch that sets up two bank accounts, one of which is a progress saver and one of which is an access account,

then conducts an A to Z review, ticks three boxes for the purposes of this - - -?---It's contributing – it's contributing to their performance, yes.

Thank you. That document – I tender that document, Commissioner.

5

THE COMMISSIONER: Is it not one of the exhibits?

MR COSTELLO: Sorry, yes, it's TCT-10. Thank you.

10 THE COMMISSIONER: Yes.

MR COSTELLO: I don't need to tender it. That document can come off the screen, please.

15 Mr Tapsall, do you recall that after the account was set up there were some telephone calls by Ms Do's clients to the ANZ call centre?---By Ms Do's client, yes.

20 Yes. And have you – you've exhibited transcripts that ANZ have had produced of some of those calls. Have you read those transcripts?---Yes. Sorry, do I remember them?

Have you read them?---I've read them, yes.

25 Do you agree that they are a graphic demonstration of the difficulties that can be encountered by some indigenous people in dealing with a bank by telephone?---Yes, they are.

30 Those calls involved the customer having to undertake a three hour round trip to a branch to reverify her identity on two occasions. Do you recall that?---Yes. She wasn't able to get a security password, correct.

Yes. Mr Tapsall, did you see any of the evidence on Tuesday morning of the panel?---I'm – so just a very small amount.

35 All right. And have you had any opportunity to read any of the transcript of that panel discussion?---No, I haven't.

40 All right. On Tuesday morning there was a panel of two witnesses that spoke to various issues faced by some indigenous people in dealing with financial service entities, and one of the topics that was discussed was how a modified approach can assist indigenous consumers in dealing more effectively with banks. Is that, as an issue, an issue that you have any awareness of? Difficulties faced by indigenous consumers in dealing with banks?---Yes. I'm aware that some indigenous customers, particularly in remote communities, will struggle with dealing with banks. From
45 time to time you can see that through the transcripts.

And you're responsible for ANZs branch network in northern Queensland and the Northern Territory, and that territory that you're responsible for would include branches that deal, to a high degree, with indigenous consumers?---Yes.
transcriber id=HHC Turn 02 Time 09:53>

5

a high degree, with indigenous consumers?---Yes.

The suggestion by the panellists was that, if questions are prepared in a deliberate way, indigenous consumers are much more likely to be able to interact with a bank successfully by telephone. Is the capacity – or the – is the need for modified sets of questions in telephone banking something that you have encountered in your current role?---No.

10

All right. I just want to show you a passage of the transcript of the panel discussion, if I may. It's pages 3725 and 3726 of Tuesday's transcript. You've not seen this before, Mr Tapsall, but this is some evidence given at the second half of page 3725, the first page on the screen there, by Mr Boyle, who is an employee of ASIC and is heavily involved in indigenous consumer engagement with financial services entities, and you can see at the last paragraph on page 3725 he says:

15

20

Sometimes we see financial services entities have policies about the types of questions that are asked and they can only ask questions in a certain way, which might not make sense to an Aboriginal person in a remote community. So, for example, one that we come across quite regularly is where we will contact – we will be assisting someone to contact a financial services entity and they will be asked, "What is in your street address?" And in a lot of remote communities there aren't street names and the person will say, "I don't have a street address. Or they will be asked three or four times what the street address is, whereas if they were asked, "What number is on the front of your house?" Then they can answer that question.

25

30

It goes on in the next paragraph to say that:

35

Sometimes the language means that people aren't able to meet the identification requirements. And as I said earlier, that often results in – has in the past resulted – we've had specific examples of it – of people failing that identification process and then being told to travel there – to their nearest branch.

40

He then gives an example of:

45

Lockhart River is a community that I come back to again in that circumstance, so the closest bank branch to Lockhart River is in Cairns, and I had a call a couple of years ago from a lady who had lost her bankcard, had failed the identification process, and was then told to travel to Cairns to visit her local branch. And it was during the wet season, so the only way that she could get to

Cairns was to fly, which was quite expensive, and she was quite distressed when contacted.

See that?---Yes.

5

Do you accept that the two calls – and if you would like me to take you to the transcript of them, I will – where Ms Do’s customer failed the identification requirements are examples of precisely the circumstances Mr Boyle is speaking of there?---I’m sorry, you will have to take me to them because there’s quite a lot of transcripts.

10

All right. I will take you to two. The first is TCT-26 to your witness statement. This is ANZ.800.787.0023. See this is a telephone call between a contact centre officer and Ms Do’s client on 20 April 2018?---Yes.

15

And – you will see at the start there that the ANZ employee answers the phone and Ms Do’s client says:

Yes, yes. Can I transfer the \$91 please?

20

?---Yes.

And then if we move across to page 0025. Can you see just after halfway down the page the ANZ employee says:

25

All right, just give me a moment here. Okay. For this one, okay, I need to ask questions regarding your account. If I fail to identify you today, you just need to step into your branch and just bring photo ID or two forms of ID and one of those should be a photo ID. Okay?

30

See that?---Yes.

Which is met with the answer:

35

I haven’t got photo ID, sorry.

?---Yes.

To which the ANZ employee says:

40

Okay, that is if I fail to identify you today, okay. I just need to ask you questions, okay?

Yes. Okay.

45

What is your residential address, including state and postcode?

Which is met with:

The address?

5 *Yes, your address including - - -*

That's including - - -

10 *I'm sorry, go ahead.*

Yes it's coming to my head.

I'm sorry, I'm not getting that information say that again for me, the complete address and postcode?

15

Sorry?

What would be your address and what is your residential address, including state and postcode?

20

So address where I'm living?

Yes.

25 *That's the community. Yes, that's where I'm living, that's the address, just community*

What would be the state and postcode?

30

Postcode?

Yes. What would be your postcode?

What postcode?

35

What state are you in and your postcode?

See that?---Yes.

40 Do you think that's an example of the type of circumstance that Mr Boyle was outlining in the evidence that I just took you to?---Yes, it was.

And I will then take you to another transcript, which is TCT-28 to your witness statement, it's ANZ.800.780.0062:

45

Hi, good afternoon. How can I help you?

I want to check my balance in my card, please.

I can certainly assist you with that. Can I just please have your first name and your last name –

5

which is given:

Thank you so much. Do you have any second name or middle name?

10 And then if we go over the page to 0063, do you see there it says:

Okay. So ma'am, it's fine if you haven't. I'm going to have to ask you some questions first and these questions will be based on –

15 certain matters:

In the event that I cannot verify you, I'm afraid I'm going to have to ask you to visit any ANZ branch for identification and verification. So can you tell me what's your residential address including the street and postcode?

20

And we're off and running again. Do you see that?---Yes.

25 Do you appreciate that for somebody who lives in a remote community that's a three hour round trip to a branch, travelling into a branch to reverify themselves is a rather more difficult thing than for somebody living in an urban area?---Yes. If she has to reverify her ID in this – in – this particular customer, yes, it is difficult for her.

30 Yes. And it's plain, isn't it, that the questions that are being asked to her are questions that she's struggling to deal with?---The address one, yes.

35

Yes. This is not an issue that was only encountered by Ms Do's clients. Other clients of ANZ – sorry, other customers of ANZ have encountered similar difficulties. Are you aware of that?---Sorry, I have seen a document here somewhere, but you would have to take me to it. I'm sorry.

40

Yes. Can I please take you to ANZ.800.843.002 – 0002 is the last number, if I only gave three. Thank you. Now, Mr Tapsall, when you see this document, are you familiar with this form of the – of document?---No, I'm not.

40 Do you know what it is?---It looks like a customer complaint or concern.

And it would be a complaint or concern that's been logged with ANZ somehow?---Yes.

45 All right. And if we could move across to page 0004, please. Can you see in the larger cell on the right-hand column it says:

Branch to load.

Do you know what that means?---My understanding of that is that the customer has failed their identification and has to attend a branch to have themselves reverified.

5

That's what branch to load means, is it?---That's my understanding, yes.

Thank you:

10 *Non-ANZ customer called to assist with their indigenous customer in updating his internet banking password. Customer was branch to load and non-customer was happy that he was being advised – sorry, was not happy that he was being advised to go into a branch which was over seven hours away. When she asked about alternative ways for her customer to update her*
15 *password, claims the consultant hung up.*

And then resolution description:

20 *Apologised, however confirmed that to reset the customer's password, considering they were over 250 kilometres from a branch, was to send in certified copies of 100 points of ID to be mailed with a cover letter confirming new password.*

Do you see that?---Yes.

25

Does that strike you as an appropriate way to deal with a customer in these circumstances?---Sorry, this is a policy from – a complaint from 2014.

30 Yes?---So it was before my time in the network, so I can't comment on what the requirements were for a customer then. But to have to travel long distance to verify your ID is – it's not convenient.

35 Do you think that the alternative proposed of sending certified copies of 100 points of ID, to be mailed with a cover letter confirming the new password, was a sympathetic response?

THE COMMISSIONER: Or, importantly, was it practical?---It may not have been practical for a remote customer, no.

40 What's the solution, Mr Tapsall? Do you agree there's a problem? Then, if there is a problem, what's the solution?---For IDing customers, Commissioner, over the – for long distances?

45 Yes. You know who your customer is. The customers come in to open an account. You know where the customer lives, live on community, long way from the branch, so you've got that data at the point of opening the account. What's the solution then about resolving ID issues in relation to phone banking or other access?---So this is

one where we do have some legislation around it, which is Anti-Money Laundering and Counter-Terrorism funding. So that's one concern we do have in sighting or IDing the customer if they do fail security. As to a better method of doing it, that is something we've started talking about at very high levels with the – with another
5 organisation which may prove to be much more convenient for customers living in remote locations. So that's – that has only commenced this – this year, though.

Well, we know that APRA have published guidelines about ID in connection with superannuation, for example, and how you meet the 100 point test in those
10 circumstances where you can do it, for example, by letter from an elder in the community. I think that's the central element of the solution there. But what's your bank now doing, if anything, about solving what – at least as far as this evidence goes – seems to be a real problem for people who are living remotely?---So at –
15 Commissioner, at point of customer on boarding, the flexibility around ID for indigenous customers does – does mean we can accept letters from community elders and community ID passes. That's at the on boarding phase. The issue arises around if a customer then may use phone banking and fail their security password or security questions, which is what we've seen in this case, which leads to that inconvenience of having to go back to the branch.

20 Because the security question does not resonate with the customer. The security questions come from a list including what was your first pet and who is your best friend in primary school, or something like that, doesn't it?---There's a broad spectrum, and we do allow customers to pick their own security words, and that –
25 and then if those are – if they do not verify those over the phone, yes, then they have to attend the branch. That's the piece of work that we've initiated to see if there's an easier way with which we can provide that reidentification service rather than a customer have to attend a branch, particularly if it's a long distance away from where they live.

30 Yes.

MR COSTELLO: Mr Tapsall, a notable example of a bank employing an approach that makes it easier for indigenous consumers to interact by telephone is the CBAs
35 Indigenous Consumer Access Line, or ICAL. Are you aware of that initiative?---Yes, I am.

And when did you become aware of that initiative?---I can't recall exactly. It was – but it's been in the last year, I – I would say.

40 And what do you say that initiative to be seeking to achieve?---To make – to make access for remote indigenous customers easier with their bank.

And do you understand that it involves the provision of a specific telephone number that indigenous consumers can ring?---Yes, I do.

And the people that are manning that phone have got particular training in dealing with indigenous consumers?---I don't know that exactly, but I – I would assume that would be the case, yes.

5 And it employs a specialised identification process so that there is less prospect of lock-outs of the type that we've seen happen here occurring. Do you understand that?---Sorry, I don't know the detail of it, but - - -

10 Well, what do you understand the initiative to be directed to?---So I understand that that particular initiative is to make it – simply the fact that it's to make it easier for indigenous customers, particularly in remote communities – make it easier for them to connect with their bank.

15 And easier to identify themselves?---I don't know, but that would be one of the things to make it more convenient, yes.

20 And you mentioned that ANZ is undertaking some – I think you described it as high level work on this issue?---On the reverification, once someone fails, but if a customer opens an account with us upfront, at that point – that's the point we do accept more flexible ID from indigenous customers. The reverification is something, yes, that we've only commenced high level talks on with another organisation. I think it was earlier this year.

25 Earlier this year?---Yes. It might be late last year, earlier this year.

Is that something you're involved with?---I was initially, yes.

30 And in ANZ considering that initiative, has it looked at CBAs ICAL service?---I don't know. I was only initially involved and I haven't been since.

Do you think it would be an assistance to your own branch employees if there was a telephone service that more effectively dealt with indigenous consumers?---I think it would make far – I think it would make sense for indigenous consumers, yes.

35 Do you think it would make sense for your own branch employees not to be spending time reverifying people?---Yes.

40 And do you know whether ANZ is currently considering anything equivalent to CBAs ICAL service?---I don't know.

All right. Thank you. Just one last thing on Ms Do's clients. When Ms Do's clients first contacted the bank, they were – Ms Do was told that her client should bring two forms of identification to the bank?---Yes.

45 And in fact ANZ only require one form of identification if the customer doesn't have photo ID or two forms of secondary identification; is that correct?---For indigenous customers, yes.

And were you surprised that a banker – that the banker here, based in a location like Katherine, was unfamiliar with the flexible identity requirements that ANZ provides for its indigenous consumers?---I was surprised it wasn't the key piece mentioned. Based on my discussion with the banker, it was her understanding that those
5 particular cards and letters were harder to get in Katherine, based on her experience, and that is why she suggested the birth certificates, which were free at the courthouse should the person have been born locally.

Are ANZ staff that work in locations that have high degrees of contact with
10 indigenous customers given specific training about these matters?---The know your customer on boarding process.

And in particular the modifications to that process that apply to indigenous
15 customers?---Yes, they do go through training for that.

They go through specific training?---Yes.

That is training directed to those in areas where they're more likely to encounter
20 indigenous consumers?---Across the entire network they do know your customer training.

Yes. My question was slightly different to that. My question was whether ANZ
25 employees in locations that are more likely to deal with indigenous consumers, have you been given any additional training beyond that that every ANZ branch employee receives?---No. They're not given any additional training particular to the know your customer outside of their mandatory annual training that they do, on top of their initial training.

Do you think that's good enough?---I think the training is good enough around the
30 know your customer principles. There are those variations for our indigenous customers. I don't think it was effective in this matter.

I now want to ask you some questions concerning informal overdrafts. An informal
35 overdraft is an arrangement entirely at ANZs discretion?---Yes.

It allows a customer to go into a debit balance?---Based on rules, yes.

And within ANZ informal overdrafts are sometimes referred to as shadow
40 limits?---They have been, yes.

An informal overdraft differs from a formal overdraft in a number of ways; agree
with that?---Yes.

One way is that there is no contractual right in the customer to continue to draw on
45 the account if there's only an informal overdraft?---There's no contractual – no, there's no prior agreement.

And - - -?---Aside – aside from the terms and conditions which highlight the informal overdrafts may or may not attach to a transaction – certain types of transaction accounts in the future.

5 When you say highlight, do you just meant that it states?---It states it in the terms and conditions.

Yes. It doesn't highlight it in any way that is different to any other term or condition attaching?---No, it just – it has its own section.

10

Thank you?---It's not highlighted.

An informal overdraft limit is not fixed and can be changed by the bank without notice?---Yes. Again – again, based on a number of rules.

15

And the customer doesn't know of the limit?---No.

You say in your witness statement at paragraph 63 that ANZ customers are notified

20

THE COMMISSIONER: Which statement, Mr - - -

MR COSTELLO: The statement in 4-13, Commissioner, which is ANZ.0009.012.0030.

25

THE COMMISSIONER: Yes, paragraph?

MR COSTELLO: 63.

30

THE COMMISSIONER: Thank you.

MR COSTELLO: You've got a hardcopy there?---Yes, thank you.

You will see you say there:

35

ANZ customers are notified of the possible availability of an informal overdraft on transaction accounts in clause 2.19 of the terms and conditions.

?---Yes.

40

And then at paragraph 65, you say:

Other than the reference in clause 2.19 of the terms and conditions, ANZ does not communicate to its customers when an informal overdraft is attached to an account, or for such time that it is, the maximum amount of the credit which it may – the maximum amount of the credit which it may from time to time make available.

45

- ?---Yes. That's what it says.
- All right. Some ANZ accounts come with the prospect of an informal overdraft and others do not?---Yes.
- 5 The Access Advantage account is an account that can have an informal overdraft attached?---Yes.
- 10 Other ANZ accounts such as the Access Basic account cannot have an informal overdraft attached?---Yes, that's right.
- Do you accept that for a person with a low level of financial literacy the concept of an informal overdraft might be difficult to understand?---Yes.
- 15 Do you accept Mr Bowden's evidence that there are low levels of financial literacy on Groote Eylandt?---I haven't – I haven't seen – I haven't read that in detail, Mr Bowden's witness statement, though I – I would say that that's a very broad statement.
- 20 Yes, it is?---And I – and I would suggest that not all indigenous people that live on Groote struggle with financial products, but yes, there would be a small subset that would.
- 25 Yes. And in fairness to you, Mr Bowden's evidence was that there is a range of levels of financial literacy?---Yes.
- And I think that his evidence was the clients that he sees overwhelmingly have low levels of financial literacy?---Yes. In his role, I would understand that to be the case.
- 30 Yes. But do you accept that there are at least material levels of low financial literacy amongst the community on Groote Eylandt?---That's not something I can answer.
- Have you been to Groote Eylandt?---Yes.
- 35 Not something that you've encountered in your dealings on Groote Eylandt?---I haven't specifically been to the communities to talk to people about their financial literacy levels, no.
- 40 Have you spoken to staff in the ANZ branch?---Yes.
- And have they expressed that view to you?---They – the same thing, it's quite a range of understanding of financial services.
- 45 Yes. Now, are you familiar with ANZs terms and conditions on transaction accounts?---I'm familiar with it, but I might need to go to it.
- Yes. You're aware it's - - -

THE COMMISSIONER: It's not a memory test?---Thank you, Commissioner.

MR COSTELLO: Are you aware that the document exhibited to your statement is 104 pages long?---Yes, I am aware.

5

And do you agree that reading the terms and conditions would not tell somebody if an informal overdraft was attached to their account?---That's right.

10 It would only tell them that there was a chance that an informal overdraft could be attached to particular types of account?---Yes.

15 Do you think it's fair to expect customers to read a document of the length and complexity of the terms and conditions in order to ascertain if there is the prospect of an informal overdraft attaching to their account?---I understand for people with – that may have low financial literacy, that is a difficult prospect, yes.

20 Well, do you think it might be a difficult prospect with a high level of financial literacy to wade through 104 pages of terms and conditions to understand if there is even a chance of a particular facility attaching to an account?---Yes, that would be difficult.

Do you think that the community might expect the bank to be a little bit more upfront?---Yes.

25 And do you accept the terms and conditions do not contain the relevant charges associated with the use of an overdraft account?---Sorry, an informal overdraft or - - -

30 An informal overdraft?---No. They would have to look at the – the fees document for that.

I think the fee – what you might be referring to is a separate booklet that is described as ANZ Personal Banking Account Fees and Charges?---Yes. That - - -

35 And that booklet is referred to in the terms and conditions?---I'm sorry, I would have to go to there. I can't remember that.

40 Would you be surprised if it was not referred to in the terms and conditions?---Yes, I would.

Yes. And in the terms and conditions there is a note that the interest will be charged on an informal overdraft account at the ANZ retail index rate plus a margin. That's the statement that is given to customers in the terms and conditions?---Yes.

45 And then, to get more specific information, the customer would need to go to the separate booklet that we've just discussed?---Yes.

- And are you prepared to accept from me that that booklet outlines that the margin on an informal overdraft is 8.5 per cent per annum plus ANZs retail rate?---Yes.
- 5 And in your statement, you confirm that the ANZ retail index rate is currently 8.7 per cent?---It was at that time, yes.
- At the time that you made your statement, the interest rate applicable to overdrawn amounts, incurred because of an informal overdraft, was 17.2 per cent per annum?---Yes.
- 10 Do you accept that it is quite difficult for a customer to ascertain what that rate is?---Yes.
- And, in addition to that rate of interest, there are also fees?---If you overdraw your account is what – yes.
- 15 Yes. Well, you only pay the interest if you overdraw your account, don't you?---Yes.
- 20 And then if you overdraw your account, in addition to the interest, you will also incur a fee?---If you overdraw your account by more than \$50, yes.
- Thank you. At paragraph 68 of your statement, which is on the screen, you say that once the account is overdrawn by \$50 a fee of \$6 per day is applied for each business day the account remains overdrawn for a maximum of 10 business days per month?---Yes.
- 25 So in addition to the 17.2 per cent interest charged on the overdrawn amount, a customer might be liable to pay up to \$60 a month as a consequence of the informal overdraft?---If they – if they have an informal overdraft and overdraw their account by more than \$50, that is a possibility, yes.
- 30 And how does the client become aware of that fee?---The overdrawn fee? Again, in the terms and conditions, fees and charges.
- 35 But you agreed with me earlier, didn't you, that the terms and conditions doesn't outline the dollar amounts of the fees; you've got to go to the separate booklet?---You have to go to the fees and charges, yes.
- 40 All right. I just want to take you briefly to the circumstances of one of the clients of Mr Bowden. I will take you to a document, ANZ.800.764.3172. Will you accept from me, Mr Tapsall, that this is a bank account statement that relates to the ANZ customer described in Mr Bowden's evidence as client 1? It's been redacted for reasons of confidentiality, but this is an account that relates to that person; this is an
- 45 account statement for an account of that person. And could I take you, please, to page 3185 of that bundle. All right. So this is – this is standard front page of an ANZ statement?---Yes.

All right. You see the opening balance, total deposits, total withdrawals, closing balance. And if we go over the page, can you see there on 13 September – and again on 8 November – there is a Centrelink pension deposit?---Yes.

5 The person who is receiving Centrelink benefits. And then if we go over the page can you see, on 14 November, overdrawn fee?---Yes.

\$6?---Yes.

10 15 November, overdrawn fee, \$6. 16 November, overdrawn fee, \$6?---Yes.

17 November, overdrawn fee, \$6?---Yes.

15 No charge on the 18th or 19 November, because they were Saturdays and Sundays, and the terms and conditions that I just took you to showed that overdrawn fees are charged on business days?---Yes.

20 November, overdrawn fee, \$6?---Yes.

20 21 November, overdrawn fee, \$6. And then on 22 November there is a credit from Centrelink?---Yes.

However, there are a number of withdrawals on that day, and on 23 November there is another overdrawn fee of \$6?---Yes.

25 And again on 24 November?---Yes.

Then we have another weekend. On 27 November there is another overdrawn fee with a \$6 charge over the page. See the overdrawn fee there, 27 November?---Yes.

30 So on my count, Mr Bowden, that's nine overdrawn fees within a two week period. Nine sixes are 54, which means it's within the \$60 maximum limit that will be charged in overdrawn fees for an informal overdraft account in a month?---Sorry, can you put that to me again?

35 You understand that there's a \$60 cap on overdrawn fees - - -?---That's how I understand it.

- - - for informal overdrafts?---Yes.

40 All I'm putting to you is I've just shown you nine fees charged in a two-week period which means that this is under the cap?---Yes. That's the overdrawn fee, yes.

45 Yes. So there has been \$54 in overdrawn fees charged in this two-month period – two-week period. We're now at the end of the month?---Yes.

5 Could we then, please, go to 3192 of that document. See this is an Access Advantage account statement? This is the same account statement, and there is a summary – a fee summary here. And you will see it's fees charged for the period 13 September to 12 October. Can you see that?---Sorry, which – yes, I can – sorry, I can see that.

10 So this is a period before the period that I just showed you but my question is, on a fee summary like this, would overdrawn fees appear?---I'm sorry, I don't know from my own experience, but is there a separate page for additional fees? This looks like a service fee page.

If that page could just be zoomed out a little. So it starts with service fees at the top there, monthly account service fee?---Yes.

15 Then another monthly account service fee. See how it states monthly account service fee, fee charged 13 October to 10 November?---Yes. I can see - - -

20 And then 11 November to 12 December. So that's in the period that I was just taking you to. And then if we go over the page there's transaction fees?---They're the service fees also. Sorry, do I have a hardcopy of this?

You don't. I just want – I will show you one more page of that. If we go back to 3191, see at the bottom of the page there it says:

25 *This statement includes ANZ Bank charges \$90.*

THE COMMISSIONER: I think a hardcopy has just been made available?---Thank you. Sorry, I can see that, Mr Costello. The bank charges at the bottom.

30 MR COSTELLO: Yes. Why – those bank charges include the \$6 overdrawn fees that I've just taken you to?---I'm sorry, I don't know.

35 Well, you've got copies of the statement there. Why don't you interrogate the statement and let me know if you think that they're included in that \$90 or not. I will just give you a moment?---Mr Costello, I would have to go through the entire statement, I'm sorry.

40 All right. So you don't know whether or not the ANZ Bank charges component at the foot of that page includes the overdrawn fees?---I don't know.

All right. But do you agree with me that the overdrawn fees do not appear on either of the two pages that I just showed you that are headed Fee Summary?---Yes, that was just the service fees listed.

45 Why would the overdrawn fees not appear in the document – in the part of the document that is entitled Fee Summary?---I don't know.

Do you think that that would be confusing to a consumer?---It may be confusing to a consumer, yes.

5 Yes. It appears to be confusing to you, Mr Tapsall?---Yes. It's not listed in that – on that service fee page. I understand that. It is listed within the statement, as you've pointed out, at the bottom of the page.

10 Well, you've just said to me you're not sure if it's included in that amount?---That's right. I'm not sure.

Right. So how would a consumer be sure about that fact?---I can't answer that. I don't know.

15 You accept that it would be very difficult for a consumer to understand, based on a summary amount, what they had been charged by ANZ as this statement is formatted?---I would suggest that something called ANZ Bank charges might – might be an indicator that I've been charged fees for something.

20 Yes. And you might also think that something described as an overdrawn fee is a fee?---Yes.

And you might think that a fee would appear in the part of the document that is entitled Fee Summary?---Yes.

25 That would be a reasonable assumption, wouldn't it?---Yes.

30 And you agree with me that whether or not the overdrawn fees are included in the ANZ Bank charges amount, they are not included in the fee summary portion of the statement?---Yes. I agree that the bank charges amount there isn't in the fee portion of this statement.

Yes, thank you. ANZ – that statement can - - -

35 THE COMMISSIONER: Just before - - -

MR COSTELLO: I tender that document.

THE COMMISSIONER: Well, is it not in evidence already?

40 MR COSTELLO: No.

THE COMMISSIONER: Statement relating to ANZ client identified by Mr Bowden as client 1, ANZ.800.764.3172 becomes exhibit 4.208.

45

EXHIBIT #4.208 STATEMENT RELATING TO ANZ CLIENT IDENTIFIED BY MR BOWDEN AS CLIENT 1 (ANZ.800.764.3172)

THE COMMISSIONER: Just before it comes down, though – too late, he said.

Mr Tapsall, I know all you've seen about this client's financial affairs is a few pages of one bank statement?---Yes, Commissioner.

5

Based only on those few pages of that bank statement, if that client came into a branch at which you were the relevant lending officer and asked you for an overdraft, what would your answer be?---It is – sorry, Commissioner, it is very hard to tell, just from a couple of statement pages about this particular customer's financial needs or –
10 or requirements, understanding that – I would have to sit down with him and discuss this with him. It's very hard just to look at it and sum up his position from a few statements.

If this is the sum total of this customer's financial affairs: Centrelink coming in,
15 money going out as recorded on this statement, would you give this customer an overdraft?---No.

And yet ANZ does without the customer asking?---In this case, it looks like there is an informal overdraft attached to this account. Yes, Commissioner.

20

And I suspect is a matter for the lawyers to grapple with later, Mr Tapsall, rather than with you, but if you have a comment on it that you feel you can offer, feel free to offer it. Isn't there a tension between giving clients informal overdrafts when, if they applied for the overdraft, you would say no?---I think there is a tension there,
25 Commissioner.

And how that tension plays out as a matter of law is not something I'm going to ask you?---Thank you.

30 Well, I can?---I don't think I would be very helpful there, Commissioner.

But how it plays out through the Credit Act is something that no doubt ANZ will spend some time telling me later in the piece, but I just – it struck me, and correct me if I'm wrong – that there is a tension between giving, unasked, an overdraft to a
35 customer when, if the customer asked, you would say no. I think you agree that there is a tension there?---In this case, Commissioner, yes, I think there is - - -

Yes?---There is a tension.

40 Yes, Mr Costello.

MR COSTELLO: Mr Tapsall, ANZ customers living in high risk zones are not entitled to informal overdrafts, are they?---No.

45 And high risk zones are areas with a higher risk of mortgage default because of the presence of or closure of a mine?---Yes.

It has got nothing to do with the socioeconomic circumstances of people living in that area?---No. It's based on the mortgage lending.

5 High risk zones are a reflection of the potential credit risk to ANZ?---Yes.

Because in particular areas affected by mining there can be fluctuations?---Yes.

10 And ANZ restricts access to informal overdrafts in those areas because of the risk that ANZ will be left chasing an overdrawn balance?---There is a – there is a – there has been a conscious decision made not to apply informal overdrafts in high risk areas.

15 And ANZ has not made an equivalent decision in respect of people in receipt of Centrelink benefits?---It has.

It has?---Yes. That's – it's – that's a recent change that's been implemented.

20 All right. Do you – can you explain that change?---Yes, Mr Costello. The – so there's a number – a large number of rules which apply to the informal overdraft process. Those rules went through a review commencing about a year ago. Off the back – off the back of those reviews, there has been ongoing changes to the rules and how they apply to certain accounts, and – and customer behaviour, including receiving Centrelink payments – or a percentage of their Centrelink payments – a percentage of their income is Centrelink payments. So that's been an evolving process which has happened for the last year, the additional rules which have been applied to informal overdrafts.

And are those rules now being applied?---Yes.

30 And how do those rules work in terms of excluding informal overdrafts for people on Centrelink benefits? Does it mean that a person on a Centrelink benefit is automatically ineligible?---Sorry, I will need to go and look at the specific rule - - -

35 Right?--- - - - in there, because there's a large number, and I know there's a Centrelink specific rule, but I don't know the exact nature of that rule.

40 And, as a consequence of that change to the rules, it is no longer the case that it's only ANZ customers living in high risk zones that will fall into mandatory exclusion?---Sorry, you need to repeat that.

As a result of the rule changes that you've just described - - -?---Yes.

45 - - - people other than people living in the high risk zones will not be entitled to an informal overdraft?---Potentially. There's a large amount of rules. So it's not just – there's not just a high risk mining zone rule. There's a large – there's a page of rules which apply to accounts that may have an informal overdraft attached including rules

around the customer behaviour, account behaviour, where the customer lives, the payments they're receiving. There's – there's a number of rules.

5 Do you think that it accords with community standards and expectations to allow an informal overdraft to be habitually used by a low income earner?---Sorry, can you – you will have to repeat that.

10 Do you think that it accords with community standards and expectations to allow an informal overdraft to be habitually used by a low income earner?---Do I think the community would accept that, is that your - - -

Do you think that the community – that it would accord with community standards and expectations to allow a low income person to regularly overdraw their account?

15 MS WILLIAMS: I object, Commissioner. The evidence doesn't establish allowing habitual use of informal overdrafts by low income earners. What has been put to Mr Tapsall is a two week period in one client's statement.

20 THE COMMISSIONER: I'm sorry, what's the proposition, Ms Williams? I'm not following that at all. Go on. What is it?

25 MS WILLIAMS: The proposition that has been put to Mr Tapsall, as I understand it, is whether – whether it is fair, or the community would expect that ANZ would permit a customer on a low income to habitually use an informal overdraft, but all that's been shown to Mr Tapsall by way of evidence is – is a two week period from one client's bank statement. And my submission is that the evidence doesn't establish permission of habitual use of overdrafts by low income earners.

30 THE COMMISSIONER: Well, Mr Costello?

MR COSTELLO: I might ask the question slightly differently.

35 You have seen the statements of account in relation to client 1, as it was described by - - -?---Yes.

- - - Mr Bowden. And you saw at the front of the document the starting balance at the start of the account – of the period that the statements concern and closing balance. Do you remember seeing that?---Sorry, I don't.

40 Could we go to the first page, please, of that document. See the opening balance is \$2.74?---Yes.

You can see at the foot of the page it says totals at the end of page, \$3.34?---Yes.

45 And I think that on a page that I took you to earlier that I – and I asked you is this the ordinary front page of an ANZ account, and you said yes, and it showed an opening

balance of around \$2 and a closing balance of around \$2 at the end of the statement period. Do you remember that?---Yes.

All right. Now - - -

5

THE COMMISSIONER: I think the point Ms Williams was making, as I understood it at least, was that this is somehow a rare and unusual circumstance - - -

MR COSTELLO: Yes.

10

THE COMMISSIONER: - - - reflected in this set of statements. Is it rare and unusual, Mr Tapsall, for Centrelink benefit recipients to find that expenditure equals income much more often than not?---It's - Commissioner, that's a very wide ranging number of people, obviously, but yes, they do live payment to payment more so, from what I've seen in my inquiries, than people not on Centrelink.

15

The fact is most Centrelink beneficiaries, at least with many kinds of benefit, would be living within the limits of their benefit from week to week, would they not?---From what I've sighted in my inquiries, Commissioner, yes.

20

Yes. Yes, go on.

MR COSTELLO: And Mr Tapsall it's the case that, until the recent changes, a person receiving a Centrelink benefit was not subject to a mandatory exclusion from an informal overdraft?---No. As I've mentioned, there's a large amount of rules. They may have hit one of those other rules. They may have had an account that wasn't able to have an informal overdraft attached.

25

But they were not excluded by reason of the fact that they received Centrelink benefits?---Again, I would have to go to the document and see exactly the rules which may have applied specifically to Centrelink.

30

Did you understand when you made your statement that Centrelink - somebody who receives a Centrelink benefit is automatically excluded from receiving informal overdraft?---If that specific scenario - I wasn't aware if that was a specific scenario that was in play at the moment.

35

Well, what I've just shown you from these statements demonstrates that at least at the point in time that these statements relate to, it plainly wasn't the case, was it? I've taken you to deposits from Centrelink in this account and I've shown you the overdrawn statement fees?---Yes.

40

So, at least at this point in time, there was not a mandatory exclusion from an informal overdraft for somebody receiving a Centrelink benefit. Do you accept that?---Yes.

45

And was your evidence earlier that there have been recent changes relating to exclusion of people receiving Centrelink benefits - - -?---Yes.

- - - from informal overdrafts?---Yes.

5

And that's a recent change?---That's a recent change, yes.

10 And why was that change made?---As I mentioned, there has been a – for the last year, an ongoing review of the rules which apply to informal overdrafts, and there's a large amount that have been implemented, and plan to be implemented in the next – some – yes, in the next period, so from the last year through to the – I think September is the next deployment that I've seen listed around new rules coming in again. So it's been an ongoing process for the last year of adding additional rules.

15 So as you sit here now are you able to say whether or not a mandatory exclusion applies to somebody who receives Centrelink benefits?---And sorry, as I've mentioned Mr Costello, there is a – it's a specific line, specific rule. I'm not sure if it's just – if it's relating to a percentage of a Centrelink payment or an entire Centrelink payment, but there is other additional rules which may apply as well.

20

Thank you. And it's certainly not the case that the – that there is an opt-in arrangement to informal overdraft?---Not to my knowledge. There is a form that we can fill out for a customer if they have the potential for an informal overdraft which will stop the informal overdraft being attached to the account.

25

Well, that's the opposite, isn't it? That's opting out?---Yes.

30 It's not the case ever that a client opts into informal overdraft, is it?---If they meet the exclusionary rules and they have that particular type of account, further terms and conditions, they may have an informal overdraft attached to their account.

Because they've asked for it?---No.

35 When I say opt-in, just perhaps I'm not being clear, I mean an act of choice by the customer to have an informal overdraft?---There's not a specific upfront question around would you like one or not.

40 On every occasion it is a matter entirely within the discretion of ANZ?---At the – at the beginning of opening the account, yes.

40

Unless the client opts out?---Yes.

45 And at the time you made your statement, your first statement, you thought the only way a client could opt out is by completing a form?---Yes.

45

And you subsequently have ascertained that there are other ways that a client can opt out; is that right?---I'm sorry, what are you referring to?

I'm referring to your supplementary statement where you say that it's also possible for a client to opt out by going into a branch, or by telephone. Do you recall that?---Yes. And that's – that's to complete the form.

5 Yes. Sorry, what's completing the form?---The customer, if they attend the branch or contact – contact Centrelink and choose to opt out.

By completing the form?---Yes. Or requesting it over the phone.

10 Right. But at the time you made the first statement you thought the only way an informal overdraft could be switched offer is by the customer completing the form. Is that correct?---I can't recall.

15 I won't bring it up on the screen but at paragraph 17 of your supplementary statement you point out that in your earlier statement you explain that a customer may take up the option of switching off their ability to informally overdraw, and that could be done by completing the form "Request to restrict informal overdraft facility (DIBS)". And you had exhibited one of those forms - - -?---Yes.

20 - - - to your earlier statement. And then you say:

A customer may also request any informal overdraft on their account be removed over the telephone whilst speaking to one of ANZs contact centre staff after having securely confirmed their identification.

25 ?---Yes.

And we've already spoken today about some of the difficulties securing securely confirming identification can cause for some consumers?---For some consumers, yes.

30 And then you say:

Additionally, ANZ may arrange for an informal overdraft to be switched off independently without any requests.

35 And that's a reflection of the fact that these informal overdrafts are within ANZs discretion?---Yes, unless the customer asks for it to be switched off.

40 And at the time you made your first statement you didn't know that an informal overdraft could be switched off by the telephone?---If it wasn't in my statement; that's correct.

45 And do you recall making inquiries about how to turn these things off?---I made inquiries as to the branch component. I had not made inquiries into the contact centre at that stage. This is subsequently why we – why I've added the supplementary statement.

All right. Are you familiar with the document described as a code of operation?---Yes.

5 This is a code that relates to what are sometimes described as the 90 per cent arrangements?---Yes.

10 And do you understand that the 90 per cent arrangements are arrangements whereby a recipient of certain benefits, including Centrelink benefits, is entitled to have access to 90 per cent of that amount and only 10 per cent can be applied towards a bank debt?---Yes.

15 That's your general understanding of it?---Yes. Through the ABA we've signed up as an organisation to put in place – well, abide by the Code of Practice, which is based on best practice in that segment.

And you say in this statement that if a customer overdraws their account they can visit an ANZ branch or agency and request that the 90 per cent arrangements be put into place?---Yes.

20 Is it your understanding that the onus is on the customer to initiate the request to put the 90 per cent arrangements into place?---Yes.

25 And that's confirmed by a document that I will show you here, ANZ.800.636.0223. Now, as I understand it – and please correct me if I'm wrong – this is a flowchart for the operation of the code of operation?---My – if my memory serves me correctly, Mr Costello, I think this is a draft document.

Right. Was it finalised, do you know?---I don't know.

30 And why do you think this one's a draft?---I think I recall sighting that somewhere within the documentation we provided.

35 The fact that it is a draft. That's what you sighted?---That's my understanding, yes, from what I recall.

All right. And do you – at least so far as your evidence has been just now, you say that the code of operation is applied if the customer requests it, and that is confirmed, at least in this version of this document, in the very first box on the left-hand side where it says:

40

Centrelink/DVA customer becomes overdrawn and makes contact with the bank.

?---Yes.

45

The starting point is that it is for the customer to make contact?---Yes, in this document, yes.

And is it your understanding that if a customer has another source of income other than Centrelink they aren't eligible for the 90 per cent arrangements?---No, they still are on their Centrelink payment.

5 So - - -?---That portion of their payment, yes.

It will apply, but it will only apply to the Centrelink - - -?---Portion.

- - - income. Thank you. You have annexed the code operation to your statement at
10 TCT-17. I want to take you to it briefly. It is ANZ.800.643.0441. Commissioner, perhaps I should tender that flowchart before I move to the next document.

THE COMMISSIONER: Draft flowchart for code of operation,
15 ANZ.800.636.0223, exhibit 4.209.

**EXHIBIT #4.209 DRAFT FLOWCHART FOR CODE OF OPERATION
(ANZ.800.636.0223)**

20

MR COSTELLO: Mr Tapsall, have you read this document before?---Yes.

If we move to page 2 of the document at 0442. See at the top it's a non-legally
25 binding statement of best practice?---Yes.

25

And the code applies to the recovery of debts that arise from customers' overdrawn
accounts where no repayment arrangement already exists?---Yes.

30 And the code does not apply where it would conflict with any conditions agreed
between the customer and the ADI?---Yes.

And then under purpose of the code, it says:

35 *All parties recognise that the Australian Government provides payments to
customers to ensure they are able to provide basic food and accommodation for
themselves and their families. The aim of this code is to ensure that recipients
of income support payments and DVA payments have sufficient income to
maintain adequate food and shelter. Participating ADIs agree that they will
40 take this into account when considering the amount they should recover each
fortnight for the repayment of the debt.*

See that?---Yes. Yes.

45 And then if you skip the next paragraph and go to the paragraph after that would:

Under this code, the default position is that a customer should be able to retain at least 90 per cent of their income support payment or DVA payment in any fortnightly period.

5 See that?---Yes, I do.

Do you see that it says “the default position is that the customer should be able to retain”?---Yes.

10 Do you think that this being the default position is consistent with ANZ only applying the code if the customer initiates the contact?---No. We don’t meet the best practice here.

You agree with that?---Yes.

15

And why don’t you?---I don’t know. There’s – there’s many different teams within the organisation that deal with this and it’s not something, as I’ve mentioned, that we are meeting best practice on.

20 Have you made inquiries about why that is the case in the course of preparing to give your evidence to the Commission?---Yes.

And what did those inquiries reveal?---Nothing substantial that I would want to mention here, as in there’s still – I’ve still got outstanding questions which weren’t able to be settled in time for me to make a truthful statement here today about our – what we are doing within the Code of Practice.

25

Do you think that it’s good enough for a bank the size of ANZ to enter into a code of operation like this but then not apply it to its terms?---As I’ve mentioned, I – we – I don’t think we do hit the aim of the – of the code and the purpose of the code around the best practice. We do rely on the customer.

30

And my question was is that good enough?---As it relates to this code, no.

35 Do you think that the community would expect that ANZ would adhere to a code that it has bound itself to?---I would expect, yes, the community would.

And do you accept that as the code sets out, the purpose of Centrelink payments is to be able to provide basic food and accommodation for the recipients of it? I read you that paragraph?---Yes.

40

That’s the purpose?---That’s the purpose, yes.

And that’s an important purpose?---Yes.

45

And its importance is recognised by the fact that this code has been agreed?---Yes.

And do you think that it's good enough for ANZ not to act in accordance with the code, given the important purpose that those payments are made for?---Yes. As I mentioned, we rely on the customer to do it, and we are not meeting best practice in this code.

5 Yes. And is that good enough?---Not for these customers that it will be impacting.

Are you aware of ANZ making any steps to enforce the code in accordance with its terms?---Yes, I – yes, I understand there to be work effort underway now to see how we actually are able to do this in a less manual way.

10 And when will that be done?---I don't have an answer for you on that here today.

Have you sought an answer?---Yes.

15 And what were you told?---It needs to go through a planning phase.

And has that planning phase commenced?---I understand, as of earlier this week, that there are discussions underway. So for me, I – my assumption is there that when I leave here I can follow up with that to ensure planning is commencing around how we meet this best practice.

20 Do you think that the operation of something like the code of operation is particularly important in circumstances where a client has an informal overdraft account that incurs significant fees?---As I mentioned, yes, this code is important and we aren't abiding by the best practice rules within it. So it's important to all customers.

25 But do you think it's particularly important to a customer incurring a high level of fees?---I think it's important to all customers that are receiving a pension payment.

30 My - - -?---And are over – and in overdrawn position.

But a customer incurring a high level of fees is more likely to lose a higher portion of their Centrelink payment to the fees?---Potentially, yes.

35 And an informal overdraft is a facility that incurs high fees?---If it's utilised, it may be incurring fees for the customer, yes.

40 And would you agree that those fees are high?---I can't answer that. I don't know.

Well, Mr Tapsall, you're a banker. Do you think that it's expensive credit to pay a maximum of \$60 a month on amounts over \$50 that are drawn, plus 17.8 per cent interest?---Again, it's a customer by customer position, and whether they utilise the – the overdraft and become overdrawn, they will pay the fees. I don't know how the fees are derived.

45

- Do you have an understanding of the prevailing interest rate for a formal overdraft?---No, I don't.
- No idea?---No, I don't.
- 5 Would you agree with me that somebody utilising a formal overdraft doesn't incur a fee for overdrawing their account up to the limit of the overdraft?---Yes, that's right.
- 10 So they wouldn't incur the equivalent of up to a maximum of \$60 a month for drawing within their overdraft limit?---No.
- So at least on that basis an informal overdraft is a more expensive type of facility than a formal overdraft?---On that basis, yes.
- 15 And would you expect that the prevailing interest rate on a formal overdraft would be lower or higher than in respect of an informal overdraft?---I don't know what that rate is.
- 20 You don't have a view about whether or not it would likely be higher or lower than the prevailing rate for an informal overdraft?---Sorry, I don't know.
- All right. You've included some figures in your statement about the income earned by ANZ in respect of overdrawn fees and interest on overdrawn amounts. Have you made any inquiries about the extent of fees charged to customers on Groote Eylandt?---Sorry, I would have to review my statement.
- 25 It's not in your statement specifically?---It's just that one figure.
- That's right, you've given one figure I think in respect of the Northern Territory, is my recollection?---Yes.
- 30 Have you personally made any inquiries about the amount of interest charged or fees charged to customers on Groote Eylandt as a result of informal overdrafts?---No.
- 35 Were you concerned when you read the documents provided to you by the Commission about informal overdrafts on Groote Eylandt?---This particular statement?
- Mr Bowden's statement, for example?---Was I concerned?
- 40 Were you concerned that ANZ customers were making use of a facility that they might be appropriate to their circumstances and that it was costing them money?---I would be concerned about that, yes.
- 45 You would be or you were?---I haven't gone through these accounts in detail and I don't know how far back they go. But, yes, if a customer is in a – is not in an

account that they – not in the best account for them, and because of that it's costing them money, that is something I would be concerned about.

5 And do you agree with me that the code of operation is a difficult arrangement for a bank to implement?---I can't answer that. I only see what we have in place today.

Yes?---Where it hasn't been best practice, as I've mentioned.

10 In fairness to you, Mr Tapsall, it strikes me that it might be difficult to implement the code of practice because it applies only in respect to Centrelink payments which might be only one form of income?---Yes, that's – that's right.

15 And so one form of income will be subject to the arrangements and the other won't?---Yes.

And the client needs to be provided with the ability to continue to draw funds from the account even though the account might in fact be overdrawn?---Yes.

20 Only 10 per cent of that income can be applied. Is that a complicated arrangement for a bank to put in place?---I don't know, but I would make an assumption that it could be.

25 Do you agree it would just be easier if people were in an account like an Access Basic account that did not have an informal overdraft attached to it?---For their particular circumstance – certain customers, yes, that might be it. Part of – part of the transaction account that we – that we offer, offers choice. And so for me, this is – this is something I grapple with. As a customer on Centrelink, for example, in some of these cases and what we've seen here, should we only be saying, "You can have an Access Basic account." Or should we be saying, "Based on your needs and what you would like, here are some other options for you as well." That, for me, is a
30 dilemma. How do we best offer options and support a customer to, in this case – in the 90 per cent arrangement, how do we actually put that in place for the customer ahead of doing it retrospectively? So that – that's an issue that I – I have said is an issue with us, but again, back to the – your question on the basic account, in some
35 cases it will be the best account, yes. In other cases where a customer might want choice, you know, that's something we would also have to abide by, considering their circumstances.

40 Yes. ANZs concerned to ensure that its customers are entitled to make a choice of the account?---Yes. A customer should be entitled to make choice.

45 Yes. And should they be entitled to choose whether or not an informal overdraft is applied to the account before it's applied?---That's – I don't – I can't answer that. I don't know. It's not my product.

You don't have an opinion?---No.

All right. Do you think ANZ does enough to promote its Access Basic account?---It has the same promotion on the website in branch as the other accounts, yes.

5 All accounts are promoted equally?---So I don't know. That might change from time to time, the way we might market things from time to time might change. So places on ANZ.com, for example, you know, one – that will change over time, and – but information is equally available on website in branch on all the transaction accounts.

10 Yes. Do you think that perhaps more could be done to promote the Access Basic account in areas of need?---We would do that via the review process. Aside – out – with the customer. And aside from just marketing basic accounts, perhaps that is something we could do. We could talk more about those in certain areas.

15 Do you think it would be good to help your customers into an account that, if the circumstances happen to be, would be beneficial to them?---As I mentioned, yes. Ideally, yes, but there is also choice to consider.

20 Yes. Mr Tapsall, are you aware of how many Aboriginal and Torres Strait Islander people are employed across the branches that you're responsible for?---Yes. It's the people that have self-identified, there's about 30.

And are any of those people on Groote Eylandt?---No.

25 Are any of those people in the Katherine branch?---We have a trainee in Katherine branch.

30 And do you think that one way that the bank could assist its indigenous clients would be to have more indigenous people working in branches?---Mr Costello, we need to service a wide variety of customers, obviously.

Yes?---And so with that, in some cases, yes, that will be the case. In the more remote areas, that's a – that's the best option. Unfortunately, trying also to recruit can be difficult.

35 Yes?---We do have a number of traineeships and other school-based trainees we mentioned, which is the kids are still at school and they come and work with us a day a week. It would be ideal. To execute is a little bit more difficult.

40 Would it be ideal in a location like Groote Eylandt that's quite remote, has a high degree of indigenous customers?---It has got a very broad – it has got a very broad group of people that live and work there. I don't know that that would benefit, necessarily. In the current circumstances, from what I've seen, it would be ideal. As to whether we can execute that, that's another matter.

45 But you think it might be beneficial if you could execute it?---Well, it – it may be, but in saying that also, the staff that are on Groote have lived in that community for

five, eight and 10 years. So they have experience in dealing with indigenous customers from remote locations.

Thank you, Mr Tapsall. Commissioner, I have no further questions.

5

THE COMMISSIONER: Thank you. Yes, Ms Williams.

<RE-EXAMINATION BY MS WILLIAMS

[11.14 am]

10

MS WILLIAMS: Thank you, Commissioner.

15 Mr Tapsall, you were – it was put to you at transcript 4072 at about line 39 some questions whether the fees and charges booklets are referred to in ANZs account terms and conditions. Can I just clarify that matter. If you could turn, please, to exhibit TCT-11 of your exhibit to your rubric 4-13 statement, please. And I'm sorry, I should have given the reference number for the screen. It's ANZ.800.634.1128. And now that you have that document, Mr Tapsall, could you turn please to page 20 1129?---Yes.

25 Are you able to – having refreshed your memory by looking to that page, are you able to refresh – are you able to identify the – whether the fees – the terms and conditions booklet refers to the fees and charges booklet?---Yes, it does.

30 Thank you, Mr Tapsall. Mr Tapsall, at transcript page 4077 you were asked some questions starting from line 9 by the Commissioner concerning the account statements of client 1 to which Counsel Assisting took you. If those account statements could be brought up on the screen, please. ANZ.800.764.3172. And at line 21 of the transcript, at page 4077, you were asked a question about whether the sum total of this particular customer's financial affairs, being Centrelink coming in and money going out, if that was the sum total, would you give this customer an overdraft. Could you have a look, please, at page 3172 that is on the screen. And if I can just direct your attention to a couple of transactions shown on the account 35 statement. Could you look, please, at the transaction for 19 December on page 3172, which is labelled a transfer?---Yes.

40 I'm sorry, Mr Tapsall, I see that from what you can see on the screen you can't see the identity of where the transfer comes from. I think you were provided with a hardcopy of the - - -?---Sorry, yes, I was.

- - - statement. Does that statement have the identity of the payer of the transfer redacted, Mr Tapsall?---Sorry, what was the page number at the top? ANZ?

45 Page 3172. It should be the first page of the document that you have, is it?---Yes.

Is the identity of the transfer payment on 19 December on that page redacted and marked confidential?---Yes.

5 I see. All right. I won't pursue that now, and I will make a - - -?---I'm sorry, what was your question there, sorry?

10 My question is simply are you able to see whether or not the transfer on 19 December on page 3172 is a Centrelink transfer or some other transfer. Please don't say the name of the transferor if you can see it?---It's – it's not a Centrelink transfer. It's some other transfer.

15 Thank you. And if you could also turn, please, by way of example to page 3187. Could you look at the transfer dated 15 November on that page?---Was that 3187? Sorry, that page?

Yes, Mr Tapsall?---Right, sorry.

20 That's all right. Take your time. The document provided to you isn't stapled. It makes it difficult?---Yes, I have that.

Right. So the transfer of 15 November at page 3187, are you able to say if that's a Centrelink transfer or not?---That's not a Centrelink transfer. That's some other transfer.

25 Thank you. Could you have a look at page 3188, please?---Yes.

By way of example, could you look at the transfer for 15 December on page 3188?---Yes.

30 Is that a Centrelink transfer, Mr Tapsall, or some other transfer?---It's some other transfer.

35 Would those non-Centrelink transfers be relevant, in your opinion, to any discussion – any decision whether to grant this particular customer an informal overdraft?---Yes. They would contribute to – sorry, an informal overdraft, did you say?

40 Informal or formal, Mr Tapsall?---Yes. They would – they would have an impact on - - -

THE COMMISSIONER: Do you want to change the answer you gave? Would you give this client an overdraft if the client asked it?---Based on these payments, Commissioner – there would be an assessment process – I would put this customer through, yes.

45 Are you able to offer an opinion about whether you would give an overdraft to this client or not, if the client asked for it?---Commissioner, I'm not appearing to be

unhelpful, but there would be a number of factors that would have to go into discussion with this customer to understand if it was applicable for him first, before I would put him through a formal process.

5 MS WILLIAMS: Mr Tapsall, could I ask you, please, to turn to exhibit TCT-12 of your Rubric 4-13 statement. That's document ANZ.772.0089?---Was that TCT?

12?---12, yes.

10 Mr Tapsall, you referred in evidence a number of times to the exclusion criteria that applied to informal overdrafts, and you said there was a whole list. Is this document the list that you were referring to?---There was a what list, sorry?

You said there was a whole list?---Yes.

15

Is this document at TCT-12 the list that you were referring to?---Yes, it is.

20 You were asked some specific questions concerning the Centrelink exclusion criteria that you referred to. Can I direct your attention to the fifth last line on the bottom of page 0089?---Sorry, zero zero - - -

0089. The fifth last line in the table on that page?---Sorry, on that page.

Sorry?---Yes.

25

Is that the Centrelink criterion you were referring to when you mentioned that in your evidence?---Yes.

30 Thank you, Mr Tapsall. And while we are on this document can I ask you to turn to page 0090, and could you look under the heading 3, Limit Assignment Rules – I'm sorry, we will just for a moment - - -?---Sorry, yes.

- - - while the document is brought up on the screen. ANZ.800.772.0090. Thank you. Do you see the heading there Limit Assignment Rules?---Yes.

35

Are you able to identify from those rules whether an informal overdraft can currently attach to an Access Basic account?---It cannot attach to an Access Basic account.

40 And for how long has that been the position, Mr Tapsall?---As long as this document – so pre-November – I think it's pre-November '17.

45 Thank you. And are you able to identify from page – from the Limit Assignment Rules from page 0090 whether an informal overdraft can presently attach to an ANZ Pensioner Advantage account?---Yes. It cannot attach to a Pensioner Advantage account now.

Thank you, Mr Tapsall. Now, just returning for a moment to client 1, referred to in Mr Bowden's statement, could Mr Tapsall – could we have on the screen, please, ANZ.800.852.002 – sorry, 0002. Now, Mr Tapsall, is that an example of the form that you referred to, in giving evidence earlier, that a customer can fill in in order to restrict or switch off the informal overdraft facility on their account?---Yes.

Thank you. And could we have on the screen, please, exhibit – I'm sorry, document – I withdraw that. I tender that document, Commissioner, before I move on.

10 THE COMMISSIONER: Request to restrict informal overdraft facility form, ANZ.800.852.0002, exhibit 4.210.

15 **EXHIBIT #4.210 REQUEST TO RESTRICT INFORMAL OVERDRAFT FACILITY FORM (ANZ.800.852.0002)**

MS WILLIAMS: Thank you, Commissioner. Could the witness be shown, please, document number ANZ.800.853.0095.

20 Now, Mr Tapsall, are you able to recognise this form of document? This a form of document you've seen from ANZs systems at all?---Yes.

25 Are you able to identify the nature or the name of the system for which a document like this is produced?---IKNOW.

Thank you. If we could turn to page 0103 within that document, please. If we could just enlarge that page, if possible.

30 THE COMMISSIONER: You might have to be more specific, Ms Williams. It's a very large page. Which part do you want enlarged?

35 MS WILLIAMS: I see. I want – I'm sorry. I wanted to enlarge the material under the heading Diary Comments so as to be able to see the entry dated 8 December 2017 on that page. Thank you.

Mr Tapsall, can I direct your attention to the first entry dated 8 December 2017?---Yes.

40 Are you able to explain for the Commission the meaning of that entry, what action or other matter it is referring to?---8 December 2017?

Yes?---

45 *Request received to remove online DIBS limit, received and action – no further action.*

It's to remove – to remove the informal overdraft limit.

Thank you, Mr Tapsall. I tender that document, Commissioner.

5 THE COMMISSIONER: To whom does it relate? What am I to make of it, Ms Williams? I guess I will mark it, but it's simply a form standing in the desert at the moment.

10 MS WILLIAMS: It relates to client 1 referred to in Mr Bowden's statement, Commissioner, and that is apparent from the first page of the document which has been redacted for confidentiality.

15 THE COMMISSIONER: Profile page IKNOW system client number 1 ANZ.800.853.0095, exhibit 4.211.

EXHIBIT #4.211 PROFILE PAGE IKNOW SYSTEM CLIENT NUMBER 1 (ANZ.800.853.0095)

20 MS WILLIAMS: Thank you, Commissioner. Just pardon me one moment, Commissioner. Thank you, Commissioner, I have nothing further for Mr Tapsall.

25 THE COMMISSIONER: Yes. Mr Costello, is there anything arising out of that?

MR COSTELLO: No, thank you, Commissioner.

THE COMMISSIONER: Thank you. Now, Ms Orr, where do we go from here?

30 MS ORR: I'm going to deliver our – I'm sorry, our closing address, Commissioner, but perhaps we might give the ANZ counsel an opportunity to leave the bar table.

35 THE COMMISSIONER: If I come back at, what, 20 to midday or 25 to, what do you want?

MS ORR: Yes. Somewhere between those two. Five minutes, but no more, would be very helpful. Thank you, Commissioner. We have a bit to get through.

40 THE WITNESS: I will come back - - -

MS WILLIAMS: Commissioner, I'm so sorry, there were some documents I wished to tender – as I indicated yesterday – that relate to client 2 in Mr Bowden's case. Would that be a convenient moment to do that at this stage?

45 THE COMMISSIONER: Yes. Have you a list of them?

MS WILLIAMS: Thank you. The first - - -

THE COMMISSIONER: Have you a list of them?

5 MS WILLIAMS: I do have – I don't now need to tender everything on the list, but I do have a list that can be handed up together with the documents, if that's more convenient to do them in a bundle.

THE COMMISSIONER: Well, let's follow whatever is the most efficient means of doing this, Ms Williams. Let's get on with it.

10 MS WILLIAMS: Thank you, Commissioner. If I could tender document ANZ.800.852.0001, being a request to restrict informal overdraft facility form, dated 29 November 2017.

15 THE COMMISSIONER: Concerning client 2?

MS WILLIAMS: Yes, Commissioner.

THE COMMISSIONER: Exhibit 4.212.

20

EXHIBIT #4.212 REQUEST TO RESTRICT INFORMAL OVERDRAFT FACILITY FORM CONCERNING CLIENT 2 DATED 29/11/2017 (ANZ.800.852.0001)

25

MS WILLIAMS: Thank you, Commissioner. And I tender a call recording dated 30 November 2017, document number – also relating to client 2, document number ANZ.800.851.0002.

30 THE COMMISSIONER: Exhibit 4.213.

EXHIBIT #4.213 CALL RECORDING RELATING TO CLIENT 2 DATED 30/11/2017 (ANZ.800.851.0002)

35

MS WILLIAMS: Thank you, Commissioner. I tender a transcript prepared by my instructing solicitors of that call in order to assist the Commission.

40 THE COMMISSIONER: Transcript of call recording. ANZ?

MS WILLIAMS: ANZ.800.857.0001.

THE COMMISSIONER: Exhibit 4.214.

45

EXHIBIT #4.214 TRANSCRIPT OF CALL RECORDING (ANZ.800.857.0001)

MS WILLIAMS: I tender a call recording relating to client 2, dated 1 December 2017. ANZ.800.851.0003.

THE COMMISSIONER: Exhibit 4.215.

5

EXHIBIT #4.215 CALL RECORDING RELATING TO CLIENT 2 DATED 01/12/2017 (ANZ.800.851.0003)

10

MS WILLIAMS: I tender a transcript prepared by my instructing solicitors of that call to assist the Commission.

THE COMMISSIONER: Transcript of call recording, ANZ.

15

MS WILLIAMS: 800.857.0004.

THE COMMISSIONER: Exhibit 4.216.

20

EXHIBIT #4.216 TRANSCRIPT OF CALL RECORDING (ANZ.800.857.0004)

MS WILLIAMS: And finally, Commissioner, I tender an IKNOW record relating to client 2, ANZ.800.856.0731.

25

THE COMMISSIONER: Exhibit 4.217.

EXHIBIT #4.217 IKNOW RECORD RELATING TO CLIENT 2 (ANZ.800.856.0731)

30

MS WILLIAMS: Thank you, Commissioner.

35

THE COMMISSIONER: I will come back at 20 to midday.

<THE WITNESS WITHDREW [11.34 am]

40

ADJOURNED [11.34 am]

RESUMED [11.40 am]

45

THE COMMISSIONER: Ms Orr.

MS ORR: Commissioner, over the past two weeks the Commission has heard evidence of misconduct and of conduct falling below community standards and expectations in relation to two topics: agricultural finance and interactions between Aboriginal and Torres Strait Islander people and financial services entities. In this closing address we will deal with each of the case studies that has been the subject of evidence in turn. For each case study, we will identify the findings that we regard as being open on the evidence, and we will invite the entity involved in the case study to respond in written submissions. We will also identify more general questions that arise in relation to these topics, and all parties with leave to appear in the hearings will be invited to provide written submissions addressing those general questions.

The first topic that was considered in these hearings was agricultural finance. The first case study concerned ANZ and its handling of former customers of Landmark financial services following ANZs acquisition of Landmark's loan and deposit books in March 2010. The Commission heard evidence from Mr Benjamin Steinberg, ANZs head of lending services, corporate and commercial. It also heard evidence from Mr Michael Hirst. Over the course of three days, Mr Steinberg gave evidence about 13 farmers or farming families who were former customers of Landmark financial services. They were the Cheesmans, the Courts, the Hirsts, the Harleys, the Handleys, the Cashmores, the Phillotts and six other farming or farming families whose names are the subject of non-publication directions.

Mr Steinberg also gave evidence about ANZs acquisition of Landmark more generally and about changes in the practices, policies and culture of ANZs lending services team over the past eight years.

In relation to many of the cases about which he gave evidence, Mr Steinberg acknowledged that ANZ had engaged in conduct that fell below community standards and expectations, and in some instances, that ANZ had engaged in misconduct. In relation to all of the cases about which he gave evidence, Mr Steinberg acknowledged that there were things that ANZ would do differently if a similar situation arose today. ANZs board decided to apply the loan and acquire the loan and deposit books of Landmark Financial Services on 21 October 2009. Part of the rationale for the acquisition was to give ANZ the opportunity to enhance its agribusiness portfolio and become the second largest agribusiness bank.

Another part of the rationale was to enable ANZ to cross-sell its products to Landmark customers. ANZ also identified an opportunity to reprice the loans of Landmark customers to earn an additional \$6 million in annual revenue. Mr Steinberg was not able to say whether ANZ took advantage of that opportunity. ANZ undertook a due diligence process in connection with the acquisition. Among other things, that process identified that the Landmark loan book was of a lower quality than ANZs loan book and that Landmark's management had underestimated the provision that would need to be made for the losses it would incur on its loan book.

ANZ was aware that there were issues in relation to the Landmark loan book, including a poor control environment within Landmark and a lack of regulatory oversight of Landmark. ANZ acquired the Landmark loan book on 1 March 2010. From that time, the former customers of Landmark were customers of ANZ. Mr Steinberg acknowledged that ANZ could have done a better job in communicating with the former Landmark customers about the acquisition. Over the following year, ANZ migrated the former Landmark customers onto its systems. Mr Steinberg acknowledged that there were issues associated with this process which affected former Landmark customers.

Mr Steinberg accepted that the quality of the Landmark loan book was worse than ANZ had anticipated. In March 2010 there were 433 former Landmark accounts with an internal risk rating of 7 plus D or worse with a total value of \$273 million. By July 2013 there were 1050 former Landmark accounts with the same internal risk rating or worse, with a total value of \$722 million, which was around a third of the total value of the former Landmark loan book. In the years that followed the acquisition, ANZ received complaints about its handling of the accounts of former Landmark customers. As we have mentioned, Mr Steinberg's evidence concerned ANZ's handling of the accounts of 13 farmers or farming families who were former customers.

The cross-examination of Mr Steinberg focused on two families in particular: the Cheesmans and the Harleys. The evidence in respect of the Cheesmans and the Harleys was lengthy and complex. Rather than summarising that evidence in this closing address, we have prepared a separate document that does so, which we will tender. That document has a doc ID of RCD.9999.0061.0001.

THE COMMISSIONER: What should I call it, Ms Orr?

MS ORR: We have called it, Commissioner, summary of certain evidence in ANZ Landmark case study.

THE COMMISSIONER: Document of that title, RCD.9999.0061.0001, can be marked as exhibit 4.218.

**EXHIBIT #4.218 SUMMARY OF CERTAIN EVIDENCE IN ANZ
LANDMARK CASE STUDY (RCD.9999.0061.0001)**

MS ORR: Mr Steinberg told the Commission about changes that it had made to lending services since 2014. In August 2014, ANZ established a specialist agribusiness team within lending services. It established this team because it was thought that high risk agribusiness customers would benefit from being serviced by relationship managers with specific knowledge of and experience in agriculture and restructuring. At around the same time, ANZ started to use farm debt mediation

more frequently and increased the frequency of face-to-face farm visits by lending services staff.

5 In the first half of 2015, after stories about former Landmark customers began to receive both political and media attention, ANZ made further changes to the culture of lending services. In July 2015, after a story about Mr Phillott was broadcast on 60 Minutes, ANZ established a taskforce to review the files of former Landmark customers. The taskforce went on to review the files of about 200 former Landmark customers. Mr Steinberg estimated that ANZ reached settlements with about 40 or 10 50 of those customers for a total amount of around \$40 million.

ANZ continued to make changes in 2016 and 2017. It is now a requirement for members of the lending services global leadership team to approve any decision to commence enforcement action. Where enforcement action is taken, ANZ now has a 15 panel of insolvency providers who have signed up to a consistent set of terms and conditions. ANZ expects that in the conduct of their duties, these providers will act consistently with ANZs values. Further, where a valuation is obtained, ANZ now gives the customer input into the choice of valuer and, as a matter of policy, provides a copy of the valuation to the customer. Decisions in lending services at ANZ are 20 now informed by the lending services purpose.

Mr Steinberg explained that the lending services team try to make the purpose an integral part of their culture and the way they act and behave on a day-to-day basis. Among other things, the lending services purpose emphasises that ANZ should take 25 into account the emotional and personal impacts of recovery and enforcement action on customers in its decision-making processes. Mr Steinberg said that a question he now often puts to his people in the lending services team is, “Is this the right thing to do?” We turn to the findings that we submit may be open to you, Commissioner, on the evidence.

30 We begin with the available findings in relation to ANZs communications regarding its acquisition of Landmark’s loan and deposit books and the transition of former Landmark customers to ANZ systems. First, Mr Steinberg acknowledged that ANZs communication with former Landmark customers, at the time of and immediately 35 following the acquisition of the Landmark loan book, was not always satisfactory. Mr Steinberg acknowledged that this conduct fell below community standards and expectations, and it is open to the Commissioner to find – to make a finding consistent with that acknowledgement.

40 Second, Mr Steinberg also acknowledged that there were issues associated with the transition of former Landmark customers to ANZ systems. He acknowledged that some former Landmark customers experienced delays in receiving responses from ANZ to information and funding requests following the acquisition. He said that there were also cases where limits were incorrectly loaded on the new system, and 45 interest rates were incorrectly charged, and that some customers experienced difficulties in opening accounts. Mr Steinberg acknowledged that this conduct fell

below community standards and expectations, and it is open to the Commissioner to make that finding consistent with that acknowledgement.

5 We turn to the available findings in relation to the Cheesmans. First, ANZ entered into an asset management agreement with the Cheesmans under which, among other things, ANZ gave the Cheesmans less than two months to sell their properties, and ANZ required the Cheesmans to give vacant possession of their properties within seven days of ANZs demand if those properties did not sell at auction. It is open to the Commissioner to find that this conduct fell below community standards and expectations. Second, ANZ repeatedly refused the Cheesmans' request to delay the sale of the properties on which they lived to see if they could repay their debt without losing their homes.

15 In circumstances where the Cheesmans had told ANZ that they would have nowhere to live in the homes were sold, and there was a real prospect that the exclusion of the homes from the auction would make no difference to the sale price, it is open to the Commissioner to find that ANZs conduct in refusing to exclude the homes from the auction fell below community standards and expectations. Third, after the Cheesmans had sold nearly all of their properties, ANZ repeatedly refused to accept offers made by the Cheesmans to settle their outstanding debt. Mr Steinberg accepted that ANZ rejected those offers because it thought that it could obtain more money if it relied on its security interests.

25 Mr Steinberg acknowledged that three of the settlement offers made by the Cheesmans, in June, October, and December 2012, were reasonable. ANZ declined each of these offers, and Mr Steinberg accepted that each time it did so it put the Cheesmans at risk of losing their remaining property where Reuben and Katrina Cheesman lived. Mr Steinberg accepted that by refusing to accept these offers, ANZ had engaged in conduct that fell below community standards and expectations, and it is open to the Commissioner to make a finding consistent with that acknowledgement.

35 It is also open to the Commissioner to find that by refusing to accept the Cheesmans' reasonable settlement offers, ANZ may have engaged in misconduct by breaching its obligation under clause 2.2 of the Code of Banking Practice which required ANZ to act fairly and reasonably towards the Cheesmans in a consistent and ethical manner. We turn next to the available findings in relation to customers who were the subject of annexure B to Mr Steinberg's statements - - -

40 THE COMMISSIONER: Just before we go on to that, can I just go back one stage with – by reference to the Cheesmans.

MS ORR: Yes, Commissioner.

45 THE COMMISSIONER: With a view to inviting those who are going to make submissions about these matters, obviously immediately ANZ but I suspect more broadly, the acknowledgements that Mr Steinberg made about want of compliance

with community standards and expectations seemed to me, subject to what I'm later told, to be unpacked as it wasn't fair to act in the particular respect. Now, if that's the right way to unpack that idea ANZ will no doubt tell me what they want to tell me about that. Then once you go to identifying, well, what's the connection, if any, between that idea and what you see in the Code of Banking Practice about fairly, reasonably, consistent, ethical manner?

And I will be assisted, I think, if both in relation to the particular cases, but more generally, some attention is given to the connection between fairness as a community standard – to which I would have ordinarily thought the other limb was honesty, so community expects entities to act fairly and honestly – connect that with Code of Banking Practice, fairly, reasonably, consistent, ethical manner. Although differently expressed, I rather suspect its content is not materially different. Then it may or may not be relevant to go on and observe that both Corporations Act 912A and the Credit Act general conduct provisions talk of efficient, honest, fair.

Now, leave aside questions of efficiency for the moment, honesty and fairness are lying at the core of those matters. Now, that's a very long interruption, I'm sorry Ms Orr, but it occurs to me that I will be assisted if parties do give some thought to that and see whether the unpacking I've flagged is right or wrong. Yes.

MS ORR: I was turning, Commissioner, to the available findings in relation to the customers who were the subject of annexure B to Mr Steinberg's statements, whose names are the subject of a non-publication direction. First, Mr Steinberg told the Commission about an occasion in October 2011 when ANZ met with these customers to discuss their debt reduction options but, on the same day, issued them with a default notice. Mr Steinberg accepted that this did not represent consistent communication with the customers.

He described the file as one that was difficult and had a long history, and accepted that this suggested that there was greater reason for ANZ to be consistent and reasonable in its dealings with these customers. In these circumstances, it's open to the Commissioner to find that by behaving in this inconsistent way, ANZ may have engaged in misconduct by breaching its obligation under clause 2.2 of the Code of Banking Practice. Alternatively, it's open to the Commissioner to find that this conduct fell below community standards and expectations.

Second, Mr Steinberg told the Commission about an occasion in January 2012 when ANZ refused to accept an offer by the customers to settle their outstanding debt to ANZ. In refusing this offer, ANZ did not explain the reasons for its refusal, or invite the customers to enter into further negotiations. This occurred in circumstances where the offer made by the customers was equal to the fair market value of the real property held as security by ANZ. In these circumstances, it's open to the Commissioner to find that by failing to explain the reasons for refusing the settlement offer, ANZ may have engaged in misconduct by breaching its obligation under clause 2.2 of the Code of Banking Practice. Again, alternatively, it's open to

the Commissioner to find that this conduct fell below community standards and expectations.

5 We turn next to the available findings in relation to the Hirsts. First, Mr Steinberg acknowledged that, having regard to the cumulative effect of a number of different aspects of ANZs conduct towards the Hirsts between 2011 and 2013, that conduct fell below community standards and expectations. The conduct included not
10 engaging in farm debt mediation with the Hirsts, entering into a deed of settlement and release that involved little or no compromise from the bank, and increasing the interest rate on the Hirsts' facilities at a time when they were known by ANZ to be under financial stress. Consistently with Mr Steinberg's acknowledgement, it is open to the Commissioner to find that this conduct fell below community standards and expectations.

15 Second, Mr Steinberg accepted that at one point in time he had formed the view that ANZ had acted in breach of clause 2.2 of the Code of Banking Practice in relation to the Hirsts by encouraging and granting increased loans to the Hirsts without either informing them that it disapproved of their property investment model or obtaining updated valuations. By the time he gave oral evidence before the Commission, Mr
20 Steinberg had changed his mind about this. However, he accepted that this conduct formed part of ANZs conduct in relation to the Hirsts that fell below community standards and expectations. It is open to the Commissioner to find that by encouraging and granting increased loans to the Hirsts, ANZ may have engaged in misconduct by breaching its obligation under clause 2.2 of the Code of Banking
25 Practice. Alternatively, consistently with Mr Steinberg's acknowledgement, it is open to find that the conduct fell below community standards and expectations.

We turn next to the available findings in relation to the Harleys. First, in September
30 2013, ANZ entered into a settlement deed with the Harleys. By the time the Harleys entered into that deed, they had made attempts to sell their assets to repay the debt, including putting their flock of sheep and all of their properties up for auction. They were also dealing with the ill health of Mr Harley, who had suffered a heart attack earlier that year. Under the deed, the Harleys were required to repay their debt in full
35 within six months.

If they did not, they were required to give ANZ vacant possession of the properties within one day, and ANZ was entitled to obtain immediate judgment against them in the Supreme Court of Western Australia. In the circumstances, it is open to the
40 Commissioner to find that by entering into a deed in these terms, providing for immediate enforcement action if the Harleys did not repay their debt by the deadline, ANZ may have engaged in misconduct by breaching its obligation under clause 2.2 of the Code of Banking Practice. Alternatively, this may be characterised as conduct that fell below community standards and expectations.

45 Second, in March 2014, after the Harleys had sold five of their nine parcels of land, including the parcels that they thought would be most difficult to sell, and paid down \$1.6 million of their \$2.5 million debt, they asked ANZ for an extension of time from

March 2014 to December 2014 to sell their remaining properties so they could sell them in the spring when interest in the properties was likely to be higher. Despite the fact that the Harleys had demonstrated their willingness to sell the properties, and had had some success in selling those properties, in April 2014 ANZ refused the request for an extension and appointed agents for a mortgagee in possession.

Mr Steinberg said that he did not know whether there was any reason for ANZ to think that agents for a mortgagee in possession could get a better price for the sale of the remaining parcels of land than the Harleys could. Rather, the bank took enforcement action in the interests of certainty, and the properties were sold before spring at a substantial discount to the June 2013 valuations. Mr Steinberg accepted that if the same situation arose today he would have been more likely to give the Harleys some additional time to sell their properties. In those circumstances, it's open to the Commissioner to find that ANZs conduct in refusing the extension and taking enforcement action fell below community standards and expectations, and potentially breached clause 2.2 of the Code of Banking Practice.

THE COMMISSIONER: Again, arising out of that and related issues, it's not immediately apparent to me that there is any timing issue. Let me explain that a little. If Mr Steinberg would treat things differently today, why should things not have been treated in that same way yesterday, at the time of the events? It occurs to me that someone may wish to say, "Oh, times have moved on, times have changed, standards have somehow changed." Well, if someone's going to say that, I will be much assisted by knowing why and how. If we're dealing in concepts like fairness, it's not instantly apparent to me that what is fair today is different from what was fair yesterday. So if somebody wants to make a timing point about this, it is not likely to be persuasive if they just say, "Times have changed." They might have to unpack that quite a bit. Yes.

MS ORR: The third available finding in relation to the Harleys relates to conduct in December 2014 when the Harleys' lawyers asked ANZ to release the Harleys from their obligation to pay the outstanding debt, which by that time was around \$309,000. By this time, ANZ had required the Harleys to sell all of their properties, including their home, at a time when Mr Harley was recovering from serious health issues. ANZ had charged the Harleys almost \$60,000 in enforcement costs and left them without their farming business which was their method of generating income. It had also sold the last four of the Harleys properties at a substantial discount to their June 2013 valuations, and had sold them before spring, when the Harleys had told the bank there would be the most interest in their properties.

In those circumstances, it's open to the Commissioner to find that by refusing the Harleys' request, ANZ may have engaged in misconduct by breaching its obligation under clause 2.2 of the Code of Banking Practice. Alternatively, it's open to characterise this as conduct that fell below community standards and expectations. We turn not available findings in relation to the Handleys. First, Mr Steinberg told the Commission about an occasion in November 2014 when the Handleys' lawyers asked ANZ to postpone a mediation on the basis that Mrs Handley had received

adverse test results arising from a series of biopsies. ANZ refused this request without seeking more information even though Mrs Handley had, in fact, been diagnosed with cancer and was scheduled for surgery. Mr Steinberg accepted that this conduct fell below community standards and expectations, and it's open to the
5 Commissioner to make a finding consistent with that acknowledgement.

Second, Mr Steinberg told the Commission that ANZ made a series of errors in relation to the overcharging of interest and fees in relation to the Handleys' accounts. As a result of those errors, there was a period when the Handleys did not have access
10 to funds, and several of the cheques that they presented were dishonoured. Mr Steinberg accepted that this conduct fell below community standards and expectations, and it's open to the Commissioner to make a finding consistent with that acknowledgement.

Third, Mr Steinberg told the Commission that ANZ had also failed to extend overdraft limits to the Handleys in circumstances where it had agreed to extend those limits, which meant that there was a period when the Handleys were charged default interest when they should not have been. Mr Steinberg did not accept that this
15 conduct fell below community standards and expectations, but it is open to the Commissioner to find that it did. Fourth, Mr Steinberg told the Commission that there was an occasion where an ANZ staff member involved with the Handleys signed documents as a witness, even though the staff member had not witnessed the
20 Handleys signing the documents. Mr Steinberg accepted that this amounted to misconduct, and it is open to the Commissioner to make a finding consistent with that acknowledgement.
25

We turn next to the available findings in relation to the customers who were the subject of annexure G to Mr Steinberg's statements, whose names are also the subject of a non-publication direction. Mr Steinberg told the Commission that in
30 May 2010 ANZ offered those customers a \$450,000 overdraft facility, but only made a \$350,000 overdraft facility available to them. It wasn't until September 2010 that ANZ made the full facility available. Mr Steinberg accepted that this conduct fell below community standards and expectations, and it's open to the Commissioner to make a finding consistent with that acknowledgement.
35

We turn to the available findings in relation to the Phillotts. First, Mr Steinberg acknowledged that ANZ breached clause 2.2 of the Code of Banking Practice in its dealings with the Phillotts. He accepted that ANZ took responsibility for some of the
40 dealings that Landmark had with Mr Phillott Junior in relation to the original lending to him, and he accepted that after ANZ acquired the Landmark loan book, it failed to work constructively with Mr Phillott junior to overcome his financial difficulties. Mr Steinberg conceded that the bank had acted in a way that was not fair, not reasonable, and not ethical. Consistently with these acknowledgements, it's open to the
45 Commissioner to find that ANZ engaged in misconduct by breaching its obligation under clause 2.2 of the code in relation to the Phillotts.

Second, Mr Steinberg acknowledged that ANZ had breached clause 25.2 of the Code of Banking Practice in its dealings with the Phillotts. ANZ failed to try to help Mr Phillott Junior to overcome his financial difficulties, and instead issued a notice terminating the facilities and requesting repayment of the facilities. Consistently with this acknowledgement, it's open to the Commissioner to find that ANZ engaged in misconduct by breaching its obligation under clause 25.2.

Finally, I turn to the available findings in relation to the other customers referred to in Mr Steinberg's statement whose names are, with one exception, subject to non-publication directions. First, in relation to the customer in the second row of the table in paragraph 43 of Mr Steinberg's statement, Mr Steinberg acknowledged that ANZ had engaged in poor communication and inconsistent practice in that it had applied the entirety of the secured property sale proceeds to reduce principal, rather than annual principal and interest payments. Second, in relation to the customers in the fourth row of the table in paragraph 43 of Mr Steinberg's statement, Mr Steinberg acknowledged that it – ANZ had failed to honour cheques contrary to a previous commitment to do so.

Third, in relation to the customers in the fifth row of the table in paragraph 43 of Mr Steinberg's statement, Mr Steinberg acknowledged that it had engaged in poor communication with these customers in relation to the restructure of the customer's loans. Mr Steinberg acknowledged that in each of these instances, ANZs conduct fell below community standards and expectations. Consistently with that acknowledgement, it is open to the Commissioner to find that in each of those instances it did so fall below community standards and expectations.

Fourth, in relation to the customer in the first row of the table in paragraph 45 of Mr Steinberg's statement, Cashmore farms Proprietary Limited, Mr Steinberg acknowledged that ANZ made significant variations to the Cashmores' loan, which was not in monetary default, without also communicating those changes in a clear and transparent way, and that it applied the sale proceeds of a residential property to a long-term loan rather than a short-term loan. Fifth, in relation to the customers in the third row of the table in paragraph 45 of Mr Steinberg's statement, Mr Steinberg acknowledged that ANZ took guarantees from the customers' mother and siblings without taking all reasonable steps to ascertain if they were suitable to act as guarantors. Mr Steinberg acknowledged that in both of these instances, ANZ had breached its obligation under clause 2.2 of the Code of Banking Practice. Consistently with that acknowledgement, it's open to the Commissioner to make such a finding.

On the evidence, it is open to the Commissioner to find that ANZs misconduct and conduct falling below community standards and expectations can be attributed to ANZs lack of preparation for a situation that would require it to deal with significant numbers of agribusiness customers experiencing financial difficulties. Mr Steinberg accepted that the Landmark loan book was of a lower quality than ANZs loan book and that ANZ was aware at the time of the acquisition that there were issues in relation to the loan book. However, Mr Steinberg said that the documents that he

had seen concerning ANZs preparation for dealing with the impending financial difficulty that former Landmark customers would encounter had all centred around calculating the overall dollar provision.

5 ANZ did not calculate the number of incoming customers who were going to
experience financial difficulty, and it relied on its usual processes and procedures to
manage those accounts. It did not establish a specialist agribusiness team within
lending services at the time of the acquisition. At this time there was a lack of
training of lending services staff about how to have difficult conversations with
10 distressed customers. Although ANZ intended to retain about 80 per cent of the
former Landmark financial services staff, 10 per cent of those staff departed in the
first six months, and more departed after that. When those staff left, that led to a loss
of established relationships between Landmark staff and their customers, and a loss
of corporate memory of the former Landmark customers' files.

15 This lack of preparation for dealing with agribusiness customers in financial distress
was exacerbated by the fact that ANZ underestimated the number of former
Landmark customers who would experience financial difficulties. As we've already
mentioned, Mr Steinberg accepted that the quality of the Landmark loan book was
20 worse than ANZ anticipated. This may be attributable to ANZs failure to conduct
proper due diligence in relation to the Landmark loan book, and its reliance on
assumptions. In October 2016, ANZs board considered a report of the finding of the
taskforce's review of the files of former Landmark customers.

25 The board minutes record that there is a lesson to be learned from the Landmark
acquisition in connection with the assumptions that were made around delinquencies,
and expected losses that were not stress-tested. Mr Steinberg said that he was not
aware that the expected losses were ever stress-tested. It is also open to the
Commissioner to find that the misconduct and conduct falling below community
30 standards and expectations can be contributed to the culture of lending services in the
period before ANZ took steps to change that culture commencing around August
2014.

35 Before August 2014, there was no specialist agribusiness team within lending
services. There were some instances where customers had not seen a bank manager
for over two years, which Mr Steinberg acknowledged was not acceptable. There
were also examples of files where customers were refused seasonal funding during
planning time, or interest payments were due at the wrong time of a farm's working
capital cycle, such as before harvest. At this time, lending services relied more on
40 external law firms to deal with customers in financial difficulty. It took a less
flexible approach to dealing with these customers and demonstrated a lack of
empathy and understanding of farmers' emotional connection to their land, and the
emotional impact that recovery and enforcement action can have on agribusiness
customers.

45 At times, lending services increased the interest rates of customers experiencing
financial difficulty, placing an additional financial burden on the customers. As

we've mentioned, since August 2014 ANZ has made a number of changes to the culture, governance and policy of lending services. Perhaps the most important of those changes was the introduction of the Lending Services Purpose which now guides decision-making in lending services at ANZ. In a report by the general manager of regional business banking and the general manager of lending services to ANZs board in October 2016, these changes in the culture, governance and policy of lending services were said to ensure that there would be no repetition of the issues identified with ANZs handling of former Landmark customers.

ANZ is invited to provide written submissions addressing each of the findings that we've identified as open to the Commissioner, as well as any other findings that it regards as open on the evidence. All parties with leave to appear would be permitted to provide written submissions addressing the following questions: first, what does it mean for a bank to act fairly and reasonably towards a customer in a consistent and ethical manner? What does that obligation require of a bank in relation to agribusiness customers in an enforcement context? Second, what weight should a bank give to the interests of the customer when making decisions about agribusiness customers experiencing financial difficulty? How should a bank balance the competing interests of the customer and the bank in that context? Third, in what circumstances is it both best for the customer and best for the bank to appoint an external administrator?

THE COMMISSIONER: As to that second question and competing interests, it would be of assistance if parties addressing that question identified with some care and precision what exactly are the interests that are in competition. At least at one level, an available view may be that the minimising of loss to the bank will minimise loss to the customer and, to that extent, the interests of both parties are parallel rather than competing. To approach it only in that way may, perhaps – I don't say it does – obscure issues about increased cost of capital and the like that arise in connection with non-performing loans but, be that as it may, generalised references to competing interests are likely to be less helpful than more particular and specific identification of the interests that are in competition and require resolution according to the party submitting one way rather than the other.

MS ORR: Thank you, Commissioner. We turn to the second case study examined in these hearings which concern Rabobank and its dealings with Wendy and Adrian Brauer. The Commission heard from Mrs Wendy Brauer and from Mr Bradley James, the regional manager for an area that included the Brauers' farm. The Brauers farm cattle and grow hay from Kia-Ora, a property approximately around 280 kilometres southwest of Rockhampton in central Queensland. They acquired their farming business from Mr Brauer's parents in 2002. The Brauers became customers of Rabobank in 2005. Initially they took out a single facility for \$700,000, which represented a refinance of their existing facilities together with additional working capital to rebuild their cattle yards. The facility had a 15 year term.

Later in 2005, the Brauers took out a second facility with a \$200,000 limit. That facility also had a 15 year term. In 2006, the limit of the first facility was increased

to \$800,000, and in 2008, it was increased to \$1 million. In March 2009 the Brauers temporarily relocated to the United States. They purchased a home there, sold all of their cattle, and leased out Kia-Ora to another farming family. In June 2009, the Brauers' bank manager, who had been their manager since they became clients of Rabobank, emailed them in the United States and advised that a property about 80 kilometres from Kia-Ora known as Jamberoo was on the market.

The email named the vendor, gave the location of the property, an estimate of the number of breeders that could be run on the property, and gave an estimate of the sale price, which was said to be "around the \$4 million mark, possibly less". At the time the Brauers received that email, they were not actively looking for another property. However, they discussed the proposal and Mr Brauer, in particular, was interested. Mrs Brauer responded to the bank manager's email and sought additional information. The manager sent a further email in which he told the Brauers about another family that was interested in purchasing a portion of Jamberoo, and gave the Brauers information about the potential price of Jamberoo.

Later, in July 2009, the bank manager conducted a valuation of the portion of Jamberoo that he had identified for the Brauers, and valued that portion at \$2.9 million. He also conducted a valuation of the portion of Jamberoo that the other potential purchasers were interested in and valued that portion at \$1.1 million. This brought the total valuation of Jamberoo to the same figure he had identified for the Brauers in his earlier email. Rabobank's valuation policy at that time permitted all valuations for non-residential security properties to be conducted internally by bankers. No specific training in valuations was provided.

In 2009, APRA required Rabobank to review its rural valuation policy, and had required Rabobank to clarify and tighten its requirements for internal valuations. This led to Rabobank engaging Ernst & Young to conduct a targeted review of Rabobank's collateral and foreclosure management. That review suggested that improvements should be made to the extent to which collateral management systems and processes at Rabobank were not independent of the business origination function. In a letter from APRA to Rabobank in December 2011, APRA noted Ernst & Young's finding that in the majority of cases at Rabobank the loan originator valued the secured property, leading to a risk that collateral may be overvalued by the loan originator either deliberately or in error.

However, Rabobank did not move to a model that separated loan origination from collateral valuation until after the European Central Bank released draft regulations requiring valuations of secured property to be independent from the client and from the commercial department that maintained the relationship with the client. It did that by establishing an asset quality management department with responsibility for valuations, and removing the ability of loan originators to conduct valuations. Returning to the Brauers, in the period between the bank manager's valuation of the property and the preparation of his written appraisal, the bank manager and Mrs Brauer exchanged further emails.

5 In July 2009, the bank manager emailed the Brauers and outlined how a possible purchase of part of Jamberoo could be financed. Amongst other things, the manager explained that the Brauers' existing facility limits were 1.2 million, not all of which was fully drawn. He suggested an additional 3 million be borrowed, which would increase the Brauers' total borrowings to 4.2 million. The Brauers understood this to mean that undrawn funds would remain in the facility following the purchase of Jamberoo. They had planned to utilise those undrawn funds, along with funds held in farm management deposits and realised equity on the sale of their home in America, in order to stock Kia-Ora and Jamberoo on their return to Australia.

10 Mr Brauer travelled to Australia to inspect Jamberoo with the bank manager. Mr Brauer had lengthy discussions with the bank manager in which he expressed concern about the short-term financial difficulties they may face on return to Australia when their lease income from Kia-Ora would reduce and there would be no income from cattle sales. The bank manager replied that undrawn funds could be drawn down at that time. In September 2009 the bank manager prepared and submitted to Rabobank's credit department a credit submission. The credit submission proposed additional lending of \$3 million, taking the Brauers' total facility limits to \$4.2 million.

20 It also included historical information about the Brauers' business and projections about what the business would require and what the cash flow would be like in future years. The credit submission noted that the Brauers' facilities were well managed with no history of excesses or temporary limit increases. It also noted that Kia-Ora was currently leased, and would continue to be leased into March 2011, after which the current lessee would lease half of the property while the Brauers progressively restocked the other half. It noted that Jamberoo would be leased back to the current owner at an agreed rate of \$175,000 per annum.

30 On 17 September 2009, a representative from Rabobank's credit department emailed the bank manager and expressed multiple concerns with the credit submission, including that the proposed gearing was high and the serviceability was hard to get a hold on. The credit department representative said that from that point until 2012 the request did not work, and most of 2013 is hypothetical. He said that the assumptions within the credit submission about cattle numbers and cattle prices were either wrong or debatable, and he said that living expenses had not been properly accounted for.

40 The representative from the credit department also raised a number of questions about the Brauers' investment properties, the substitution of agistment income if the vendor of Jamberoo was to move off the property, and the Brauers' current income and expenses. On the same day, the bank manager emailed the Brauers. The email presented an optimistic view about the prospect of credit approval. The manager wrote that:

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

Mr James agreed that the bank manager's email to the Brauers did not explain the credit department's most significant concerns about the credit submission. Mr James also agreed that the Brauers should have been, but were not, told of the credit department's concerns about the viability of the proposal. After obtaining a response
5 from Mrs Brauer to the questions in his email, and corresponding further with the credit department, the bank manager again emailed the Brauers on 22 September. That email explained that:

10 *After some back and forth with Sydney, it would appear that we will get approval.*

In this email, the bank manager then outlined a proposed funding arrangement with facility limits of \$3.9 million rather than the \$4.2 million that had been discussed to that point. Under the proposed arrangement a \$3.7 million facility would be put in
15 place in replacement for the existing \$1 million facility, and the existing \$200,000 facility would be continued. The bank manager told the Brauers that in March 2011, when the lease of Kia-Ora expired, the bank would provide a loan increase for livestock purchases. Based on the communications with their bank manager, the Brauers understood that funds would be made available to them upon their return to
20 Australia in order to restock Kia-Ora and to stock Jamberoo.

Mr James accepted that the Brauers were entitled to understand the statements from the bank manager as a commitment on the part of Rabobank to fund cattle purchases on the Brauers' return to Australia. The funding proposal was put to the Brauers by
25 way of a formal letter of offer in January 2010. The Brauers accepted that offer and proceeded with the purchase of Jamberoo. Unbeknown to the Brauers, the vendor of Jamberoo was also a client of the bank manager, as were the parents of one of the purchasers of the other portion of Jamberoo. The bank manager did not at that time act for the purchasers of the other portion of Jamberoo, but was encouraging them to
30 become clients of Rabobank.

The failure to disclose this information to the Brauers was a breach of Rabobank's internal policies which required that appropriate disclosures be made in
35 circumstances where the bank is acting on more than one side of the transaction. The settlement of Jamberoo did not occur for many months. In order for the sale to complete, the Brauers had to contribute around \$60,000 as there was insufficient credit available in the new Rabobank facility to meet the purchase price and expenses associated with the acquisition. Rabobank did not undertake a further assessment of the Brauers' financial position in the time between the bank manager's September
40 2009 communications and the formal offer of funding in January 2010, nor between January 2010 and the settlement of the property in August 2010.

In December 2010 and January 2011, significant flooding occurred in parts of
45 Central Queensland, including at Kia-Ora. That flooding destroyed the hay crop of the lessee of Kia-Ora. The lessee elected not to renew the lease for a further two-year period, which was contrary to the Brauers' expectations. That decision placed considerable financial pressure on the Brauers. They notified the bank manager of

the lessee's decision almost immediately after being told of that decision. In March 2011, the Brauers returned to Australia and to Kia-Ora. They had anticipated receiving rental for half of Kia-Ora at that stage.

5 Following their return to Australia, the Brauers inquired about borrowing a further 300,000 from Rabobank to restock Kia-Ora. They were introduced by the bank manager to another Rabobank employee, Mr Brady, who was to be their new bank manager. Mr Brady responded that a further 300,000 could be advanced, but on the condition that the sum of \$3 million be repaid within two years by June 2013. Mrs
10 Brauer said that she felt they had no choice but to accept the offer, given their dire need for additional finance at that time. In June 2011, the Australian Government's ban on the live export of cattle to Indonesia came into effect. This had the effect of depressing cattle prices and generally making trading conditions more difficult.

15 Mrs Brauer's evidence was that she inquired as to hardship arrangements with Mr Brady, but was told that no such arrangements were available. The Brauers were unable to repay the \$3 million by 30 June 2013. At the Brauers' request, Rabobank provided a further 12 months for that sum to be paid. The Brauers were still unable to repay the 3 million by 30 June 2014. From 1 July 2014, default interest of 4 per
20 cent above the standard rate was applied to the Brauers' facilities. In January 2015, Rabobank invited the Brauers to attend farm debt mediation. Before the mediation, the Brauers engaged a Legal Aid solicitor. Their solicitor requested that Rabobank provide him with certain documents so that he could properly prepare for the mediation, and he asked some questions about Rabobank's conduct. Rabobank
25 declined to provide the documents or to answer the questions set out in the email.

The mediation was a stressful experience for the Brauers. By the end of the mediation, an agreement was struck by which the Brauers would sell Jamberoo for not less than \$2 million on or before December 2015, the Brauers would refinance
30 the remaining balance of their facilities with Rabobank by June 2016, and Rabobank would rebate the default interest that had been charged, which was by that time \$115,490. The Brauers later sold Jamberoo for \$2.4 million and refinanced the balance of their facilities through a private lender under a short-term, high interest loan. Mrs Brauer estimated that, as a consequence of the Jamberoo purchase and
35 subsequent sale, the Brauer family had lost at least \$1 million. In his draft statement initially provided to the Commission, Mr James did not consider that Rabobank had engaged in any misconduct or conduct falling below community standards and expectations. Further, he maintained that Rabobank would deal with the situation involving the Brauers in the same way under its existing policies
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Mr James later revised those views. In the final version of his first statement, Mr James accepted that the contents of the email sent by the bank manager on 22
September 2009 could have caused the Brauers to consider that they had an assurance from Rabobank that further funds would be provided in March 2011 for
45 livestock purchases. He accepted that the terms on which the \$300,000 was provided to the Brauers in August 2011 did not meet an expectation on the part of the Brauers that may have been created by that email, and, therefore, this conduct fell below

community standards and expectations. He also accepted that this conduct may also have constituted misconduct in that it may have breached the Code of Banking Practice because it was unfair to the Brauers.

5 In a supplementary statement provided prior to giving his evidence, Mr James made some further acknowledgements. He accepted that the conduct of Rabobank in approving the proposed facility without communicating to the Brauers that it could not be serviced if they ran both properties at full capacity fell below community standards and expectations; he accepted that this conduct could be characterised also
10 as a breach of the Code of Banking Practice in that it was unfair to the Brauers; he accepted that Rabobank's refusal to provide the documents sought by the Brauers, as well as the information sought by the Brauers prior to the farm debt mediation, also fell below community standards and expectations; and he accepted that this conduct could be characterised as misconduct within the meaning of the Banking Code of
15 Practice.

In the course of his oral evidence, Mr James also conceded that Rabobank had failed to exercise the care and skill of a diligent and prudent banker in selecting and
20 applying its credit assessment methods and in forming its opinion about the Brauers' ability to repay the \$3.7 million loan and had, therefore, breached clause 21 of the Code of Banking Practice. It is open to the Commissioner to find that Rabobank's conduct amounted to misconduct, and conduct falling below community standards and expectations in each of the ways acknowledged by Mr James. It is also open to
25 the Commissioner to find that by acting on each side of the Jamberoo transaction, without disclosing that fact to the Brauers, Rabobank failed to act in an ethical manner as required by clause 2.2 of the Code of Banking Practice and therefore engaged in misconduct.

It is also open to the Commissioner to find that by failing to inform the Brauers of its
30 policy on hardship in circumstances where the Brauers' operations had been adversely affected by both flood and the live export ban, Rabobank engaged in conduct that fell below community standards and expectations. It is open to the Commissioner to find that the misconduct and conduct that fell below community standards and expectations was a result, at least in part, of the remuneration policies
35 and practices of Rabobank. Those policies and practices rewarded loan sales and failed to properly weight other important elements of the banking relationship, including the accuracy of the assessment of loan serviceability, the accuracy of the assessment of security value, and frankness in communicating credit concerns to
40 clients.

Mr James gave evidence that Rabobank's current remuneration structure is still
predominantly driven by sales and is, therefore, not yet consistent with the
recommendations of the Sedgwick Review. It is also open to the Commissioner to
find that the misconduct and conduct that fell below community standards and
45 expectations was the result of inadequate internal systems at Rabobank. It remains unclear as to why the loan to the Brauers was approved. The initial concerns of

Rabobank's credit department were not dealt with in a comprehensive fashion in any document provided to the Commission.

5 In no document provided to the Commission did the credit department explain that those concerns had been addressed. At all relevant times, Rabobank's policies regarding internal appraisal of property values failed to adequately divide the function of loan origination and security valuation. Rabobank placed both tasks in the hands of a banker who was incentivised to write loans, and failed to have internal appraisals assessed by staff who were qualified and experienced in that field.

10 All parties with leave to appear are invited to make written submissions on the following questions: is it appropriate for financial services entities to conduct internal appraisals, as opposed to obtaining independent valuations of farms and other rural property? If so, in what circumstances is it appropriate? Is it appropriate for staff involved in origination of the loan to conduct or otherwise be substantively involved with such appraisals? Should there be minimum levels of qualification, skill, and experience before a bank employee can be authorised to conduct appraisals? If so, what are the appropriate minimum levels? Should there be a code that sets out the requirements for the conduct of internal appraisals by financial services entities, either in respect of rural properties or more generally? If so, what form should that code take?

25 If it is inappropriate for financial services entities to conduct internal appraisals of property to be taken as security, what should be done to stop or discourage that practice? Are the legislative obligations on financial services entities to provide documents prior to a farm debt mediation, such as the obligation in section 21 of the Farm Business Debt Mediation Act in Queensland, sufficient? Should they be extended to oblige financial services entities to provide information on request, as well as documents? Those are the questions we pose in relation to the Rabobank case study, Commissioner.

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THE COMMISSIONER: Yes.

35 MS ORR: The third case study examined in the hearings involved conduct by Bankwest in connection with Mr Melville Ruddy. Mr Ruddy is a 68 year old cattle farmer from Central Queensland. Mr Ruddy gave evidence, as did Ms Sinead Taylor, the executive manager of personal and business banking at Bankwest. Mr Ruddy and his wife owned two farms, Sunrise and Arranfield. Since 2007, they had held loan facilities with Rural Bank. In 2010, a Bankwest bank manager began actively courting their business. The Ruddys declined an offer to move to Bankwest in 2010 for reasons that included their desire not to pay for external valuations for their properties.

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45 By 2011, Mr and Mrs Ruddy were seriously considering selling one of their properties, Sunrise. They were again approached by Bankwest. Bankwest offered the Ruddys increased loan facilities and more competitive interest rates than those offered by Rural Bank. Ms Taylor gave evidence that Bankwest put forward an

aggressive price to attract the Ruddys business. The bank manager they had been dealing with had also obtained a valuer's ticket and was able to offer the Ruddys free internal valuations. The Ruddys agreed to move from Rural Bank to Bankwest. By letters of offer signed in October 2011, the Ruddys took out three separate facilities with Bankwest totalling \$1.12 million.

The facilities were secured by their two properties. The bank manager, who was by then an accredited valuer for Bankwest, appraised both properties, valuing Arranfield at \$1.1 million and Sunrise at \$1.2 million. At the time that the bank manager brought the Ruddys to Bankwest, the bank manager's key performance indicators were heavily weighted towards profitable growth. In the 2011 financial year, the bank manager had achieved 134 per cent of his sales targets and processed in excess of 60 applications, most of which were new to bank clients. He had been named a rural and regional champion by Bankwest as a result.

In March 2012, the bank manager left the bank. At about that time, Bankwest began to uncover significant issues with the conduct of the bank manager, including that he had overstated valuations, engaged in inappropriate and improper mis-selling, and manipulated internal Bankwest systems to avoid behavioural triggers. By May 2012, these events had resulted in at least 15 separate complaints about the bank manager, and losses to the bank of about \$374,000. Ms Taylor accepted that there was no record of the bank manager's customers being informed of this misconduct.

Bankwest first became aware of errors specific to the Ruddys valuations in early May 2012. Ms Taylor accepted that the valuation error should have been picked up long before this time. The errors detected at this time included errors in relation to the date of the valuations, which Ms Taylor was unable to explain. It later became apparent that there were more material errors in the valuation of Sunrise. Instead of valuing Sunrise on the basis of it being 72 hectares, as it was, Sunrise had been valued by the bank manager on the basis that it was 896 hectares in size.

Throughout 2012 and 2013, the Ruddys' farming operations faced a number of challenges due to Mr Ruddy's ill health, the live cattle export ban, low cattle prices and drought. Bankwest continued to extend credit to the Ruddys throughout this period. In about May 2013, Bankwest informed the Ruddys that it wanted to revalue their properties, and that the Ruddys would be required to pay for those revaluations. Prior to receiving the valuations, Bankwest also issued two letters of offer to the Ruddys which extended their facilities. The May 2013 revaluations were completed by an external firm using the correct inputs. Arranfield was revalued at 900,000, down from the previous \$1.1 million valuation, and Sunrise was revalued at 750,000, down from the previous \$1.2 million valuation.

Bankwest informed Mr Ruddy that, as a result of the revised valuations, the Ruddys were in breach of their loan to value ratio and they would have to sell Sunrise. Around this time, Bankwest issued further letters of offer reflecting those arrangements. The Ruddys were charged \$6600 to their overdraft accounts for the cost of the valuations; they were not given notice that those amounts would be

charged. As a result of paying for the valuations, Mr Ruddy was not able to afford feed for his cattle and over the next few months he lost 80 head of cattle.

5 The Ruddys subsequently lodged a dispute with the Financial Ombudsman Service. FOS determined that the internal valuation in 2011 had been flawed and that Bankwest should not have relied on the 2013 revaluations to require the Ruddys to make a principal reduction to reduce debt and to sell the properties. However, the Ruddys did not accept the ombudsman's recommendation or determination. They subsequently participated in a farm debt mediation and ultimately settled with Bankwest on the basis that they would sell Sunrise within six months and pay Bankwest 75 per cent of the net sale proceeds. They also agreed to pay Bankwest an additional \$410,000 to discharge the mortgage over Arranfield. Mr Ruddy said that he felt that this was his only choice.

15 Ms Taylor gave evidence that Bankwest would not deal with the Ruddys' matter in the same way today because Bankwest has introduced increased controls in respect of internal valuations. On the evidence, it's open to the Commissioner to find that Bankwest may have engaged in misconduct by breaching the obligation in clause 2.2 of the Code of Banking Practice to act fairly and reasonably towards the Ruddys in a consistent and ethical manner. The conduct that may have breached clause 2.2 is as follows: first, offering the loan facilities to the Ruddys on the basis of an incorrect valuation. Ms Taylor accepted that by getting the valuation wrong, Bankwest had engaged in conduct that fell below community standards and expectations, but she did not concede that it was misconduct. Second - - -

25 THE COMMISSIONER: That's a good example of the need to unpack what is seen as being community standards and expectations and what that requires and how, if at all, that differs from the obligation to be fair. Yes.

30 MS ORR: The second potential breach of clause .2 arises from the failure to take adequate steps to inquire into the bank manager's valuations of the Ruddys properties after Bankwest learned of the bank manager's misconduct, including his misconduct in artificially inflating valuations. Third - - -

35 THE COMMISSIONER: Again, that's a point of – yes, it arises particularly in this case, but it may be a point of general application in the sense that if an entity becomes aware of something having gone awry in a particular file, and identifies that that has formed part of a series of actions of like kind, what should the entity do? Should it go back and look at the earlier or other files in which the particular manager or operator, whoever it is, has been engaged to see whether there has been like conduct in respect of other files that have not yet come to the surface through complaint or otherwise? Yes.

45 MS ORR: The third way in which Bankwest's conduct may have breached clause .2 is the reliance on the loan to value ratio breach occasioned by the 2013 revaluations to renegotiate the terms of the Ruddys' agreement in a way that was disadvantageous to the Ruddys. Ms Taylor accepted that it was not fair for Bankwest to rely on the

revised 2013 valuations to trigger a non-monetary default and that this behaviour breached clause 2.2 of the code. Fourth, choosing not to inform the Ruddys and the bank manager's other clients of the bank manager's misconduct after it had been detected, Ms Taylor accepted that all of the customers should have been told that there was an issue, and that the failure to inform the bank manager's clients of the issue was a breach of clause 2.2.

And the fifth way in which the conduct of Bankwest may have breached clause 2.2 of the code was the failure to inform the Ruddys that it would charge the fees of the 2013 valuations to their overdraft account prior to doing so. Again, Ms Taylor conceded that this was conduct that fell below community standards and expectations, but did not concede that it was misconduct. On the evidence, it's also open to the Commissioner to find that Bankwest may have engaged in conduct that fell below community standards and expectations in the following ways: first, Bankwest failed to take adequate care in preparing the original internal valuation of Sunrise in October 2011.

Second, Bankwest failed to have adequate systems in place to detect that the internal valuation was incorrect. Third, Bankwest's processes were lax in several significant respects as demonstrated by the misstated valuations, the undated guarantees, and separately the guarantees that were signed before the letters of offer. Ms Taylor was unable to explain why the valuation reports completed in 2011 were signed in late 2012, long after the bank manager had left Bankwest. Fourth, when formulating its strategy for dealing with the Ruddys after the receipt of the May 2013 valuations, Bankwest determined that the appropriate course was to declare the May 2013 letters of offer null and void, forbear the Ruddys loan to value ratio breach, and issue new letters of variation.

In issuing the new letters of variation, Bankwest appears to have been motivated by a concern to increase the Ruddys overdraft sufficiently so that Bankwest could charge the external valuation fees to the account. Fifth, as Ms Taylor accepted, Bankwest did not deal with FOS in a full and frank way in relation to the Ruddys dispute. Sixth, the guarantee provided by the Ruddys' son changed multiple times during the life of the facility. Ms Taylor characterised the changes as being "troubling", and accepted that there was no explanation as to why the guarantee wasn't maintained with the facilities.

On the evidence, it's open to the Commissioner to find that there were a number of causes of the misconduct which are attributable to Bankwest's culture and governance practices, as well as to its remuneration practices and to inadequate internal systems. First, it's open to the Commissioner to find that a significant cause of the misconduct was Bankwest's remuneration and incentive scheme. The evidence establishes that at the time Bankwest offered the facilities to the Ruddys, 60 per cent of its KPIs for employees like the bank manager were weighted towards profitable growth. Half of that was allocated to asset sales targets.

5 Provided that employees met a risk gate opener, they could then be eligible for short-term incentive payments. The evidence established that in the 2011 financial year, Bankwest employees were able to double their base salary through such bonus arrangements. This created a culture of prioritising sales to the detriment of diligent and prudent conduct in relation to loan approvals. The Ruddys' bank manager received his base salary and was eligible for a short-term incentive for up to 57 per cent of his salary by way of additional bonus.

10 Second, it's open to the Commissioner to find that Bankwest did not have in place adequate internal systems to minimise the risk of conflict of interest posed by internal valuations. The only cross-check done on internal valuations in 2011 was for the internal valuation to be provided to the credit team with the credit submission. At that time, the credit officer was required to validate the valuation prior to approving the deal. This was not an adequate mechanism to address the inherent risk
15 of conflict of interest posed by internal valuations. Bankwest continues to permit internal valuations by its sales professionals and applies growth-focused key performance indicators to those employees. Bankwest does not consider that this places such sales professionals in a conflict of interest, as long as the valuations are checked by another employee, but the review that takes place is solely a review on
20 the papers.

Bankwest is invited to provide written submissions addressing each of the findings that we've identified as open. All parties with leave to appear are invited to provide written submissions addressing the following questions: first, do remuneration and
25 incentive policies that reward bank employees for the volume of loans sold create an unacceptable risk that bank employees will prioritise the sale of loan products over the bank's responsible lending obligations; over the bank's statutory obligations, including to provide loans in a manner that is efficient, fair and honest, and to have in place adequate arrangements to ensure that customers are not disadvantaged by
30 any conflict of interest that may arise in relation to the provision of loans; and over the bank's obligations to act fairly and reasonably towards customers in a consistent and ethical manner?

35 The second set of questions that arises from this case study relates to internal valuations, and we have already outlined those questions in connection with the Rabobank case study. I was going to turn after that, Commissioner, to the fourth case study involving the Smiths, but perhaps that is a convenient time.

40 THE COMMISSIONER: How are we travelling, Ms Orr?

MS ORR: I think it would be useful, Commissioner, if we had a 45 minute luncheon adjournment rather than an hour.

45 THE COMMISSIONER: So if I come back, what, at 10 to 2, or - - -

MS ORR: Yes, thank you, Commissioner.

2013, drought was declared in the Flinders Shire. The Smiths began reducing the number of cattle on Limbri and transferring cattle to Oakvale.

5 The expiry date of the Smiths' business markets loan was 28 February 2013. NAB granted the Smiths a one-month extension. At the end of the extension period the business markets loan facility expired and NAB commenced charging default interest on the amount outstanding under the loan. Notwithstanding that Limbri was officially in drought at that stage, NAB did not notify the Smiths of its hardship policy or offer any relief under that policy. In April 2013, NAB wrote to the Smiths.
10 NAB noted that their facilities had fallen into arrears, expressed concern about the viability of their business, and advised that it was considering commencing recovery action which could include possible sale of the Smiths' farming property.

15 NAB invited the Smiths to attend farm debt mediation. Mrs Smith said that on receiving this letter she and her husband were very frightened. She said that neither Limbri nor Oakvale were saleable at that point in time due to the dry conditions. A farm debt mediation took place in Townsville in September 2013. The Smiths attended, along with their solicitor from Legal Aid and their rural financial counsellor. Mrs Smith described the mediation as very intimidating. The mediation
20 resulted in NAB and the Smiths entering into a deed of forbearance.

The deed imposed various obligations on the Smiths and NAB. In particular, NAB was to allow the Smiths access to funds so that they could continue to tend to their cattle and meet their expenses; the Smiths were to list either Oakvale or Limbri for
25 sale by 1 March 2014, have exchanged a contract for sale by 31 May 2015, and have sold one of the properties – I think I said 2015 – 2014 – and have sold one of the properties by 30 June 2014. The Smiths were also obliged to remit \$200,000 to NAB, which they were to gain by cattle sales by 30 April 2014, pay a further \$200,000 by 30 May 2014, \$400,000 by 30 June 2014 and, if the Smiths complied
30 with their obligations under the deed, NAB was to rebate \$50,000 of the default interest charged to the Smiths' accounts. Mrs Smith said that the repayments required by cattle sales would only have been possible if they had had a super year.

35 The Smiths listed Limbri for sale with a real estate agent. Mrs Smith said that the agent advised that it was highly unlikely that a purchaser would be found because of the dry conditions. In April 2014, Mr Smith was hit by a cow while loading cattle into a truck to send them for sale. He suffered broken ribs, a punctured lung, and spent two weeks in hospital. Throughout 2014, Limbri remained in drought. The Smiths did not find a purchaser for the property in the time required by the deed, nor
40 were they able to make the repayments required. Oakvale was also dry and was officially drought declared in 2015. In December 2014 the Smiths' relationship manager changed, but the file continued to be supervised by the same person within strategic business services. Mrs Smith said that she was unaware of this fact and has not spoken with the new relationship manager.
45

The Smiths' financial counsellor wrote to NAB and sought an extension of time for them to complete their obligations under the deed. The letter explained that neither

Limbri nor Oakvale could be sold to their best advantage due to the drought. It explained the poor state of the cattle market at the time, and the low prices obtained by the Smiths in their most recent sales, and that the Smiths were endeavouring to refinance their NAB facilities. NAB declined to grant the extension and reserved its rights. Mrs Smith said that both Limbri and Oakvale remained in drought from 2015.

Mr McNaughton conceded that NAB could have potentially done more in its communications with the Smiths, after the farm debt mediation, to ensure that they were conscious of the practical consequences of continuing to be in default. He characterised the Smiths' file as a particularly difficult one even by SBS standards. NAB has not taken any step to enforce its securities over either Oakvale or Limbri, but default interest has continued to accrue on both facilities. As a result, the Smiths' facilities have incurred in excess of \$2.6 million in default interest in addition to ordinary interest charged on the accounts.

Mr McNaughton said in his oral evidence that he understood NAB would hold additional capital as a consequence of an impaired loan, but was unable to answer whether there was any relationship between the bank's cost of capital and the charging of default interest. He explained that it was customary in Australia for banks to charge default interest as an incentive to comply with the terms of the loan. Mr McNaughton agreed that farmers in drought situations are under heightened level of stress, agreed that the imposition of default interest on farmers in such situations could add to their stress, agreed that as events transpired it was impossible for the Smiths to comply with their obligations under the deed of forbearance, and agreed that had the bank enforced at any point it would not have been able to realise the asset.

It's open to the Commissioner to find that by charging default interest to the Smiths for in excess of five years on one facility and in excess of six years on the other, in circumstances where the Smiths' business was affected by more than one natural disaster, NAB engaged in conduct falling below the standards and expectations of the community. It's also open to the Commissioner to find that by failing to notify the Smiths of the bank's hardship policy in August 2012, when the Smiths business had suffered as a result of flooding at Oakvale, NAB engaged in conduct falling below community standards and expectations.

In the light of Mr McNaughton's evidence as to the purpose for which default interest is charged, it is open to the Commissioner to conclude that NABs conduct in charging default interest to the Smiths over such a long period was the product of a culture by which default interest was used as a strategic tool to place pressure on borrowers in default. That such a culture exists is reinforced by Mr McNaughton's evidence that he would expect default interest to be waived at a future farm debt mediation and that his experience has been that all or a large element of default interest is waived by that process. However, the application of default interest in the lead-up to such a mediation only serves to weaken the position of the farmers participating in those mediations and lessen their bargaining position.

1 All parties with leave to appear are invited to provide written submissions on the
following questions arising from this case study: to what extent does default interest
reflect the cost to financial services entities of carrying impaired loans? Should there
be a moratorium on the charging of default interest in respect of farm debts secured
5 by farm debt mortgages during periods when the farm property is affected by natural
disaster? If so, how should such a moratorium be implemented? By legislation, by
an industry code, or by some other means? In what circumstances should the
moratorium come into effect? In what circumstances should the moratorium be
lifted?

10 Similarly, should there be a moratorium on the taking of enforcement action in
respect of farm property while that property is, or soon after that property has been,
affected by natural disaster? If so, how should such a moratorium be implemented,
in what circumstances should it come into effect, and in what circumstances should it
15 be lifted? Should provision be made in the farm debt mediation Acts or another
legislative instrument or binding code to facilitate earlier discussion between
financial services entities, farmers, and third parties such as rural financial
counsellors in cases where farmers face actual or probable financial distress? Should
there be a uniform Farm Debt Mediation Act? If so, is any of the current Acts in a
20 suitable form for uniform adoption?

The fifth case study examined in these hearings related to loans made by Rural Bank
to Queensland cattle industry farmers that became non-performing over the past 10
years. The Commission heard evidence from Ms Gartmann, the chief executive
25 officer and managing director of Rural Bank Limited. In December 1998, Bendigo
and Adelaide Bank established Rural Bank, then known as Elders Rural Bank, as a
joint venture with Elders. In May 2009, Bendigo Bank acquired a controlling
interest in Rural Bank. In late 2010, Rural Bank became a wholly owned subsidiary
of Bendigo Bank. Bendigo Bank's engagement with agricultural clients is
30 substantially achieved through Rural Bank, which describes itself as a dedicated
agribusiness bank.

In its submission to the Commission on 29 January 2018, Bendigo Bank told the
Commission that a number of loans taken out by customers in the Queensland cattle
35 industry had become non-performing. Bendigo Bank told the Commission that
contributing factors included weak underwriting and an overreliance on security
values, compounded by the live cattle export ban, falling cattle prices, a prolonged
and severe drought, and a fall in property values. In a further letter to the
Commission on 18 May 2018 from Mike Hirst, then the managing director of
40 Bendigo Bank, Bendigo Bank told the Commission that a number of factors had
contributed to these loans becoming non-performing including an overreliance on
security values and a failure to appropriately establish loan serviceability.

Mr Hirst also said that loan performance was exacerbated by inadequate loan
45 management with evidence of a lack of follow-up of excesses, arrears and out of
order accounts, failures to conduct timely reviews or collect updated farm
performance information, failures to otherwise detect signs of financial distress at an

appropriately early point in time, and failures in relation to enforcement processes. Mr Hirst also referred to a failure to make appropriate inquiries and verification of valuations and appraisals, including failures to ensure valuation accuracy, independence and integrity, and failures to physically visit and inspect livestock and properties.

In her oral evidence, Ms Gartmann told the Commission that she disagreed with Mr Hirst's assessment in a number of respects. Ms Gartmann told the Commission of 62 loans that Rural Bank had made to Queensland cattle producers that became non-performing between 1 January 2008 and 31 December 2017. In her statement, Ms Gartmann referred to a number of external events in Queensland, including the live export ban, Yasi related flooding and severe drought, which she said created the perfect Storm scenario for Queensland cattle farmers. Ms Gartmann said that whilst those external factors contributed to the 62 loans becoming non-performing, the conduct of Rural Bank had also contributed.

She said that there were issues internal to Rural Bank that related to poor judgments in the exercise of discretion, inadequate management oversight, inadequacies in staff training, insufficient performance management of individuals, and matters of sales and credit culture, governance framework, approval process, and portfolio management. In her statement, by way of explanation as to how Rural Bank discovered these issues, Ms Gartmann exhibited a number of reports. These included a report prepared by KPMG dated 27 September 2010 entitled assistance With Rural Bank's Limited Credit Risk Internal Control Program. This report set out KPMG's findings following a sample review of 10 Rural Bank client files across five district banking managers.

KPMG identified a number of major themes from the review, including suppression of information pertinent to the credit, misrepresentation of data in Rural Bank's systems which was described as "going beyond window dressing of credit submissions", reasons for excesses provided by district banking managers in the seasonal or overdraft accounts not reflecting the actual cause of excesses of customers' accounts, instances of livestock appraisal values appearing to have been inflated to improve the security position of the exposures, deteriorating features not being reported to Rural Bank in a timely manner, noncompliance with condition precedents including confirmation that tax liabilities were up to date and in order, and failures to follow up on loan conditions and inadequate financial and cash flow analysis.

Ms Gartmann accepted that the KPMG report returned a number of very concerning findings. Ms Gartmann also exhibited a report presented at a Board Credit Committee meeting on 27 July 2011 by Mr Taso Corolis, the general manager of risk entitled Credit Structure and Portfolio Trends and dated 18 May 2011. In his report, Mr Corolis undertook a detailed analysis of a number of aspects of Rural Bank's lending portfolio. He found that a number of the issues identified by KPMG were clearly systemic and not isolated. He also found that these issues were a significantly material contributor to the credit issues that were then being faced by the bank.

In her oral evidence, Ms Gartmann told the Commission that she disagreed with the severity with which Mr Corolis painted the picture in his report, and that she believed that the findings in his report were overstated. Ms Gartmann also exhibited a report by HSW Partners entitled Credit Framework and Operations Review, dated
5 September 2011, which was presented by Mr Graham Willis of HSW Partners at a board meeting of Rural Bank in December 2011. This was referred to by Ms Gartmann as the Willis Report. Ms Gartmann told the Commission that based on the findings in these reports, and especially the Willis Report, Rural Bank had made a number of significant changes to its processes and procedures, including rebalancing
10 its focus on loan serviceability, improving staff training, tightening performance management, making changes in relation to valuations and appraisals, and implementing new governance practices.

In the course of Ms Gartmann's evidence, the Commission also heard that APRA
15 had highlighted issues with Rural Bank's approach to loan serviceability as early as 2006 and 2009. In 2009, APRA had noted that a high proportion of Rural Bank loan proposals were being approved despite the failure of policy tests. APRA raised concerns as well about the appropriateness of Rural Bank's credit risk rating system. Ms Gartmann recognised that Rural Bank did have an over reliance on security in
20 Queensland, and that the emphasis and the balance between serviceability and security was not appropriate.

Ms Gartmann also gave evidence about Rural Bank's approach to its customers once their files were transferred to asset management. Ms Gartmann said that once
25 customers were brought within Rural Bank's asset management unit, Rural Bank worked with the customer to identify a strategy that would help to address some of the financial challenges they are facing and that Rural Bank would always look to try and trade out of challenges. Rural Bank was not a signatory to the Code of Banking Practice when the misconduct occurred. The Commission heard that Rural Bank
30 became a subscriber to the code in December last year, and that Rural Bank had not subscribed to previous iterations of the code. Nevertheless, the code was a professional standard and a recognised and widely adopted benchmark for conduct throughout the period.

35 On the evidence, it's open to the Commissioner to find that Rural Bank may have engaged in misconduct in a number of ways. First, Rural Bank may have breached the obligation to exercise the care and skill of a diligent and prudent banker in selecting and applying credit assessment methods and in forming opinions about customers' ability to repay. It's open to find that Rural Bank may have breached this
40 obligation a number of ways. First, as KPMG found, Rural Bank staff had engaged in a number of breaches of lending standards in relation to serviceability, including a failure to properly assess serviceability and by suppressing information pertinent to credit and by mis-representing data into the Rural Bank systems.

45 Second, the five district banking managers referred to the KPMG report had engaged in a significant number of different types of breaches in respect of loan origination. In respect of the file of the Queensland farmer whose application was approved in

circumstances where it was known that \$1 million had been provided by his aunt, that was sourced from a margin loan that created further liabilities, the district banking manager had misrepresented the bank's position to the borrower, had acted dishonestly both towards the bank and towards the customer, and this had led to a loan being originated in circumstances where Rural Bank lacked material information about whether the debt could be repaid.

In respect of a Victorian farmer with a livestock mortgage, Rural Bank had loaned this customer more than the value of his security, and the district banking manager responsible for the initial valuation should not have increased the customer's facility in circumstances where the customer had been experiencing significant financial difficulty and there were reasons to doubt the correctness of the valuation upon which the increase was based. The second way in which it's open to find that Rural Bank may have engaged in misconduct relates to a potential breach of the obligations under the Code of Banking Practice to act fairly and reasonably towards its customers in a consistent and ethical manner.

It's open to find that Rural Bank may have breached this obligation in a number of ways as well. First, Rural Bank failed to act fairly and reasonably towards a number of its customers whose loans were not adequately managed. Second, as KPMG found, Rural Bank advanced credit to individuals and entities without undertaking a proper serviceability assessment. It was not fair to do this, because this placed those individuals in a position that – where they were unlikely to be able to fulfil their obligations under the loan. And third, after identifying customers who had been affected by internal issues within Rural Bank, including the misconduct of the district banking managers, Rural Bank failed to communicate with those customers about those internal issues, which was not fair or reasonable.

On the evidence, it's also open to the Commissioner to find that Rural Bank engaged in conduct that fell below community standards and expectations. First, the conduct, policies and procedures of Rural Bank materially contributed to the 62 loans becoming non-performing. In her statement, Ms Gartmann accepted that five aspects of Rural Bank's conduct – which contributed to the issues relating to securities and valuations, loan serviceability and loan management fell below community standards and expectations.

Second, from recommendations made by APRA, Rural Bank should have been on notice from at least 2009, if not from 2006, of potential systemic issues within its loan serviceability policies and practices. Rural Bank failed to adequately engage with these warning signals to recognise the issues as systemic and to take prompt steps to fix the issues. Third, in 2010, a decision was made to give priority to generating new business and additional lending to existing clients over no increase annual reviews. This was not fair and reasonable to existing Rural Bank clients who were entitled to expect standard and careful loan management.

On the evidence, it's open to the Commissioner to find that any such misconduct can be attributed to Rural Bank's culture and governance practices, to its remuneration

practices, and to inadequate internal systems. First, it's open to the Commissioner to accept the findings of the Corolis report which include a finding that Rural Bank had a culture of prioritising asset growth over careful loan origination and loan management processes. Second, as acknowledged by Rural Bank, it's open to the
5 Commissioner to find that the conduct of Rural Bank that contributed to the 62 loans becoming non-performing included the culture and governance issues to which we've previously referred, being poor judgments in the exercise of discretions, inadequate management oversight of the manner in which the discretions were being exercised, inadequacies in staff training, insufficient performance management and
10 matters of sales and credit culture, governance framework, approval process and portfolio management.

Rural Bank is invited to provide written submissions addressing each of the findings that we've identified as open, and all parties with leave to appear are invited to
15 provide written submissions addressing the following questions: how should banks balance the competing interests of strengthening the long-term relationships with their customers and being prepared to act decisively, where necessary, particularly to safeguard shareholder interests? Commissioner will recall that that was the language of Rural Bank's mission statement in its asset management unit policy. How should
20 banks balance portfolio growth against the need to monitor and manage their existing clients?

Do banks have appropriate policies in place for dealing with external events that may impact an agribusiness loan portfolio? If not, what should those policies entail? And
25 should banks be required to conduct – I'm sorry, contact individual customers when they become aware of misconduct in relation to their accounts?

THE COMMISSIONER: Now, those two last questions, external events and contact with customers, raise their own sets of issues. The first two questions, the ones I
30 want to direct attention to, when we go to the Code of Banking Practice we observe at the moment the provisions of clause 27, imposing the – or requiring the exercise of care and skill of a diligent and prudent banker in connection with provision of credit. In the course of dealing with the first two questions you have identified, it would
35 seem to me that there may be utility in the – in those making submissions considering whether shareholders, customers, the public more generally, would expect banks to abide by a standard described as the standard of a diligent – the standard of care and skill of a diligent and prudent banker, not only in deciding whether to provide credit, which is now dealt with by the Code of Banking Practice.

40 But is it the same standard or a different standard that applies in deciding whether to vary the terms of credit as, for example, reprice or alter the terms? Is it the same standard or a different standard that should apply in deciding whether, when and how to enforce the credit contract? The three questions, whether, when and how, call for distinct and different consideration. You may or may not get to the same answer in
45 respect of each of them – I don't know – but whether to enforce, when you enforce, not least how you enforce, seem to me to raise considerations that may require separate examination. Yes, Ms Orr.

MS ORR: Commissioner, the final agricultural finance case study concerned the Commonwealth Bank of Australia, and on Monday of this week two statements of Joanna White, CBAs managing director, corporate and commercial banking were tendered into evidence, and those statements addressed CBAs failure to apply fee
5 waivers and ongoing package benefits to eligible AgriAdvantage Plus package customers. We have prepared a separate document that sets out our summary of the evidence in relation to that matter, and the available findings of misconduct, and our position on the causes of that misconduct. I want to tender that separate document, Commissioner. I'm sorry that I don't have the document ID to hand, but we will
10 have it before the end of the closing submissions.

THE COMMISSIONER: And what's it to be called, Ms Orr?

MS ORR: It's to be called submissions of Counsel Assisting in relation to the CBA
15 processing errors case study.

THE COMMISSIONER: That document will become exhibit 4.219.

20 **EXHIBIT #4.219 SUBMISSIONS OF COUNSEL ASSISTING IN RELATION TO THE CBA PROCESSING ERRORS CASE STUDY (RCD.9999.0062.0001)**

MS ORR: Now, Commissioner, in the second week of this hearing block, our focus
25 moved to the interactions of Aboriginal and Torres Strait Islander people in regional and remote communities with financial services entities, including banks, insurers, and superannuation funds. As you heard in our opening address in relation to this topic, we consulted with a large number of bodies that provide assistance to Aboriginal and Torres Strait Islander people in their dealings with or disputes with
30 financial services entities. As a result of those consultations, we sent out a large number of notices to produce to a large number of entities.

We also requested a number of witness statements that have not been the subject of
35 case studies presented in this round of public hearings. This is not because those witness statements failed to identify issues of significance to our inquiry, nor is it because those statements failed to reveal any potential misconduct or conduct falling short of community standards and expectations. Rather, it is because we consider it important to use these public hearings to focus upon case studies which, to the extent
40 possible, best demonstrated the complex and overlapping difficulties that Aboriginal and Torres Strait Islander people living regionally and remotely have when dealing with financial services entities.

For that reason, we settled upon the four case studies which have been presented this
45 week. The witness statements that did not form the subject of case studies this week nonetheless significantly informed our thinking and frequently highlighted issues that were similar to those considered in the public hearings. For those reasons, we will tender four further witness statements that were provided to the Commission. First,

we tender the statement of Ms Sian Lewis of CBA, dated 28 June 2018.
CBA.9000.0078.0001.

5 THE COMMISSIONER: That document will be exhibit 4.220.

**EXHIBIT #4.220 STATEMENT OF SIAN LEWIS OF CBA DATED 28/06/2018
(CBA.9000.0078.0001)**

10 MS ORR: Ms Lewis' statement addresses the particular detriment suffered by an
Aboriginal and Torres Strait Islander woman who lives in Broome in Western
Australia as a result of her difficulties with cancelling a direct debit arrangement in
15 respect of a no interest loan to purchase white goods. Second, we tender the
statement of Mr Robert Musgrove of Bendigo and Adelaide Bank, dated 14 June
2018, BAB.9000.0001.0001.

THE COMMISSIONER: That will be exhibit 4.221.

20 **EXHIBIT #4.221 STATEMENT OF ROBERT MUSGROVE OF BENDIGO
AND ADELAIDE BANK DATED 14/06/2018 (BAB.9000.0001.0001)**

25 MS ORR: Mr Musgrove's statement also addresses detriment relating to direct debit
arrangements in respect of an Aboriginal and Torres Strait Islander woman who lives
near Cairns in Queensland. As we explained in the course of our opening address,
this consumer was repeatedly charged overdrawn fees of \$21.50 and dishonour fees
of \$40 by Bendigo Bank. Third, we tender the statement of Mr Anthony Hampton of
30 the Traditional Credit Union, dated 19 June 2018. TCU.0003.0001.0001.

THE COMMISSIONER: That will be exhibit 4.222.

35 **EXHIBIT #4.222 STATEMENT OF ANTHONY HAMPTON OF THE
TRADITIONAL CREDIT UNION DATED 19/06/2018 (TCU.0003.0001.0001)**

40 MS ORR: Now, this statement provides important context as to the high cost of
TCUs fees and charges. As we explained in our opening address, TCUs business
model is fundamentally different than that of other ADIs because TCU relies on fee
income rather than interest income. TCUs fees structure provides insight into the
cost of banking in remote communities throughout the Northern Territory. Fourth,
45 we tender a statement of Gavin Teichner, T-e-i-c-h-n-e-r, from TAL, dated 22 June
2018, WIT.0001.0070.0001.

THE COMMISSIONER: That will be exhibit 4.223.

**EXHIBIT #4.223 STATEMENT OF GAVIN TEICHNER FROM TAL DATED
22/06/2018 (WIT.0001.0070.0001)**

5 MS ORR: Mr Teichner's statement provides helpful context in relation to the
funeral insurance operations of a major player in the Australian market.
Commissioner, in the course of the evidence given by Ms Edwards and Mr Boyle on
Tuesday morning, and in the evidence of Mr Bowden yesterday, the Commission
heard about a number of difficulties faced by Aboriginal and Torres Strait Islander
10 people when seeking access to their superannuation entitlements. These difficulties
included – but were not limited to – a lack of understanding of the existence or
purpose of superannuation, identification issues, difficulties associated with meeting
the conditions of early release of superannuation, and difficulties associated with the
release of death benefits.

15 Given that superannuation will be the subject of the Commission's next round of
hearings, we will further consider these topics at this point. In the course of that
round of hearings, we will invite responses to questions relating to the interaction
between superannuation funds and Aboriginal and Torres Strait Islander people. Our
20 first case study in this part of the hearings concerned interaction between Aboriginal
and Torres Strait Islander people and the funeral insurance provider, Aboriginal
Community Benefit Fund, which we will refer to as ACBF. The Commission heard
evidence from Ms Tracey Walsh, an Aboriginal and Torres Strait Islander woman
from Mooroopna in Victoria.

25 The Commission also heard evidence from Mr Bryn Jones, the CEO and a current
director of ACBF. ACBF was founded in 1993. It markets itself as Australia's only
funeral insurance plan dedicated to the Aboriginal community. The organisation is
not affiliated with or sponsored by any Aboriginal or Torres Strait Islander
30 organisation, or governmental organisation. None of its directors or managers are
Aboriginal or Torres Strait Islander people, and only a small number of its
employees so identify.

35 ACBF has three types of funeral insurance policy on issue. The first, fund number 2,
is only available to Aboriginal and Torres Strait Islander people. It has not accepted
any new members since around 2004. At that time, following Federal Court
proceedings brought by ASIC alleging breach of the anti-hawking provisions in the
Corporations Act, ACBF gave an undertaking to ASIC that it would stop taking new
40 members to that fund. The second policy is the Community Plan. The Community
Plan has been offered by ACBF since 2005 as a result of ACBF's undertaking to
ASIC to cease accepting new members of fund 2.

45 The Community Plan is a funeral expenses policy, which means that the corporate
entity which offers it is not required to hold an Australian financial services licence,
and the obligations contained in chapter 7 of the Corporations Act do not apply. The
only restrictions on membership to this fund are age and health related. The third
policy is the ACBF Plan, which was also established in 2005 as a result of ACBF's

undertaking to ASIC to cease accepting new members of fund 2. Like the Community Plan, the ACBF Plan is an expenses only funeral policy. It's available to Aboriginal and Torres Strait Islander people under the age of 70. There are 13,460 policies presently on offer under the ACBF Plan, almost five times the number of policies on offer under fund 2 and the Community Plan put together. Approximately 36 per cent of policyholders of the ACBF Plan are under the age of 18.

Turning to Ms Walsh's evidence, in late 2005, a representative from ACBF attended Ms Walsh's workplace. Ms Walsh understood ACBF to be an Aboriginal organisation because the brochures and posters that ACBF had displayed around her workplace used images and colours associated with Aboriginal culture, and because the name of the organisation included the word "Aboriginal". After speaking with the representative of ACBF, who Ms Walsh understood to be an Aboriginal person, Ms Walsh signed up to the ACBF Plan. Ms Walsh's initial application form recorded her health level as level 1, the least severe health rating. The application recorded that she would be offered a benefit amount of \$12,000 with premiums of \$18 a fortnight.

ACBF subsequently advised Ms Walsh that it had reassessed her health level as level 3, the most severe health rating, due to the fact that she was taking medication for depression. As a result, ACBF offered her a reduced benefit amount of \$8000 for premium payments of \$36 each fortnight. Ms Walsh understood that the ACBF Plan worked like a savings plan. Ms Walsh's understanding was that if she paid less than her benefit amount, she would be entitled to a payout of the full benefit amount; if she paid over the benefit amount, she thought that any overpayments would be paid to her family upon her death. During the life of the policy, Ms Walsh unsuccessfully attempted to increase her benefit amount on at least two occasions.

By the end of 2016, Ms Walsh had paid over \$10,000 to ACBF for a maximum benefit amount of \$8000. In May 2018, Ms Walsh's lawyers assisted her to lodge a complaint with FOS, which alleged misleading and deceptive conduct, unconscionable conduct, and unlawful discrimination. This followed earlier correspondence between Ms Walsh's lawyers and ACBF on these matters in which ACBF had sought to dissuade Ms Walsh from lodging a complaint with FOS. On 7 June this year, ACBF made submissions to FOS strongly encouraging FOS to reject Ms Walsh's claims. On the same day, ACBF wrote to Ms Walsh's lawyers with a settlement offer by which ACBF offered to raise Ms Walsh's maximum benefit amount to \$10,000 and to waive future payments.

Mr Jones' evidence was that he had instructed ACBF's lawyers to settle the claim in order to avoid the legal costs associated with the claim and because he felt sympathetic towards Ms Walsh, given that she had paid premiums over her benefit amount. Mr Jones said that he did not believe that Ms Walsh had been misled about the character of ACBF, although he accepted that some documentation sent to Ms Walsh relating to the nature of the payout to which she would be entitled had included inaccurate wording. Ms Walsh has indicated that she will accept ACBF's offer. She said that before the offer was made she did not feel as though she had any

choice about whether to continue to pay ACBF for her plan. She felt as though ACBF had her over a barrel, and she could not walk away from the large amount of money she had already paid.

5 Turning to ACBFs marketing practices. Since 1999 following action taken by ASIC, ACBF has been required by a court order to include a disclaimer in its advertising materials. The disclaimer is to the effect that ACBF is a private company, that it is not sponsored by or otherwise connected with any governmental body or Aboriginal organisation. Mr Jones conceded, that notwithstanding this, some of ACBFs
10 advertising material, including internet and radio advertising, had not included the disclaimer, and that this appeared to be in breach of the court orders. The orders also required ACBF to remove from its marketing materials the Aboriginal flag, and any suggestion that ACBF was established to advance the welfare of the Aboriginal community. In 2012, ACBF revamped its advertising strategy. Its new strategy
15 included the adoption of a new logo using red, yellow and orange colours, accompanied by the tag line:

For you, for your family.

20 ACBFs recent promotional material includes the phrase:

Over 20 years working in the Aboriginal community.

25 And ACBFs website features imagery that resembles indigenous dot artwork as well as photos of Aboriginal and Torres Strait Islander people. Mr Jones conceded that there has been confusion over the years about whether ACBF is an Aboriginal-owned company. We turn to ACBFs sales processes. Until recently, ACBF had an arrangement with the Department of Human Services. Under this arrangement, ACBF could deduct the premiums of policyholders who receive Centrelink payments
30 directly from those Centrelink payments by using the Centrepay system.

ACBF was the only funeral insurer receiving payments through the Centrepay system. A condition of its arrangement with the Department of Human Services was that ACBF was not permitted to sell its policies in an unsolicited setting. Following
35 a decision by the government to remove funeral insurance from the Centrepay system, which was the subject of an unsuccessful court challenge by ACBF, the condition regarding unsolicited sales is no longer operative. Mr Jones said that ACBF currently sells its product through inbound phone and website inquiries. Until recently, ACBF also engaged in door-to-door selling. Mr Jones told the Commission
40 that ACBF has now ceased door-to-door selling.

However, he said there were four indigenous employees who were networking and working in field to create connections with bodies. Mr Jones conceded that their work involved looking for sales opportunities, including through land councils. Mr
45 Jones said that ACBFs sales representatives ask customers and prospective customers about whether they have children they may want to sign up to funeral insurance policies. In ASICs 2015 report it found that ACBF was the only insurer

with significant numbers of persons insured under 30 for which premiums were being paid, and that 50 per cent of persons insured by ACBF were aged under 20, and 33 per cent were aged under 15.

5 Mr Jones indicated that he intended to implement the recommendations of a cultural
audit report provided to ACBF by MURA Connect. That report recommended that
ACBF continued to leverage its existing customer base for the purpose of signing up
new customers, including children and families. The MURA Connect report
recommended that ACBF offer referral incentives to existing policyholders and
10 research the benefits of offering family policies. In relation to the sale of policies of
children, Mr Jones accepted that a motivating factor for ACBF is to sell as many
policies as possible.

ACBF explained that new policyholders are required to submit an application form
15 that includes a health statement. ACBF then uses a customer's disclosed pre-existing
health conditions to determine a health level ranking from between level 1 to level 3.
This health level, along with the customer's age, determines the fortnightly
premiums paid by the customer. Mr Jones said that the basis for designating certain
conditions as level 1, 2 or 3 was the assumed risk associated with insuring someone
20 with certain health issues. Mr Jones appeared to accept that this meant that ACBF's
health classification system resulted in higher premiums for people with medical
conditions that are more common amongst Aboriginal and Torres Strait Islander
people.

25 ACBF uses a stepped premium structure, meaning that as each nominee under the
policy enters into a new age bracket they pay a higher premium. Mr Jones accepted
that ACBF's disclosure of its stepped premium structure may be inadequate. Mr
Jones also conceded that ACBF does not provide an upfront estimate of the total cost
of its policy to its customers, contrary to recommendations made in relation to
30 funeral insurance by ASIC in 2015. Mr Jones accepted that ACBF plan holders
could end up paying more in premiums than they would ever be entitled to recover
under their policies. Mr Jones accepted that ACBF did not clearly and prominently
disclose this as a risk, again contrary to ASIC's recommendations in relation to
funeral insurance.

35 Mr Jones said that from January 2018, ACBF has released customers from paying
further premiums if they've exceeded their maximum benefit payable but only if the
customer contacts ACBF and identifies that they are struggling to make
contributions. Since then, ACBF has waived the future payments of 24 customers
40 who have paid more than their entitlement. Mr Jones gave evidence that a policy
holder's policy will be cancelled if they miss four payments within a year. Over the
last five years, ACBF has cancelled 13,175 ACBF Plan policies as a result of non-
payment of premiums. Mr Jones gave evidence that 6000 of those policies were
cancelled following the decision by the government that funeral insurance providers
45 could no longer be listed on Centrepay.

Mr Jones said those customers being cancelled as a result of Centrepay being discontinued were uncontactable and the location of those persons was not known to ACBF. Mr Jones said that generally speaking, once a policy is cancelled, the customer will lose their cover and they will not be entitled to any refund or credit in respect of the amounts they have paid to ACBF. Until mid-2017, ACBF would not pay claims where the cause of death was suicide, although it would refund premiums in those circumstances. In his statement, Mr Jones said that ACBFs previous position had been adopted because customers and local community groups thought that paying out suicide claims could be seen to condone suicide.

In cross-examination, Mr Jones accepted that at least one staff member had taken the view that ACBF had received backlash for not paying out on suicide. Mr Jones was taken to ACBF media releases dated 27 and 29 June this year, and 2 July this year. Mr Jones conceded that there were errors in relation to ACBFs claims about suicide payments in the first two of these media releases, and that the incorrect statements were repeated in the third media release. On the evidence, it's open to the Commissioner to find that ACBF may have engaged in misconduct in a number of ways.

First, it's open to find that ACBF may have breached its obligations under section 12DA of the ASIC Act to not engage in conduct that is misleading or deceptive, or is likely to mislead or deceive, and under section 12DF subsection (1) of the ASIC Act which prohibits a person from engaging in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose, or the quantity of any financial services. Most significantly, ACBF represents that it uniquely provides a product and service tailored to meet the needs of Australia's Aboriginal and Torres Strait Islander people, and that its policies are beneficial for Aboriginal and Torres Strait Islander people.

It is open to find that ACBFs products and services, the sale of which is targeted to Aboriginal and Torres Strait Islander people are not, in fact, tailored to meet the needs of these people, or beneficial for those people for a number of reasons. First, ACBFs health classification system may result in Aboriginal and Torres Strait Islander people paying more than they would if they obtained funeral insurance from another insurer. Second, until very recently, ACBF policies did not pay out for suicide, despite the high rates of suicide in the Aboriginal and Torres Strait Islander community.

Third, as ASIC found in its 2015 report, ACBF is the only insurer with significant numbers of persons insured under 30 for whom premiums are being paid. It is open to find that ACBF plays on the cultural significance of funerals to Aboriginal and Torres Strait Islander people, and indigenous mortality statistics, to actively sell its policies to children and young people in those communities, in circumstances where they have little need for the product. Fourth, ACBF is not an Aboriginal organisation, nor is it affiliated with any Aboriginal or government organisation. Fifth, the ACBF policy is an expenses only policy. This is not sufficiently clear from

some of ACBFs promotional and marketing material. The policy is unlikely to cover all aspects of sorry business.

5 Sixth, unlike some other policies available in the market, it is a design feature of the ACBF Plan that any policy holder may pay more in premiums than they will ever be entitled to receive. Separately, ACBFs current advertising materials, even with the disclaimer which has not always been used, may induce consumers into thinking that it's an Aboriginal-owned company. Its materials use colours, red, yellow and orange, associated with Aboriginal culture and use imagery which is significant in
10 Aboriginal and Torres Strait Islander culture. The name of the plan includes the word "Aboriginal", the promotional material includes references to ACBF having spent over 20 years working in the Aboriginal community, and the plan is described as Australia's only funeral insurance plan dedicated to the Aboriginal community.

15 As we've noted, some of ACBFs advertising material has failed to include the disclaimer that ACBF is a privately-owned company with no government or Aboriginal community affiliations. That is the first way in which we say it's open to the Commissioner to find that ACBF may have engaged in misconduct. The second is that it's open to the Commissioner to find that ACBF may have breached section
20 12DB subparagraph (e) of the ASIC Act which prohibits the making of a false or misleading representation that services have sponsorship approval, performance characteristics, use of benefits. ACBFs marketing materials as a whole, and specifically ACBFs statements about its dedication to the Aboriginal community, convey a representation that ACBF has the approval or endorsement of the
25 Aboriginal community in a general sense.

On the evidence, it's also open to the Commissioner to find that ACBF engaged in conduct that fell below community standards and expectations. First, contrary to
30 ASICs recommendations, ACBF fails to adequately warn its policyholders that they may pay more under their policies than they will ever be entitled to receive by way of payout. Second, again contrary to ASICs recommendations, ACBF fails to provide an upfront estimate of the total cost of the policy. Third, ACBF actively seeks to sell its policies to children and to young people in circumstances where they are unlikely to receive any benefit from the policy.

35 Fourth, ACBF generally refuses to credit payments made towards a plan holder's previous plan if the plan holder reinstates a plan after cancellation. ACBF does this despite understanding that there is a very high rate of cancellations for non-payment of premiums across its policyholders. Fifth, ACBF fails to adequately disclose its
40 waiting period to plan holders, and at least historically provided confusing information to its plan holders about the completion of their waiting periods. Sixth, the product provided by ACBF is a very low value product when understood in light of the claims paid as a percentage of premiums received.

45 In an ASIC report dated April 2014, the claims paid by ACBF as a percentage of the premiums received in the previous 12 months was 13.6 per cent. This represented the lowest percentage out of the insurers surveyed. Mr Jones accepted that this data

5 was concerning. Seventh, ACBF has breached the orders made by the Federal Court in 1999 in failing to consistently utilise the required disclaimer in its advertising materials. On the evidence, it's open to the Commissioner to find that there are a number of causes of this misconduct which are attributable to ACBFs culture and governance practices and its remuneration practices.

10 It is open to the Commissioner to find that the misconduct can be attributed, at least in part, to ACBFs remuneration and bonus scheme for its sales and field representatives. This scheme actively encouraged ACBF employees to aggressively target vulnerable persons and incentivise them to pursue signing up entire families, including their infant children. This is particularly the case in relation to the KPI structure evidenced in the 2018 letter of employment that was tendered, in which the staff member was to be paid \$20 in respect of each of the first 29 nominees signed up, \$30 in respect of each of the next 10, and so on, culminating in payments of \$70
15 per nominee for the 70th to 100th nominees signed up.

20 It is open to the Commissioner to find that ACBF did not have a corporate culture which enabled it to communicate and sell its products to Aboriginal and Torres Strait Islander people in a respectful manner. The MURA Connect report found that the majority of ACBF staff are non-indigenous, and that there was a lack of cultural understanding and confidence amongst the staff. This, in turn, resulted in an environment in which Aboriginal and Torres Strait Islander people were unlikely to be offered a service that was tailored to their needs.

25 It is also open to find that ACBF did not effectively and adequately respond to the detriment suffered by Ms Walsh, one of its customers, as a result of its misconduct. After misrepresenting the plan to Ms Walsh, and after Ms Walsh challenged ACBFs actions in this regard, ACBF corresponded with Ms Walsh in an aggressive and hostile manner over a significant period of time before finally making an offer to
30 settle Ms Walsh's dispute. This was despite the fact that at the time that Ms Walsh's lawyers first complained to ACBF Ms Walsh had already paid substantially more than she would ever be entitled to receive under her policy.

35 ACBF is invited to provide written submissions addressing each of these open findings that we have identified, and all parties with leave to appear are invited to provide written submissions addressing the following questions which arise both from the ACBF case study, and from the Select AFSL case study to which we will shortly turn. The first question: is the current regulatory framework in respect of funeral expenses products adequate? In particular, should the framework be
40 amended so that funeral expenses products are not excluded from the definition of financial product by virtue of section 765A(1)(y) of the Corporations Act and regulation 7.1.07D of the Corporation Regulations 2001.

45 THE COMMISSIONER: 7.1.

MS ORR: 7.1.07D.

THE COMMISSIONER: Thank you.

MS ORR: Should section 12BAA subparagraph (8) subparagraph (o) of the ASIC Act be amended to put beyond doubt that funeral expenses policies are not excluded from the definition of financial product, as applicable to part 2 Division 2 of that Act? Is the current regulatory framework sufficient to minimise the risk of funeral insurance providers using inappropriate sales practices to sell their products to vulnerable people, including Aboriginal and Torres Strait Islander people living regionally or remotely? Is the current regulatory framework sufficient to minimise the risk of sales of unsuitable funeral products to these people, including to avoid the risk of individuals having multiple forms of funeral insurance, and to address the sales of funeral insurance policies to children and young people.

Does the current regulatory framework deal adequately with the potential for people with funeral insurance policies to pay more in premiums than may ever be paid out? And should the current regulatory framework be modified to include protections for holders of funeral insurance in relation to the cancellation of their policies for non-payment of premiums? The second case study relating to funeral insurance concerns Select AFSL Proprietary Limited - - -

THE COMMISSIONER: Just before you leave that, is there also a general question about whether estimates of total cost should be given? ASIC recommended that.

MS ORR: They did, Commissioner. That's correct. And as you will recall, Commissioner, in both our funeral insurance case studies that recommendation has not been adopted.

THE COMMISSIONER: Yes. And it may be time to get some submissions about whether that's right or wrong. Yes.

MS ORR: Thank you, Commissioner. Now, Select AFSL is a company which promotes and distributes various insurance products including, until relatively recently, funeral insurance. Now, this case study came to our attention upon review of a Bank of Queensland board report, dated 19 July 2017, which was produced under a notice to produce issued by the Commission in March 2018 in relation to inquiries that the Commission was making in connection with the second round of hearings which related to the provision of financial advice.

Within that report there was a reference to a 2015 spike in funeral insurance sales by Select, and to the existence of correspondence between Select, St Andrews and ASIC in relation to that spike. From reviewing that report in connection with our financial advice inquiries, we determined that it would be appropriate to issue a rubric in respect of that matter to Select. The funeral insurance mis-selling issue that the Commission has heard about had not been disclosed to the Commission before that point, because Select had not been invited to disclose its misconduct or conduct falling below community standards and expectations. And the Bank of Queensland,

which had been invited to disclose its misconduct, did not consider that it was able to disclose that matter.

5 In the Bank of Queensland's submission to the Commissioner on 29 January 2018 under the heading St Andrews and Distribution Arrangements, the Bank of Queensland told the Commission that it was constrained in providing its response by confidentiality obligations to third parties arising in contract. Contractual confidentiality obligations of this kind were said to be contained in arrangements between St Andrews and third party distributors of its products. Also in that 10 document, the Bank of Queensland told the Commission that it would welcome the opportunity to provide further detail of issues that have arisen in relation to third party distributors in circumstances which will not risk the breach of any contractual confidentiality obligations.

15 So there was no reference to Select or to the mis-selling issue, but there was clear reference to the Bank of Queensland's understanding that it was constrained by contractual confidentiality obligations to Select from disclosing the misconduct. But as I've explained, Commissioner, we managed to detect the issue via that board 20 report that was produced in our financial advice investigations.

Now, turning to the substance of the case study, the Commission heard evidence from Ms Marika, a Yolngu woman who is originally from East Arnhem Land and now lives in regional New South Wales. Ms Marika is 60 years old, and English is not her first language. Ms Marika was sold two funeral insurance policies by Select 25 trading as Let's Insure in 2015. The Commission also heard evidence from Mr Russell Howden, the managing director of Select. In August 2015, an external lead provider rang Ms Marika. Ms Marika does not know how they got her phone number. The person told Ms Marika that they were calling to conduct a one minute survey.

30 In the course of the call, Ms Marika told the person that she already had funeral insurance. The salesperson responded that, "He was not here to sell her a second insurance, obviously that would be pointless." The next day, a Let's Insure representative called Ms Marika to see if he could switch her to Let's Insure. Ms 35 Marika told the representative that she couldn't have two policies and that she was happy with the other one. Mr Howden accepted that Ms Marika did not want to receive either of these telephone calls. Mr Howden also accepted that both representatives were aware that Ms Marika already had funeral insurance, and that she clearly indicated that she did not have any interest in taking out further funeral 40 insurance.

Despite this, Let's Insure called Ms Marika again on 9 September 2015. On that day, Let's Insure sold Ms Marika two funeral insurance policies covering herself, her 45 three children, and her five grandchildren. Before Ms Marika agreed to take out the policies, the salesperson said to her:

You can actually have two at the same time, and that is what most people tend to do because with their one with work, it only covers them, and they say it expires when they stop working, which means your family don't get the money.

5 Mr Howden accepted that the representative was not authorised to make these statements, and that the statement should not have been made in circumstances where the representative did not have details of the work policy to which Ms Marika referred. Before Ms Marika agreed to take out the policies, she received an oral product disclosure statement. She was not asked for her consent to receive the
10 product disclosure statement in this way. Ms Marika's evidence was that she found the Select representative who she spoke to in this call difficult to understand. Amongst other things, he spoke:

Really fast, like a train.

15 And before she could think about how to answer his questions, he would just start speaking again. She said she was just trying to "Catch up with the language", so she kept saying yes. Ms Marika said that she found the call confusing and frustrating. The representative did not wait for her to speak or to finish what she was saying, and
20 she felt that he did not treat her with respect. Mr Howden accepted that there were multiple occasions in this call in which Ms Marika appeared confused. Mr Howden also accepted that there were sufficient signals during the call that suggested that Ms Marika may not have fully understood the product she was purchasing, and the consequences of the purchase. The following day, the same Select representative
25 called Ms Marika offering her Coles Myer vouchers if she provided the contact details of family friends and if they in turn took out policies with Let's Insure. The representative said at one point:

You never know, if you've got, like, 30 names and numbers, you get \$600.

30 Despite being induced to go through her old phone and her new phone to find and provide the contact details of family and friends, Ms Marika never received any vouchers. Mr Howden accepted that the conduct on the part of the representative was unreasonable and constituted a gross abuse of Select's referral program. Less
35 than a week later, on 16 September 2015, Ms Marika called Let's Insure to try to cancel her policies because she could not afford to keep them. Another Let's Insure employee called her back. Ms Marika told her:

I'm not getting enough money to be able to pay for the insure.

40 The employee convinced Ms Marika to retain the policies on the basis that she would waive the premium payments for a month. In response to a question as to whether this was a fair way to conduct the call, in light of the statutory cooling off period, Mr Howden responded that it was. In December 2016, with legal assistance, Ms Marika
45 was able to cancel her policies. In a letter to her lawyers containing a settlement offer, Let's Insure maintained that at all times it had acted properly and in accordance with the law, but stated that it was prepared to refund the premiums.

There was no evidence that any disciplinary action was taken against the sales representative at this time, although Mr Howden conceded that representatives of Select would have listened to the recording of the call in which the sale was made.

5 Mr Howden accepted that although the payment to Ms Marika had been described to her lawyers as an “act of goodwill”, it should more appropriately have been characterised as a recognition that Ms Marika had been paying for a policy that she did not need, she did not want, and she did not understand. Ms Marika was only one of a significant number of Aboriginal and Torres Strait Islander people who were
10 mis-sold funeral insurance by Select in 2015. Mr Howden gave evidence about the spike in sales to customers living in 43 postcodes with a high proportion of Aboriginal and Torres Strait Islander people. Mr Howden principally attributed the spike to two sales incentive arrangements, and to abuses of Select’s referral processes by two particular sales representatives.

15 Mr Howden was questioned about three likely contributors to the spike: the aggressive sales tactics that its representatives were trained to use, the KPIs and incentives that were in place, and the adequacy of Select’s quality assurance and disciplinary frameworks. In relation to Select’s sales tactics, the Commission heard
20 evidence that Select representatives were trained to actively overcome obstacles, including potential customers already having a funeral insurance policy, or not being able to afford the policy. Select emphasised to its representatives that there was no impediment to making a sale to a customer who already held funeral insurance with another company.

25 It was permissible to play upon a customer’s fears in order to sell policies, and they should assume the customer’s response is positive and lead the customer to mandatory confirmation. While Mr Howden maintained that Select did not sanction aggressive sales tactics, he accepted that Select did push its agents with productivity targets, and that this may have been a contributor to the spike. In relation to
30 remuneration and incentives, in 2015 commissions were payable on the first year’s premium for sales originated by a sales representative. The premiums comprised, on average, 30 per cent of a sales representative’s remuneration.

35 In addition, during 2015, Select ran sales incentive campaigns offering a Vespa scooter and a cruise as prizes for high volumes of sales. Select also had a number of other incentives in place from time to time. The commission structure and the sales incentive campaigns encouraged Select representatives to sell aggressively and did not adequately discourage Select staff members from mis-selling policies. In relation
40 to quality assurance, Mr Howden gave evidence that at the time that Select sold the policies to Ms Marika, it undertook random reviews of sales calls by its agents. Select listened to more calls from junior agents than from senior agents.

45 Select used a scorecard which featured binary questions such as, “Was a PDS given?” Depending on the nature of the failure, if a sales representative failed one of the categories, Select provided coaching and feedback to the representative. From 2016, Select moved to a system involving phone licences by which Select would

record points against a sales agent for certain specified breaches. Points were allocated according to severity of the breach. The breaches for each call were not cumulative. Agents would only be penalised for the most significant breach on a particular call, meaning that a maximum of 10 points could be deducted per call.

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Agents were allocated a maximum of 30 points which were reinstated every six weeks. Within a period of six weeks, if a representative lost 10 points, they received a formal warning. If a representative lost 20 points, they received a second formal warning. And if a representative lost 30 points, they lost their phone licence and would be dismissed. The Commission heard evidence that under this system, it was possible to complete an unethical sale, or to provide personal advice to a potential customer in breach of the Corporations Act, and to only have 10 points deducted from the agent's phone licence.

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15 Mr Howden was asked whether Select's quality assurance systems were sufficiently robust to deter and detect misconduct. Mr Howden maintained that those systems were sufficiently robust but conceded that they were insufficient to deter the misconduct of the two Select representatives who had significantly contributed to the 2015 spike in funeral insurance sales to Aboriginal and Torres Strait Islander customers. Before departing from Select's policies, it should be noted that the majority of Select's policies employ a stepped premium structure. Select also gave evidence about its dealings with ASIC and with St Andrews, the issuer of the funeral insurance policies sold by Select.

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25 On 17 January 2017, St Andrews made a voluntary disclosure to ASIC in relation to the potential mis-selling of funeral insurance by Select in 2015. Select has maintained the position that no significant breach notification was required in respect of mis-selling of funeral insurance to Aboriginal and Torres Strait Islander people. Nevertheless, Select has agreed to remediate affected customers. In early 2018, 30 ASIC expressed significant and extensive concerns with Select about Select's life insurance sales practices. ASIC characterised its concerns as being not dissimilar to the concerns that had been identified in relation to Select sales of funeral insurance in 2015.

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35 The concerns included, but were not limited to, applying pressure to close sales even where the consumer raises a concern, using the cooling off period and delayed payment to close sales, and failing to explain features of the policy. Mr Howden accepted that there was overlap between the funeral insurance mis-selling conduct in 2015 and the life insurance related conduct in 2018. On 19 March this year, Select 40 ceased distributing funeral insurance. Mr Howden did not accept that it had ceased sales activities as a result of St Andrews' request that it do so until it had improved its compliance and sales practices.

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45 Around this time, Select corresponded with St Andrews and the Bank of Queensland about how to manage its relationship with the Royal Commission. On 19 February this year, the Bank of Queensland requested Select's formal consent to voluntarily disclose to the Commission issues relating to Select's sale of funeral and life

insurance. Select refused to provide this consent and stated that it did not consider there to have been any misconduct or conduct falling short of community standards or expectations arising out of any matter which would bring it within the scope of the Commission's terms of reference. Select maintained this position in subsequent
5 correspondence with St Andrews. As a result, Select's mis-selling of funeral insurance was not voluntarily disclosed to the Commission.

On the evidence, it's open to the Commissioner to find that Select may have engaged in misconduct in the following ways: first, in the course of selling the funeral
10 insurance policies to Ms Marika in September 2015, Select breached section 952C of the Corporations Act by providing personal advice to Ms Marika. The sales representative advised Ms Marika that she could have more than one funeral insurance policy in place at one time and suggested that she would cease to be covered by her existing funeral insurance policy when she stopped working. Mr
15 Howden accepted that the representative was not authorised or licensed to provide personal advice, and that the representative had probably contravened section 952C of the Corporations Act.

Second, in the course of selling the funeral insurance policies to Ms Marika in
20 September 2015, Select breached section 992A subsection (3) subparagraph (e) of the Corporations Act by providing an oral product disclosure statement to Ms Marika without expressly obtaining her consent. Mr Howden accepted that Ms Marika was not asked for consent. It's unclear whether this breach occurred on other occasions in relation to other customers, but it appears likely given that Select's sales scripts at
25 that time did not include any prompt to request the customers express consent to provision of a PDS orally.

Third, by selling funeral insurance to Ms Marika, Select engaged in unconscionable conduct contrary to sections 12CA, or 12CB of the ASIC Act. Mr Howden accepted
30 that in all of the circumstances, including Ms Marika's expressed wish not to purchase the insurance, and her lack of understanding about the product that she was purchasing and the consequences of the purchase, it was unconscionable for Select to have sold the policies to Ms Marika. Fourth, the two sales representatives to which
35 Select principally attributed the spike in 2015 funeral insurance sales also engaged in unconscionable conduct contrary to sections 12CA or 12CB of the ASIC Act. Those representatives used Select's referral program to actively target Aboriginal and Torres Strait Islander people for potential sales. In the termination letters that Select provided to those two representatives, Select told the representatives that there was
40 no doubt in the company's mind that they had failed to act in the utmost good faith by taking advantage of people in the postcodes with high proportions of indigenous clients.

Fifth, Select failed to notify ASIC under section 912D of the Corporations Act that
45 by the actions of its employees, it had engaged in significant breaches of its obligations under section 912A of that Act. Amongst other things, it had failed to ensure that it did all things necessary to ensure that the financial services it provided were provided honestly and fairly. It failed to have in place adequate arrangements

for the managements of conflicts of interest between the interests of its policyholders or potential policyholders and the interests of its sales representatives, and it failed to take reasonable steps to ensure that its representatives complied with the financial services laws.

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Sixth, it's open to the Commissioner to find that the actions of the two Select representatives also constituted a breach of section 13 of the Insurance Contracts Act. Upon the termination of their employment, Select told the employees that there was no doubt in the company's mind that they had failed to act in the utmost good faith by taking advantage of people in the postcodes with high proportions of indigenous clients.

On the evidence, it's also open to the Commissioner to make the following findings of conduct falling below community standards and expectations in relation to Select. First, it was deeply inappropriate for the Select sales representative to induce Ms Marika to provide the names and contact details of a significant number of family and friends during the phone call on 10 September 2015. Mr Howden accepted that this conduct was unreasonable and that it represented a gross abuse of Select's referral program. Second, when coupled with Select's sales culture and Select's remuneration and KPI arrangements, the referral program used by Select clearly carried a risk that Select representatives would mis-sell funeral insurance policies. It fell below community standards and expectations for Select to use such a program in circumstances where it had not put in place adequate safeguards to ensure that the program would not be abused.

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Third, it was also inappropriate for a Select representative to dissuade Ms Marika from cancelling her policies a week after she took them out by offering her one month's free coverage in circumstances where Ms Marika had expressed serious concerns about affordability. The representative dissuaded Ms Marika from cancelling her policies in circumstances where Ms Marika had a statutory right to cancel her policy in writing for 14 days, and the product disclosure statement that was applicable to her policy afforded her 30 days to cancel her policy. Fourth, contrary to ASICs recommendation, Select also fails to provide an upfront estimate of the total costs of its policies.

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On the evidence, it's open to the Commissioner to find that there were a number of causes of the misconduct which were attributable to culture and governance practices and to remuneration practices. First, it's open to the Commissioner to find that a significant cause of the misconduct was Select's sales training. Select encouraged its employees to sell aggressively and to overcome objections in such a way that was designed not to permit potential purchasers to exit the selling process. Second, it's open to find that another significant cause of the misconduct was Select's remuneration and incentive structure. As we've noted, Mr Howden accepted that Select pushed its agents with productivity targets. Select also provided very significant incentives which attracted its representatives to sell policies at all costs, and did not appropriately deter potential misconduct.

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Third, it's open to find that Select did not have adequate internal systems in place to deter or detect misconduct within its organisation. Select's quality assurance system in 2015, and even as revamped in 2016, was inadequate to stop Select representatives from engaging in misconduct on calls and to allow Select to realise when such
5 misconduct took place. By way of example, Mr Howden only became aware of the mis-selling to Ms Marika upon being told about Ms Marika's case by the Royal Commission. Select is invited to provide written submissions addressing each of the findings we've identified as open, and all parties with leave to appear are invited to provide written submissions addressing the same questions that we have already
10 outlined in relation to the ACBF case study.

I turn to our case studies involving ANZ. Our first case study relating to ANZ focused on the experience of an ANZ customer who lived in a remote community in the Northern Territory whose nearest bank branch was in Katherine, around 100
15 kilometres away. The Commission heard evidence from Ms Thy Do, a senior family support worker with Save The Children, and from Mr Anthony Tapsall, ANZ's general manager, retail branch network, northern Queensland and Northern Territory. Ms Do works with Save The Children in Katherine. She's not a financial counsellor, but her work sometimes involves assisting clients with financial matters, including
20 their dealings with banks.

Ms Do gave evidence about the assistance she provided to a particular client from a remote community near Katherine to open an ANZ Access Basic account. Ms Do told the Commission that her client is an Aboriginal woman in her 30s who is a
25 single mother of three school aged children. Her client speaks two Aboriginal languages, and English is not her first language. Her main source of income is Centrelink payments. The remote community has one privately owned ATM which meant that every time Ms Do's client would check her balance at the ATM or try to withdraw money she would be charged an ATM fee.

30 Ms Do told the Commission that her client was being charged a significant amount in ATM fees, dishonour fees, and overdrawn fees. Ms Do explained that the dishonour fees resulted from rejected direct debit payments. Ms Do told the Commission that she and her colleague researched the available fee-free accounts and determined that
35 ANZ had a particular product that would be suitable for her client called an Access Basic account. The Access Basic account was designed for concession cardholders, had no monthly service fee and did not incur dishonour or overdrawn fees. Ms Do told the Commission that on 19 December last year she drove the one and a half
40 hours from Katherine to the remote community to pick up her client's sister.

They attended the ANZ Katherine branch to open an account. They were told by the ANZ Banker that it would not be possible to open an Access Basic account without a prior appointment. Mr Tapsall told the Commission that it was now common
45 practice to require a customer to make an appointment to open a bank account. Ms Do then made an appointment for both her client and her sister on 21 December last year. On that date, she drove again to the remote community to collect her client and

her sister. Her client asked Ms Do to support her in the appointment with ANZ to help her understand the conversation.

5 Ms Do and her clients attended the appointment at the Katherine ANZ branch and Ms Do informed the banker that they were there to open an Access Basic account. Ms Do explained that her clients wanted a fee-free account, particularly one that didn't attract dishonour or overdrawn fees, and a savings account. The banker asked Ms Do's client a series of questions in relation to her budget, expenses and savings. Ms Do said that she wasn't sure whether her client understood the purpose or
10 implications of those questions and whether she meant for her answers to be taken literally by the banker. At the end of the questions, the banker suggested that the clients set up a direct debit arrangement to transfer \$100 a fortnight from her Centrelink payments into the new savings account.

15 Ms Do told the banker that she wasn't sure whether her client understood the implications of the direct debit and that this was a significant proportion of her client's income. The banker did not at that time put the direct debit arrangement in place. Ms Do said that the banker also set up internet banking for her client during this appointment, and they went through a process of setting up security questions.
20 Towards the end of the meeting, the banker turned her computer screen around to show the accounts that had been set up. Ms Do saw that the screen listed a Progress Saver account and an Access Advantage account. Ms Do expressed confusion about why that account had been opened, because it hadn't been discussed during the meeting. The banker told Ms Do that it was not possible to open an Access Basic
25 account at the branch.

Ms Do asked the banker about the Access Advantage account that had been opened. She was told that it attracted monthly fees, but the banker said she could waive them. She was also told it attracted dishonour and overdrawn fees, but that they shouldn't
30 be an issue as long as the customer didn't overdraw her account. The banker was unable to assist the client and her sister further on that day. Following the appointment, Ms Do telephoned ANZ to ask whether it was true that the Access Basic account was available only to existing customers. Ms Do was informed that the account was available to new and existing customers as long as they supply
35 suitable identification and supporting documents at a local branch.

After the call, Ms Do went to the branch to confirm that they had kept copies of the documents her client had provided. Ms Do again travelled to the community on 4
40 January this year where she assisted her client to access her internet banking account. Upon logging in, Ms Do noticed that the accounts listed for her client were a Progress Saver account and now a Pensioner Advantage account. On 15 February, Ms Do again met with her client and they called ANZ with the intention of changing her Pensioner Advantage account to an Access Basic account. At first, Ms Do was
45 told it was not possible to do this over the phone.

After making a second phone call, she was told that it would be possible for her client to change her account but, because her client had failed to verify her identity

using a verbal password on a previous occasion, it was not possible to do it that day. The operator suggested that they attend the Katherine ANZ branch to verify the client's identity, however the branch was closed that day due to a plumbing issue. Ms Do made a formal complaint to ANZ that day.

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On 1 March, Ms Do attended the ANZ Katherine branch with her client again, and they successfully reverified her client's identity. They also asked to change the account to an Access Basic account and were told that it was not possible. On the same day, Ms Do and her client phoned ANZ to try and change her client's account over the phone. They were told that it was not possible to do this. The operator instead opened a new Access Basic account as an additional account. The operator asked Ms Do's client to send him a text message to confirm that she was requesting a new keycard for the account. Ms Do's client was unable to do this as she did not have enough credit on her phone.

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Ms Do told the Commission that by the end of this phone conversation, her client had a Progress Saver account, a Pensioner Advantage account which carried a high risk of dishonour and overdrawn fees, and she also had an Access Basic account which she couldn't access because she wasn't able to request a new keycard in the way required by ANZ. All up, it took about four months for Ms Do's client, even with the assistance of Ms Do, to open a fee-free account with ANZ, despite her being eligible for such an account from the outset. Ms Do contacted ASICs Indigenous Outreach Program and provided feedback in writing.

Ms Do was later contacted by a woman named Emma from ANZ's complaints department and they discussed solutions for her client. Ms Do was told she would need a written authority from her client and she forwarded a written authority on 27 June this year. Since then, she has received further correspondence in relation to delivery of the keycard to her client. When that is received, Ms Do's client will need to activate the keycard by telephoning ANZ.

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Mr Tapsall told the Commission that in preparing to give his evidence he had spoken to the ANZ employees who dealt with Ms Do and her client. Mr Tapsall's statement outlined two versions of events, that of Ms Do and that of the banker. Mr Tapsall had ascertained the banker's version of events at a meeting in Melbourne which both he and the banker had travelled to. In his oral evidence, Mr Tapsall told the Commission that he had put forward two versions of events and was not making a call on which version was right. In circumstances where Ms Do gave sworn oral evidence to the Commission and produced a contemporaneous file note, to the extent that there are any inconsistencies between the two accounts, Ms Do's account should be preferred.

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THE COMMISSIONER: It occurs to me that there may be a further consideration, which is that the account given by the banker was given to her superior in the course of an inquiry about a complaint that had been made about her conduct.

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MS ORR: Yes. Just so, Commissioner. On the evidence, it is open to the Commissioner to find that ANZ failed to make information available in an accessible manner to Ms Do's client about banking services that may have been relevant to her, in breach of clause 8 subparagraph (a) of the Code of Banking Practice. It is open to
5 find that after ANZ received a request to provide details of appropriate accounts for Ms Do's client, ANZ failed to provide details of accounts which were suitable to Ms Do's needs in breach of clause 8 subparagraph (b) of the Code of Banking Practice. As noted in the code, this information can include details of ANZs accounts which attract no or low standard fees and charges.

10 It is also open to the Commissioner to find that ANZ failed to adequately assist Ms Do's client and her sister in meeting identification requirements by failing to notify them of the differing ways in which the identification requirements could be met, in breach of clause 8 subparagraph (c) of the Code of Banking Practice. It is also open
15 to find that ANZ failed to appropriately train its staff, who were regularly dealing with Aboriginal and Torres Strait Islander customers, to be culturally aware, contrary to clause 8 subparagraph (d) of the Code of Banking Practice. Each of those matters invoke available findings of misconduct.

20 On the evidence, it's also open to the Commissioner to make findings that ANZ engaged in conduct that fell below community standards and expectations. First, to the extent that this does not constitute misconduct, ANZ did not take reasonable steps to make information about their banking services accessible to Ms Do's client and failed to tell Ms Do's client about accounts and services that were relevant to
25 her. The ANZ banker did not explain the availability of a fee-free account to Ms Do's client despite multiple inquiries indicating that she would be eligible for one. ANZ banking staff gave incorrect advice that the ANZ Access Basic account was not available to new customers.

30 The ANZ banker opened an account for Ms Do's client that was inappropriate for a person in her circumstances, due to the risk of attracting dishonour and overdrawn fees. The most appropriate account should have been set up immediately, especially in circumstances where the client was travelling from a community that was a one and a half hour drive from the branch. The second way in which ANZs conduct - - -

35 THE COMMISSIONER: The more general question may be in what circumstances, if any, is it appropriate for a bank to challenge directly or indirectly a customer's expressed wish to have a basic account. If the customer comes in, especially if the customer comes in with a support person, and the request is made for a basic
40 account, in what circumstances, if any, is it appropriate for the bank to challenge that request? Whether that challenge takes the form of exploring the customer's "needs", or otherwise.

45 MS ORR: Thank you, Commissioner. The second way in which we say it's open for the Commissioner to make findings of conduct that fell below community standards and expectations arises from the multiple occasions on which ANZ failed to open the appropriate account or to assist Ms Do's client to change her account

type over the phone after a less appropriate account was opened. Thirdly, we say that the questions asked in the A to Z review were not appropriate for somebody with limited English and limited financial literacy, and the security questions posed for Ms Do's client for internet banking were also inappropriate.

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Fourth, again to the extent that this is not misconduct, ANZ failed to help Ms Do's client to meet identification requirements over the phone and failed to take into account geographic barriers which made it difficult for Ms Do's client to attend the branch to verify her identity. Mr Tapsall agreed that at least two of the calls where Ms Do's client failed the identification process were a graphic demonstration of the difficulties that can be encountered by some indigenous people in dealing with the bank by telephone. It was plain that Ms Do's client was struggling to answer the verification questions, and that other clients of ANZ have encountered similar difficulties.

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Finally, again to the extent that this is not already misconduct, the ANZ staff member in the Katherine branch was not effectively trained to assist Aboriginal and Torres Strait Islander customers. Mr Tapsall's evidence was that staff members in branches with higher concentrations of indigenous customers are not given any specific training in assisting Aboriginal and Torres Strait Islander customers.

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THE COMMISSIONER: The more general point that I think may emerge, at first sight seems to be a more captious point about language but it is, I think, is rather more important than that. It is to observe the progression from what is described as an identification of a customer's needs to a provoked expression of want by a customer to a sale to the customer. That is, the language of need is equated with the answer that is given to a question: would you like. Many things that – many ways in which that question can be framed where the only answer available is, "Yes, I would like that." And then to go from that to sales. Now, as I say, the point can be dismissed as a merely captious point about language.

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I would be glad if parties who think it appropriate to make submissions about it attempted to grapple with the problem that may lie behind the issues of language which I have identified. I'm provoked by the fact that Ms Do gave evidence, did she not, of her client being asked, in effect, "Do you want to save? What for?"

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MS ORR: Yes.

THE COMMISSIONER: "Furniture." "How much?" "Thousands." "What say we say 5000." Now, the progression is perfectly understandable. You can hear it playing out. But behind the language there are some – I think there may be some quite important and rather deeper questions.

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MS ORR: Commissioner, we invite ANZ to provide written submissions addressing each of the findings we've identified as opening – as being open, and we invite all parties with leave to appear to provide written submissions addressing the following questions which arise from this case study: first, do banks take sufficient steps to

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promote the availability of fee-free accounts to eligible customers? Second, are banks' identification requirements appropriate for Aboriginal and Torres Strait Islander customers? If so, are those identification requirements sufficiently understood and implemented by staff on the ground?

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Third, do financial services entities have in place appropriate policies and procedures to assist Aboriginal and Torres Strait Islander people to overcome obstacles associated with geographical remoteness, to address the cultural barriers to engagement that some of these people face, to address the linguistic barriers to engagement that some of these people face, and to address the obstacles posed by the financial literacy levels of some of these people? And, if appropriate policies and procedures are not in place, what changes should be made to those policies and procedures to deal with those matters? And finally: should more banks have a telephone service staffed by employees with specific training in assisting indigenous consumers? The Commissioner will recall from our opening statement the ICAL line operated by the Commonwealth Bank as an example of one such service.

Commissioner, our final case study concerned ANZ and informal overdrafts offered on some transaction accounts. This case study focused in particular on the position of ANZ customers on Groote Eylandt. The Commission heard evidence from Mr Philip Stewart Bowden, a financial counsellor with Anglicare Northern Territory and from Mr Anthony Tapsall of ANZ. In his oral evidence, Mr Bowden explained that Groote Eylandt has a population of about 1500 people, a high proportion of whom are indigenous. There are three main townships and a privately operated mine. Mr Bowden said that there is a wide range of both literacy and financial literacy levels in the Groote Eylandt community but that most of the clients that he assists have low levels of financial literacy.

As an example, Mr Bowden referred to a client with a negative account balance who had not understood the effect of a negative symbol. The client was confused as to why she was unable to withdraw her funds. Mr Bowden gave evidence that English was not the first language of many of his clients, and that it could easily be the person's third or fourth language. Informal overdrafts, which are sometimes referred to as shadow limits, provide an account holder with the capacity to withdraw more funds from their account than are available on deposit at that point in time. Informal overdrafts attach to certain ANZ accounts unless automatic exclusionary criteria are applied to the account by ANZs IT system. There is no action required by a client to establish an informal overdraft; it attaches to an account at the sole discretion of ANZ.

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Mr Tapsall gave evidence that ANZ customers were notified of the possible availability of an informal overdraft by clause 2.19 of ANZs terms and conditions, a 104 page document. Mr Tapsall agreed that even after reading all 104 pages, a customer would only know whether there was a possibility that they may be offered an informal overdraft. Mr Tapsall accepted that the community would expect ANZ to be more upfront about the prospect of an informal overdraft being attached to an

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account. It was open to ANZ customers to opt out of informal overdrafts by completing the requisite form, by attending at a branch, or via telephone banking.

5 Mr Tapsall gave evidence that at the time of his first statement he did not know that an informal overdraft could be turned off over the phone. Once an account with an informal overdraft becomes overdrawn by \$50 or more a fee of \$6 a day is applied for each business day the account remains overdrawn for a maximum of 10 business days per month. Interest is also charged at the ANZ retail index rate plus a margin of 8.5 per cent. At the time of his witness statement the rate of interest charged by ANZ
10 on overdrawn amounts was 17.2 per cent per annum. Mr Tapsall accepted that it is difficult for a customer to ascertain rate of interest charged on overdrawn accounts.

Mr Bowden gave evidence of the particular circumstances of two of Anglicare Northern Territory's clients. Each client had met with a financial capability worker
15 employed by Anglicare Northern Territory. Mr Bowden had reviewed the financial capability worker's notes and spoken with her before giving evidence. Mr Bowden gave evidence that client 1 was referred to the financial capability worker by Centrelink because the client's family would often take his bankcard and spend
20 money from the client's account, causing the client's account to be overdrawn on multiple occasions. As a consequence, on some occasions the client's Centrelink payments were used to clear the overdrawn amount, leaving him without funds in the account.

The client spoke little to no English and was struggling to understand the concept of
25 an overdraft. The financial capability worker asked a Centrelink worker to act as a translator so as to enable the client to better understand, and the client agreed to turn off the overdraft feature on his account. The financial capability worker assisted the client to talk to the bank and confirm that the client currently had an overdraft and asked for it to be switched off. Once the informal overdraft was removed, the client
30 had a debt of \$600 which was to be progressively paid off from his Centrelink payments. The financial capability worker ensured that the 90 per cent arrangements under the code of operation applied so that only 10 per cent of each Centrelink payment could be applied towards the outstanding debt.

35 Mr Bowden gave evidence that client 2 was referred to the financial capability worker because she wanted to learn how to save, and because her account was overdrawn by \$310. When first referred to Anglicare, the client did not understand what an overdraft was. The financial capability worker provided some education about overdrafts and the client decided to contact the bank to cancel any applicable
40 overdraft. Mr Bowden explained that the financial capability worker assisted the client to call the bank, but was informed that the request could not be made over the phone and that it would be necessary to visit a branch.

45 The financial capability worker drove the client to the branch. At the branch, the client was told that it was possible to cancel the overdraft, but because the account was locked at that time it would be necessary to return to the bank on Friday after the client's Centrelink payment had been deposited so that the outstanding balance could

5 be cleared. Mr Bowden gave evidence that after this payment had been received, the financial capability worker assisted the client to return to the branch and take out cash from her account. 10 per cent of her family benefit payment was used to pay back the overdraft. Because the client took money, leaving the account overdrawn, her account remained locked until the overdraft was paid off.

10 The code of operation to which we referred in our opening statement is a voluntary code to which ANZ is a signatory. Under the code, the default position is that a customer should be able to retain at least 90 per cent of their income support payment or Department of Veterans Affairs payments in any fortnightly period. Mr Tapsall conceded that ANZs current policies in relation to the 90 per cent rules do not meet the requirements of the code. That is because the code places the onus on the bank to implement the 90 per cent arrangements, whereas ANZ only implements
15 such arrangements after a customer has made a request to enter into the 90 per cent arrangements. Mr Tapsall conceded that ANZs current policy was not good enough and that ANZs customers were entitled to expect more. He gave evidence that, as of earlier this week, there were high level discussions underway within ANZ in relation to the application of the code.

20 It's open to the Commissioner to find that ANZ engaged in misconduct by failing to comply with the code of operation, which is a widely adopted benchmark for conduct to which ANZ is a signatory. Specifically, Mr Tapsall conceded that ANZs current policies and procedures in respect of its so-called 90 per cent arrangements do not conform with the code of operation. Contrary to the code, ANZ places the onus on
25 its customers to opt in to the 90 per cent arrangements. It is also open to the Commissioner to find that ANZ may have engaged in misconduct by failing to provide effective disclosure of information relating to the attachment of informal overdrafts to transaction accounts, and the fees and interest charges applicable to informal overdrafts. This conduct may be in breach of clause 3.1(b)(1) of the Code of Banking Practice.
30

It is also open to the Commissioner to find that ANZ may have failed to provide information relating to the attachment of informal overdrafts to transaction accounts and the fees and interest charges applicable to informal overdrafts in an accessible
35 manner, contrary to clause 8, subparagraph (a), of the Code of Banking Practice. As recognised by Mr Tapsall, even after reading a 104 page document, a customer would only be aware of the possibility that they may be offered an informal overdraft. Finally, it is also open to the Commissioner to find that ANZ may have engaged in misconduct by breaching the obligation in clause 3.2 of the Code of
40 Banking Practice to act fairly and reasonably towards its clients.

ANZ continued to charge clients high fees for informal overdrafts in circumstances where the overdraft was not sought by the client and the fees and charges applicable to the informal overdraft were not readily ascertainable. It's also open to the
45 Commissioner to find that ANZs conduct in providing informal overdrafts with high rates of interest and high fees to customers with low incomes on an opt-in rather than opt-out basis was conduct falling below community standards and expectations. It's

open to find that the misconduct and conduct that fell below community standards and expectations was attributable to a culture that was inadequately concerned with placing customers in the most appropriate product and more concerned with revenue enhancement.

5

By granting informal overdrafts on an opt-out rather than opt-in basis, including to accounts held by low income earners, ANZ prioritised its own position over that of some of its customers. I'm sorry, Commissioner, I did say earlier that they were provided to customers with low incomes on an opt-in rather than an opt-out basis. I should have said on an opt-out rather than an opt-in basis. It's open to the Commissioner to find that the misconduct and conduct falling below community standards and expectations was the result of inadequate internal systems at ANZ. While the code of operation anticipates that the default position is that customers who receive a defined benefit and have an account that is overdrawn should be placed on the 90 per cent arrangements, ANZ has no systems for monitoring people who are eligible for the code of operation.

20

We invite all parties with leave to appear to provide written submissions dealing with the following questions: is it appropriate for informal overdrafts to be available in connection with basic accounts? If so, what policies and procedures should banks put in place to minimise the risk of consumer detriment in respect of those products? Would it be appropriate for - - -

25

THE COMMISSIONER: Well, is it a question of appropriate or is it lawful? It may have to be both questions, may it not? Is it (1) appropriate, is it – well, I rather think the order should be different: (1) is it lawful, (2) if lawful, is it appropriate?

30

35

MS ORR: Yes, Commissioner. Is it lawful for informal overdrafts to be offered on an opt-in rather than an opt-out basis to recipients of government benefits in circumstances where the costs of utilising the informal overdrafts are high and where informal overdrafts may not be adequately notified to customers? Is that lawful and is it appropriate? Should any other aspect of the current regulatory regime in respect of informal overdrafts be reformed to minimise the risk of consumer detriment? And do ADIs presently have adequate policies in place for the implementation of the code of operation? Those are the questions we pose, Commissioner.

THE COMMISSIONER: Yes.

40

MS ORR: Now, that concludes our closing address. There are two matters that I want to refer to. One is I need to give you, Commissioner, the document ID for a document I tendered earlier, which was the written document dealing with the CBA processing errors case study.

45

THE COMMISSIONER: Which became an exhibit, I thought.

MS ORR: It was an exhibit and I was going to provide you, Commissioner, with the doc ID.

THE COMMISSIONER: Yes.

MS ORR: I'm sorry, we're just trying to locate what the exhibit number was.

5 THE COMMISSIONER: So am I.

MS ORR: We have it. It is exhibit 4.135.

THE COMMISSIONER: Doubt it's 135, is it? 135 was an eon ago.

10 MS ORR: 4.219.

THE COMMISSIONER: 219.

15 MS ORR: I'm sorry, Commissioner. Now - - -

THE COMMISSIONER: So the doc ID for exhibit 4.219 will be?

MS ORR: It's RCD.9999.0062.0001.

20 THE COMMISSIONER: Thank you.

MS ORR: And the second matter, Commissioner, is I don't believe yet, Commissioner, you have said anything about the timeline for the receipt of written submissions in relation - - -

25 THE COMMISSIONER: No, I haven't.

MS ORR: - - - to this.

30 THE COMMISSIONER: I have not, and I was about to.

MS ORR: Yes. Thank you, Commissioner. I will leave it to you.

35 THE COMMISSIONER: Well, as in past rounds, case study submissions of not more than 20 pages should be provided by those who are the immediate parties to the particular case study no later than 4 pm on Friday 13 July '18. That is to say, as in past rounds, case study submissions, seven days' hence. Submissions of not more than 30 pages in relation to the general questions posed in the course of the final address may be made by any party having leave to appear in this round of hearings no later than 4 pm, Monday 16 July. So case study submissions Friday next, general submissions Monday week, Monday 16 July.

40

45 As I said at the end of the last round of hearings, it is my expectation that documents that a party refers to in its written submissions will be restricted to those documents that have been tendered in the course of the hearings. If a party seeks to refer to a document that was not tendered, that party would need to apply to tender the

document and would need to provide written submissions as to why the document was not tendered during the course of hearings. If such an application were made and granted, and the document was tendered, it would be marked as an exhibit and it would then be published in the ordinary way, as are all the exhibits that are received in the course of the hearings. Now, that being so, I think we adjourn the Commission to – is it 6 August? 6 August next in Melbourne.

MATTER ADJOURNED at 4.06 pm UNTIL MONDAY, 6 AUGUST 2018

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