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TRANSCRIPT OF PROCEEDINGS

O/N H-871454

THE HONOURABLE K. HAYNE AC QC, Commissioner

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

MELBOURNE

9.46 AM, MONDAY, 19 MARCH 2018

Continued from 16.3.18

DAY 6

MS R. ORR QC appears with MS E. DIAS as Counsel Assisting

DR M. COLLINS QC appears with MR M. RUSH, MR N. DE YOUNG and MS K. BRAZENOR for ANZ

MR R. DICK SC appears with MR J. WATSON and MS E. BEECHEY for APRA

MS L. NICHOLS SC appears with MS C. VAN PROCTOR, MR C. TRAN and MR R. CHAILE for ASIC

MR C. SCERRI QC appears with MR P. KULEVSKI for CBA

MS D. HOGAN-DORAN SC appears with MS J. SHEPARD for Aussie Home Loans

MR P. ANASTASSIOU QC appears with MR B. JELLIS for Commonwealth

MS K. REES SC appears with MR D. HEALEY for Citigroup

MR A. SLEVIN appears for Finance Sector Union of Australia

MR D. MACKAY appears for ING Bank

MS W. HARRIS QC appears with MR R. CRAIG, MS K. FOLEY and MS P. THIAGARAJAN for NAB

MS R. DOYLE SC appears with MR D. FAHEY for Smartline Home Loans

MR J. SHEAHAN QC appears with MS P. NESKOVCIN QC and MR J. ARNOTT for Westpac

THE COMMISSIONER: Ms Orr.

MS ORR: The Commission pleases, we have one more witness to call in relation to the home loan part of this block of hearings. That witness is Mr William Ranken.

5

THE COMMISSIONER: Yes. Mr Ranken, would you come into the witness box, please.

10 <WILLIAM RANKEN, AFFIRMED [9.46 am]

<EXAMINATION-IN-CHIEF BY DR COLLINS

15

THE COMMISSIONER: Do sit down, Mr Ranken. Thank you. Yes, Dr Collins.

DR COLLINS: Yes. Thank you, Commissioner.

20 Would you state your full name?---William Andrew Ranken.

Is your business address 833 Collins Street, Docklands?---Yes, it is.

Are you the lead of the homeowners team at the ANZ Banking Group?---Yes I am.

25

Mr Ranken, have you received a summons to appear before the Commission?---Yes, I have.

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

30

Would you hand that to assistant. Your Honour, I tender the summons.

THE COMMISSIONER: Yes. That will be exhibit 1.85, summons to Mr Ranken.

35

EXHIBIT #1.58 SUMMONS TO MR RANKEN

40 DR COLLINS: Mr Ranken, have you made a witness statement for the purpose of these Royal Commission hearings?---Yes, I have.

And do you have a copy of that in the witness box?---Yes, I do.

45 And Commissioner, I tender the witness – I'm sorry, before I do that, is there a correction, Mr Ranken, to be made to the witness statement on page 11 in paragraph 59(b)(vi)?---Yes, there is.

And is the correction to delete the last two words of that subparagraph, “and superannuation”?---Yes.

5 With that correction, Mr Ranken, are the contents of your statement true and correct?---Yes, they are.

Commissioner, I tender the witness statement.

10 THE COMMISSIONER: Mr Ranken, have you been good enough to strike through the words that you wanted corrected and initialled those?---Yes.

Just initial them, if you would. Thank you very much. Exhibit 1.86 witness statement of Mr William Andrew Ranken.

15

EXHIBIT #1.86 WITNESS STATEMENT OF WILLIAM ANDREW RANKEN

20 DR COLLINS: No questions.

THE COMMISSIONER: Yes. Yes, Ms Orr.

25 **<CROSS-EXAMINATION BY MS ORR** **[9.48 am]**

MS ORR: Mr Ranken, you’re responsible for ANZs home loan portfolio; is that right?---Yes, it is.

30 And you estimate that portfolio is currently estimated as being a 265 billion dollar portfolio?---Approximately, yes.

Yes. Now, could I ask you to turn to the first exhibit to your witness statement, Mr Ranken, which is ANZ.800.314.0001?---Yes.

35

Could we have the first and second pages of this document displayed on the screen, please. This is an extract of ANZs 2017 full year results?---Yes, it is.

40 We see from that that, in FY17, ANZ had approximately 1.008 million home loan accounts?---That’s correct.

And this represents an approximately 15.7 per cent share of the home loan market?---That’s correct.

45 And the average loan size was \$262,000?---Yes.

And the average loan to value ratio at initiation was 69 per cent?---Yes.

Could you explain the loan to value ratio, Mr Ranken?---The loan to value ratio is a mathematical figure taken when you compare the size of the loan against the value of the underlying asset.

5 Thank you. Now, ANZ offers home loans through five channels; is that right?---Yes.

And those channels include a broker distribution channel?---Yes.

10 And the proportion of – excuse me – proportion of ANZ home loans that originate from brokers is significant; do you agree?---Yes.

Can I take you to the table at paragraph 42 of your statement. If we could have that page and the following page displayed on the screen, please. You include tables in paragraphs 42 and 43 of your witness statement. And, from the first table, do we see that during the period from 1 October 2016 to 30 September 2017, 177,604 home loan applications were submitted to ANZ?---No.

20 Sorry, I have that figure wrong. Could you explain how many home loans were submitted to ANZ during that period?---No. It's just your wording around applications "submitted". That – that's actually approved sales.

I see. So this isn't just submitted. These are the home loans that went through to approval; is that right?---That is my understanding, yes.

25 Yes, I see. And of those, approximately 102,000 were submitted by brokers?---Yes.

Approved, but submitted by brokers?---Yes.

30 Yes. So that's 58 per cent that were submitted by brokers that went through to approval?---Yes.

And the quantum of home loan sales submitted by brokers was also significant. That's what you deal with in your table in paragraph 14?---Yes.

35 I'm sorry, paragraph 43. We see from that table that during that same period, from 1 October 2016 to 30 September 2017, ANZ sold approximately \$67 billion of home loans?---Yes.

40 And of that amount, almost 38 billion came from brokers?---Yes.

So 56 per cent of the sales during that period?---Yes.

45 You explain in your statement that ANZs procedures for processing and approving home loans originated by brokers are generally the same as for home loans that come through the non-broker channels?---Yes.

But you mention one difference – well, you mention that one difference is that as at March 2017, all broker initiated home loan applications were subject to manual assessment?---That's correct.

5 Is that still the case?---That's still the case, yes.

And is that because they're not processed through your internal mortgage origination system platform?---They have – they have their own specific mortgage origination platform, and we think it's prudent that we should manually assess those applications.

10 Why do you think it's prudent to do that, Mr Ranken?---Because our bank staff aren't present at the initial conversation with the customer, and so we're relying on the broker to submit documents, so we like to manually look at those.

15 Is the process for broker originated home loans still partially automated?---Yes.

In what way? What part of it is automated?---The – the assessment of the – the automated part is where we look for the credit score by giving a query to the credit – to the – to Veda or Equifax, the bureaus – credit bureaus.

20 Yes. So that portion is automated?---That portion is - - -

Any other portion automated?--- - - - automated. The system would automate the sensitisation of the actual payments. So some of those mathematical calculations would be automated as well.

25 Yes. I see. Could I ask you some questions about the steps that ANZ requires a broker to take when submitting a home loan to ANZ. You've annexed to your statement a document called the ANZ Broker Operations Manual. That's the second exhibit to your statement, ANZ.800.314.0003, and you explain in your statement that this document sets out ANZs expectations in relation to any home loan application submitted by a broker; is that right?---Yes.

30 And this document, we see, is dated November 2016?---Yes.

35 Is it still current, this document?---I believe so, yes.

40 Okay. Could I ask you to look at 0048 in that document. We see there under the heading Lending Criteria, 5.1 Income Verification. Do you see that, Mr Ranken?---Yes.

ANZ will only lend to borrowers who can demonstrate an ability to repay with sufficient comfort and over the life of the loan.

45 ?---Yes.

And could you explain what is meant by “with sufficient comfort” in this setting?---We look at a calculation around unencumbered monthly income and if that unencumbered monthly income – when we assess the repayment requirements on a fully sensitised basis if that is sufficient that is deemed sufficient comfort.

5

Yes, I see. Before submitting a home loan application, are brokers required to conduct a loan interview with a potential borrower; is that right?---Yes, it is.

10 And are there requirements about how that home loan is to be conducted?---Yes, there are.

Can I ask you to look at 0073 in this document. You see there 6.3, Loan Interview?---Yes.

15 And 6.3.1 Purpose of the Loan Interview?---Yes.

And I would ask you to look at 6.3.2, During the Loan Interview:

20 *The loan interview must be conducted in person by the approved originator who has been accredited by ANZ and not by any other person. As an approved originator, you are required to be satisfied as to the customer’s ability to service their commitments, ie, get to know your customer and to ensure that the product offered meets the customer’s requirements and objectives.*

25 So we see from that that the broker has to be satisfied as to the customer’s ability to service their commitments?---Yes.

30 And does ANZ have an independent obligation to satisfy itself as to the customer’s ability to service their commitments?---Yes, it is. Yes, we do.

Yes. And you’re aware that that’s a legal obligation that arises under the National Credit Act?---Yes.

35 And can ANZ discharge that obligation by relying on the broker’s assessment of whether the customer has the ability to service the commitments?---I’m not aware that we can, no.

40 So you accept that you have an independent obligation to assess whether the customer has the ability to service their commitments yourself?---Yes.

Thank you. And, as at March 2017, a broker was required to submit three forms of documents to ANZ; is that right?---Specifically three – I’m not sure - - -

45 If it assists, I will direct you to paragraph 48 of your statement. Do you see there, Mr Ranken, a reference to three documents: a completed home loan application form, a statement of financial position signed by the customer, and supporting

documentation?---Yes, I – when you said three, supporting documentation could be many. I was wondering why you limited to three. Sorry.

Sorry. That could be a bundle of documents?---Yes, yes.

5 Yes. So three – well - - -?---Components.

Two individual documents?---Two individuals and then - - -

10 And one bundle of documents?---Yes.

Which is the supporting documentation?---Yes.

And is that still the case that brokers are required to submit that documentation to ANZ?---Yes.

15 And the first two of those documents, the online home loan application form and the statement of financial position, they’re completed by the broker with information that’s to be collected by the broker from the customer?---That’s correct.

20 And the statement of financial position, the second document, is to be signed by both the broker and the customer?---That’s correct.

All right. Now, could we move then to the steps that ANZ takes, having received these – the two documents and the third set of documents from the broker. The documents are entered into ANZs internal system and the assessment process commences; is that right?---The details entered into – already entered into with the online home loan application form by the broker.

25 Yes?---They’re then passed through to ANZs systems via various gateways and things.

Yes. You deal with this in paragraph 52 of your statement. So the information is received into what you’ve described as MOS, which is ANZs mortgage origination system?---Yes.

35 And then the assessment process commences, which you explain involves a combination of automated functions and manual assessment by a member of the ANZ assessments team?---That’s correct.

40 Is that still the case?---That’s still the case, yes.

Yes. Now, the automated component of the process includes the steps you’ve described in paragraph 53 of your statement?---Yes.

45 I see you’ve used the word “including” there in paragraph 53. Were there any other steps to the automated component of the process that you did not refer to in your

statement?---No, I think that's fairly comprehensive. They're – I need – there's one other adjustment to expenses, which is if a customer claims to be living at home rent free that we would then insert a minimum board – board amount.

5 And that's an automated step, is it?---I'm – I'm not sure. I'm not sure if that's automated or manual - - -

Right?--- - - - in the MOS system. So it's – then, other than that, I can't think of any other reason, yes.

10 Okay. And the steps you've referred to here as comprising the automated process as at March 2017 are still the steps within the automated process?---That's correct. At the point of assessment, yes.

15 Yes. And the steps that you describe there include, in 53(b), the initial calculation of uncommitted monthly income, or UMI?---Yes.

And the UMI, in general terms, is the amount of money available to the customer after all monthly expenses have been deducted from their net monthly income?---So an estimate of expenses on a monthly basis. So – because some expenses obviously are annual, and you will need to take a – they may be paid annually, but you need to take a monthly adjustment.

25 So with that qualification then, do you agree that it's the amount of money available to a customer after all estimated monthly expenses have been deducted from their net monthly income?---Yes. Including buffers to those expenses.

Yes?---From what they currently are today.

30 Yes. Buffers applied by ANZ?---Buffers applied by ANZ, yes.

Thank you. And you explain here that the UMI figure incorporates the monthly home loan repayments, a monthly repayment figure for the customer's credit cards, which is calculated as 3 per cent of the customer's total credit card limit?---Yes.

35 And it also incorporates the higher of the customer's stated living expenses or a particular living expenses benchmark used by ANZ, known as the household expenditure measure or HEM benchmark; that's right?---Yes.

40 I will come back to that benchmark, but you also say in 53(c) that in some cases the steps also include the calculation of a loan to value ratio. In which cases is a loan to value ratio calculated?---It's more – I think the – in some cases it's on the modelled estimate of the value being appropriate. So if the – the stated value of that house is within a range that is – our – our systems tell us is within the reasonable range for a house of that type, that nature, and there's no other reasons why we would require a
45 full or kerbside valuation of that thing then we're happy to take the modelled

estimate. If we've got a modelled estimate then we can calculate a LVR off the back of that.

5 I see. But sometimes you don't use the model estimate is that what you're saying?---Correct.

You calculate it specifically?---Sorry?

10 You do a specific calculation rather than relying on the model - - -?---No. It's not the - - -

- - - is that what you mean?--- - - - calculation, it's the - sorry, I just cut - - -

15 Yes?---It's not the calculation. It's the - where we're happy to actually rely on that valuation, the valuation component which allows us to do the calculation. Sometimes, if the value that's given to us seems out of whack with the value of the houses of that nature in that suburb we say, "Sorry, we need a full valuation. We wouldn't do an LVR based on the estimate you've given us."

20 So does that mean an LVR is always done, rather than only done some of the time? It's a question of what it's based on, the valuation accepted or another one that's required?---We would always do an LVR to approve the loan.

25 Yes?---At this stage it's an - if it's an automated calculation, depends actually whether we're happy to rely on the automated valuation.

I see. I see. Thank you. You then deal in paragraph 54 with the key steps of - - -

30 THE COMMISSIONER: Before we leave the calculation of the UMI, can I just make sure I understand 53(b)(ii), the credit card allowance. Assume you have an applicant for a mortgage who has a credit card limit of \$5000. You take to account a repayment of 150 a month, do you?---Yes. That - that sensitisation of the credit card repayment is assuming the full limit is used on the facility.

35 The customer has maxed out the credit card?---Yes.

40 And you are assuming the customer is going to service that at 150 a month, that is, at 1800 a year on a 5000 credit card debt; is that right?---That's right. It's calculated to assume the - they pay it down within five years.

45 Well, it's exactly that I wanted to focus on. On the numbers, as I understand them at least, would 1800 a year pay down a 5000 credit card debt that's accruing interest?---That's the calculation that the systems use. I'm - yes.

I know - - -?---That's my understanding.

5 - - - that's what the system does. What I'm trying to get my head around – and forgive my probably insufficient mathematical grasp of it – but it seemed to me that if the customer is going to make any headway on that credit card debt, it was going to be quite slow headway on the debt. But am I right or wrong?---I think five years is actually the time – the timeframe it would be paid down using that ratio.

I see?---Yes.

10 What's the credit card interest rate at the moment on most of your cards? What's the rate?---I actually – I'm not a – I don't know the credit card rates. There's a range. I think there's - - -

You pay it off as soon as it comes in, like some others do, Mr Ranken?---Absolutely.

15 Yes. Not everybody does. Yes. Sorry, Ms Orr. Do go on.

20 MS ORR: No, Commissioner. I wanted to move to the manual component of the assessment process which you deal with in paragraph 54 of your statement. And, again, you say that you've listed the key steps which include the 11 steps listed in paragraph 14. Are there any other steps – I'm sorry - - -?---Sorry.

- - - in paragraph 54?---Right.

25 So I am in paragraph 54. You say that the key steps of the manual component of the assessment process include (a) to (k). So there are 11 key steps?---Yes.

30 And are there any other steps in addition to those 11 that you've listed there?---If there are – I couldn't definitely say there are no others. If there's refer-out rules that the system picks up in terms of the application, the assessor would be required to refer out rules and satisfy themselves as to why the loan should keep going through. So I think there's a – they're the key ones.

35 So that sort of step that you've described is on the margins, is it? That only happens in some cases, and these are the key steps that should occur in each instance of manual assessment?---These are – yes, yes.

Okay. And are these still the steps that ANZ takes in its manual component of the assessment process?---Yes, they are.

40 And one of the steps that you've referred to in 54(c) is a review of the application against the customer's signed statement of financial position to check if the customer's financial information has been correctly recorded by the broker in the application. You see that?---Yes.

45 And another is the verification of the customer's income – this is 54(d), as stated in the signed statement of financial position, using the documentation provided by the broker?---Yes.

Yes. Could I take you to your third exhibit, which is ANZs mortgage credit requirement policy, ANZ.800.282.0001. Now, this document sets out ANZs credit requirements in relation to home loans?---Yes.

5 And is it still current, Mr Ranken?---I believe it is. Actually, there might be some minor – I would need to check that. We do update and review aspects to the requirements. I'm not sure.

Okay. So ANZ employees are required to follow this policy?---Yes, they are.

10 Yes?---Within – so there's – it's a – it's a strict policy.

Yes?---And then our assessors have a credit authority discretion and they can make sort of overrides to that policy if – to within discretion that's deemed reasonable.

15 Yes. I see. But in the absence of an override, this sets out - - -?---Yes.

- - - the credit requirements that are to be followed?---Yes, it does.

20 Okay. Can I ask you to look at 0070. And could we have 0070 and 0071 on the screen together, please. Do you see there, Mr Ranken, 5.4, Other Income Sources?---Yes.

So:

25 *ANZ recognises in this document that customers may have a variety of sources of income.*

?---Yes.

30 And one of those sources is government benefits?---Yes.

And at 0072, we see the way this document deals with government benefits, down the bottom of the page, Government Income Sources:

35 *Government benefits may be used in servicing calculations on a limited basis as they are designed to provide a very basic standard of living. Government benefits are split into three categories: benefits that may comprise the applicant's total income, ie, benefit can be the sole source of the applicant's*
40 *income; government benefits that must comprise less than 50 per cent of the applicant's total income, and can be accepted on a case by case basis, ie, the applicant must have other income aside from government benefits –*

45 we will see over the page. And (3), the third form is government benefits that are unacceptable. Do you see that?---Yes.

So we see from the table on this page that a pension is a government benefit that is permitted by ANZ to comprise the customer's total income?---That is correct.

Yes. And:

5

This form of income is to be verified by a letter from Centrelink within 60 days of the date on the signed statement of position that confirms ongoing payments, or a three month transaction history from the customer's bank account showing consistent payments over that three-month period.

10

?---That's correct.

Yes. So those are ANZs requirements in relation to verification of income that comes as a government pension?---Correct.

15

Thank you. Now, could I return to your statement at 54, back into the steps that you've listed of the manual process. Now, there is no reference in any of the 11 steps that you've identified in paragraph 54, to verifying the customer's expenses; is that right?---54. Customer's income – that's – that's correct.

20

And that's because that wasn't part of the process, and isn't part of the process at ANZ. The only reference we see to something along those lines is in 54(f):

25

Verification of the customer's ANZ home loan, personal loan, credit card and overdraft liabilities. The assessor would also verify any other financial institution liabilities which were being refinanced as part of the loan application.

30

So a very limited form of verification restricted to ANZ loan products or other financial institution liabilities that are being refinanced within the loan application?---That's correct. Although at (h), that wording:

...confirmation that the higher of the customer's stated living expenses.

35

We see reference to the HEM benchmark as a form of indirect verification.

40

Could you explain that? How does the HEM benchmark – how does moving away from the customer's declared expenses to the HEM benchmark verify the expenses declared by the customer in the information provided by the broker?---Yes. It's a form of what we refer to as indirect verification. If the customer has had the conversation with the broker and they've gone through components of their living expenses and said, "Here is my total", we then indirectly verify if that is reasonable by reference to a benchmark, such that if the customer has stated it's \$1000 and the benchmark for a customer in that sort of – with that number of dependants, whether single or a couple, etcetera, is below that, we would apply the higher benchmark level.

45

I want to suggest to you, Mr Ranken, that is not a verification step at all. That is not about verifying what the customer has told the broker about their expenses. It's, instead, connected to the suitability assessment because in some cases you don't accept the customer's declared expenses. You move them up to the HEM
5 benchmark for the purposes of assessing suitability for the loan, but you do nothing to verify the expenses that are recorded by the broker in the documentation provided to ANZ?---Other than to ensure that the statement as to what those living expenses are is also signed by the customer, we don't verify beyond that.

10 Yes. So all that the ANZ employee does is check that the expenses recorded in the application are the same as those recorded in the statement of financial position. There's a cross-check between those two documents; is that right?---That's correct.

15 And you would agree that that's not a verification of the information contained in the statement of financial position provided by the broker?---It's not a direct verification, no.

20 It's not a direct or an indirect verification, is it, Mr Ranken?---I – I still personally think indirect verification reference to a benchmark is a form of indirect verification, but it's wording, in my - - -

25 So you don't accept what I put to you that that's all about assessment of serviceability rather than checking that the information contained in the form about the customer's expenses is, in fact, accurate?---Yes. The primary purpose of obtaining the expenses is for the serviceability.

30 Yes. Thank you. But the National Credit Act prohibited, at this time that your statement is directed to in March 2017 – and still prohibits – ANZ from entering into a loan with a customer without making reasonable inquiries about the customer's financial situation and taking reasonable steps to verify the customer's financial situation. You're aware of that?---Yes, I am.

35 And you're aware that the customer's financial situation includes not only the customer's income but the customer's expenses?---Yes.

Are you aware, Mr Ranken, of a regulatory guide published by ASIC which is Regulatory Guide 209 Credit Licensing Responsible Lending Conduct?---Yes, I am.

40 Could I ask that that be brought up. It's document RCD.0021.0001.0088. And could I take you first to page 16 of this document, Mr Ranken?---Is that the best, it is really hard to read on this - - -

45 We can move in onto parts of it. It is 209.32 that I wanted to ask you questions about. You said you were familiar with this document?---Yes.

Yes. So you understand this is the guidance provided by ASIC to assist entities of complying under the National Credit Act?---Yes. It's about their – their expectations of - - -

5 Yes?---Yes.

Yes. Do you accept these are reasonable expectations in this document? Do you disagree with any of them?---There's aspects of it that I personally still wonder how it would be possible to operationalise to the letter that they've got there.

10

And what are they, Mr Ranken?---It's – it's their concept of scalability, specifically where they say every – I think the words they use in the document is “every situation must be considered on its merits”, and then your procedures must be appropriate to that.

15

And what do you disagree with about that?---I don't disagree, it's just that I find – just putting an operational hat on, it makes it very complex to design processes that, you know, make sure you adhere to that in every single circumstance. There's so many variations on people's circumstances.

20

Do you accept that you need to adhere to it in every single circumstance involving every single customer?---We need to take reasonable steps to – absolutely, reasonable steps, absolutely.

25

Yes. So I just want to understand the scalability problem. Is it because ANZ has so many customers that it's difficult to have systems in place that permit that?---It's – it's not the number, it's the – the variations in individual customer circumstances, and just the – you know, the subjective nature of reasonable, you know, that type of thing.

30

Right. Well, if any of these parts that I refer you to, Mr Ranken, are parts that you take issue with, you will tell me as we go?---Yes.

Yes. So can we start with - - -

35

THE COMMISSIONER: Just before we leave that, can I just come back to the scalability issue that you think presents operational difficulties. It depends whether you treat scalability as something requiring a degree of variation over a curve, whether you take the top end of the curve, doesn't it, Mr Ranken? There's no difficulty if you took the top end of the curve, that is, the worst case scenario and said, “Right, regardless, we're going to apply this in the worst – the standards that would apply to the worst possible case, the hardest possible case, we're going to apply those across the board.” There would be no difficulty about that, would there?---You – you could do that. The reality of that situation would be for simple cases we would be having very onerous processes and procedures, the complexity, the cost and the time of implementing that for every application would be significant.

45

There's a trade-off, isn't there?---Yes. There's a customer benefit trade-off, yes.

Or at least the bank regards there as being a trade-off; is that right?---Regards it and – yes, we have experience where that would be the case.

5

Let me just make plain what lies behind the question, because at least an available point of view may be – I don't say it is – an available point of view may be that the trade-off is between administrative convenience and obeying the law. Now, that's a very awkward trade-off if that's the way it's seen, isn't it, Mr Ranken?---I think ANZ takes its obligations, legal, regulatory and others, very, very seriously. We're very focused on complying with those. We want to do that in a reasonable level, and I guess it's down to that subject to nature of the word "reasonable".

10

Yes.

15 MS ORR: Just because you've raised this part of the document, Mr Ranken, I will show you page 12, which deals with scalability of the reasonable inquiries and verification obligations, to confirm that that is the part of the document that you're referring to. Do you see there the reference to:

20

We consider –

ASIC considers –

25

that the obligation to make reasonable inquiries and take reasonable steps to verify information is scalable. That is, what you need to do to meet these obligations in relation to a particular consumer will vary depending on the circumstances.

?---Yes.

30

Yes. Now, is that the part of the document that you were referring to?---Yes.

Yes. All right. Now, could I take you back to page 16. And 209.32. And you see there that ASIC tells us that:

35

Reasonable inquiries about a consumer's financial situation will generally include –

in (b):

40

The extent of the consumer's fixed expenses (such as rent, repayment of existing debts, child support and recurring expenses such as insurance).

And in 209.33 below, which we will need to expand:

45

Depending on the circumstances of the particular consumer, and the kind of credit contract or consumer lease they may acquire, reasonable inquiries could

also include the consumer's other expenditure that may be discretionary (such as entertainment, take away food, alcohol, tobacco and gambling)

5 Now, do you agree that these are things that ANZ should be verifying when it is verifying the financial situation of the consumer in accordance with its statutory obligation under the National Credit Act?---Our processes on those categories are to have a conversation with the customer, understand what their stated expenses are and then, to the extent to which we need to consider whether they're at a reasonable level, we reference to the benchmark.

10 But you don't have a conversation with the customer when the information comes from a broker, do you?---The broker has that conversation with the customer as part of their initial interview.

15 And, as we've established, you don't do anything to verify what the broker tells you about the customer's expenses. You don't do anything to check that that information accurately represents the customer's expenses?---Their general living expenses, no.

20 THE COMMISSIONER: Why is it in the broker's interest to pin the customer down? Why is it in the broker's interest to interrogate the customer when the customer reports living expenses as X dollars a month? What's in it for the broker to say, "Are you sure? Is that right"?---Up to the individual broker, I suppose. They're acting as agent for the customer.

25 Well, are they? There's a nice question about who's agent is who – who is the agent for who in this transaction, but we can have a debate about that later. But do you agree with me there is no incentive for the broker to interrogate the customer about expenses?---They have their own obligations under their own licensing requirements to ensure the product's not suitable for the customer and understand their customer's position.

30 And there's no incentive, because they know the bank will default to higher of declared expenses or HEM; is that right?---Yes.

35 And they know that the bank will do that, or at least it would be open to a broker to conclude that the bank defaulting to HEM was seen by the bank as the bank meeting its obligations about responsible lending; is that right?---You still require the initial conversation with the customer about their living expenses, and then referencing it to the HEM.

40 Yes?---It's both steps.

45 Having interrupted you, let me take you back to just this question of UMI, the uncommitted monthly income, isn't it?---Yes.

Is that the proper understanding of the - - -?---Yes.

The acronym. We all end up talking in acronyms. You said, in calculating UMI, the bank would sometimes apply buffers - - -?---Correct.

- - - to some of the numbers that go into that calculation?---Yes, that's true.

5

Now, if I am treading on matters of commercial confidence, you need to speak up. Do you understand me? If I am about to tread into matters where you need to be a little circumspect - - -?---Okay.

10 - - - you should speak up, then we will decide whether you can be circumspect. But interest rates are historically low; do you agree?---I do.

If you take account of repayments at today's level, you are taking account of repayments geared to historically low interest rates; is that right?---Yes.

15

Does the bank ordinarily apply a buffer to repayment levels?---Yes, we do.

20 Does it apply a buffer that would have regard to what would be the historical general level of interest rates?---It's a reference to the - yes, long-term average through the cycle is the phrase - - -

Is of the order of about 7 plus per cent, I think?---7.25, correct.

25 7.25, is it? Yes?---So the buffer those - we - there's two parts of the buffer. That's the floor. There's also an actual buffer to the effective rate the customer's paying. So if the customer's paying 4 per cent, we have a buffer of 2.25 per cent to that, which actually gets you only to 6.25. Hence, we apply a floor of 7.25. If interest rates are higher, 6 per cent, we would apply a buffer of 2.25 to 6 which would be 8.25. So we would assess it at the 8.25.

30

Yes. Go on, Ms Orr.

MS ORR: Could I ask that you look at page 20 of this document, Mr Ranken, and clause 209.46 on that page. You see there that ASIC tells ANZ and others that:

35

You are obliged to take reasonable steps to verify a consumer's financial situation. Generally, this will require some positive steps to verify the information provided by the consumer.

40 Do you agree with that?---Yes.

And do you agree that ANZ does not take positive steps to verify the customer's expenses?---No, not all expenses.

45 I'm sorry. You agree, but you confine your answer to only some of the customer's expenses; is that right?---So the general living expenses, which is one component of customer's living expenses as we've repeated many times today, we take their stated

level that they, you know, they attest to and then we reference that to the HEM benchmark.

5 And you would agree that where a customer provides information about their expenses that is inconsistent with other information that ANZ holds about the customer, such as information contained in bank statements, it's important to make further inquiries in the verification of the information?---No, I don't agree with that statement.

10 So when the customer's expenses are inconsistent with bank statements that ANZ holds, you don't think that it's necessary to take further steps to deal with that inconsistency?---No, not necessarily.

15 What, does ANZ ignore that inconsistency?---The fact there's an inconsistency of itself doesn't mean that the customer's stated living expenses are incorrect.

20 Well, what does it mean? It should cause you to question what the customer has told the broker or what the broker has recorded for the customer, should it not?---Well, it's about what's the most appropriate step to take to get ourselves comfortable the customer's stated living expenses are appropriate.

25 Yes. So what I'm putting to you is that you've got bank accounts to show that the expenses are different to what is recorded in the documents submitted by the broker. You say you do nothing about that?---There are – we – our processes are we do nothing. There are transactions on those statements that are inconsistent with the statement of position, and we don't do anything - - -

Well, do you think that's satisfactory, Mr Ranken?---I personally do, yes.

30 And why is that? Why do you think that, holding two pieces of inconsistent information about the customer's expenses, ANZ can choose to ignore that and the consequences of that for the assessment of whether that loan is not unsuitable for the customer?---Yes. We're talking about the manual review of paper-based bank statements, and to use those to verify a customer's statement of position, particularly
35 general living expenses, would be highly complex, very time-consuming, very costly, and ultimately not necessarily that helpful.

40 So as I understand your answer, it's too hard to do that. It's too hard to do anything about an inconsistency, so it's ignored?---It's not that it's too hard, it's actually that it – it is hard, but it's not that it's too hard. It's too hard, but there's other ways to get to a better level of comfort around a customer's expenses.

45 Well, what are those ways? How do you deal with a situation where you've got bank statements showing different expenditure by the customer, higher expenditure by the customer than is recorded in the documents submitted by the broker? What are the other ways of dealing with that?---That's the purpose of the customer interview guide. We have the – the – sorry, the initial customer interview. You have the

discussion with the customer, what are their stated living – their general living expenses, discuss that with them in a variety of categories to get a thorough discussion, and then reference the total amount to an independently verified, statistically relevant, benchmark.

5

I just want to be very clear, make sure that I understand this. You're saying that as a result of that interview information is put in a document provided by the broker, and if that information is contradictory or inconsistent with other information that ANZ holds, you ignore that other information that ANZ holds and proceed with what you've been told by the broker, and whatever consequences arise for your serviceability assessment of the loan for the customer, ANZ is not concerned about that?---Sorry, I just – there was something – could you start that - - -

10

Sorry, it was far too long a question?---Yes, sorry.

15

I just want to make sure that your evidence is when you have a statement of financial position submitted by a broker that contains information about a customer's expenses and you have your own information about the customer's expenses, such as bank statements, which is inconsistent with that, you ignore your own information despite the fact that that may mean that the customer's expenses have been incorrectly stated, and therefore the assessment of whether that product is suitable for the customer may well go awry?---There's two adjustments I would probably make to your statement.

20

Thank you?---The first is we're using the customer's stated expenses - - -

25

Yes?--- - - - on their statement of position, which is signed by the customer - - -

30

Yes?--- - - - as being true and correct. And secondly, there's another part to your – I've lost that train of thought.

Well, I was asking you about the consequences of this for the assessment of suitability of the product?---Yes. So there was another one where you talked about actually having bank statements or within our possession. If they were ANZ accounts - - -

35

Yes?--- - - - and we have those in a digital form.

40

Yes?---At the moment we're trialling the use of exactly that, looking at how do we categorise expenses, general living expenses, to be able to prepopulate a statement of position for the customer to allow us to have a more rich conversation. You would still need – so we wouldn't be ignoring them in that case, but at the same point you would still be – that would be the basis of your conversation, rather than a blank sheet of paper. If the customer said, "Actually, no, these aren't the items, this is my general living expenses," and put that to the statement position, signed it, submitted it to us, we wouldn't do anything further.

45

THE COMMISSIONER: In over half of the conversations, it's not your conversation, is it It's the broker's conversation?---Correct.

5 Yes. And the broker – I thought we had agreed, correct me if I'm wrong – there is nothing in it for the broker to interrogate what the witness – what the witness – what the customer is telling the broker?---Other than their own licensing obligations.

MS ORR: I want to put to you, Mr Ranken, that your processes or your lack of processes in relation to the verification of a customer's expenses are non-compliant with the National Credit Act responsible lending obligations, and with this regulatory guide issued by ASIC?---I – I disagree. I think in a – in a practical example, if you have – a bank statement has a series of transactions on it, you have to identify which of those transactions – to the extent of what's more appropriate, manual review of bank statements versus taking a customer's stated level of expenses and comparing that to an independently provided statistical benchmark, we're interrogating a customer's bank statements, we're identifying individual transactions, we probably need to go back 12 months, because some expenses are paid annually, not monthly. We then need to ask customers, you know, what the nature of that transaction was individually, if it was above or below their – what we deemed their reasonable level. It would be a very highly complex – complex situation. You would end up then documenting various transactions individually, as from the customer, as to why they were or were not – were not ongoing. If they're one-off, etcetera, discretionary nature – so discretionary nature items that they propose not to continue with. You have all that documentation, they then sign that rationale, and you're back to where we are at the moment which is relying on a signed statement from the customer in any case.

Well, given how much you rely on that signed statement, Mr Ranken, why do you bother asking the broker to submit the documentation? Because I think what we've just heard is it's put to one side, it's not analysed by ANZ, certainly not analysed from an expenses perspective. Why do you bother asking the broker to provide it?---We ask them to provide the documentation for verification of income.

Of income?---And to the extent there's other financial liabilities that we're refinancing as part of the loan.

I see. I want to come back to the HEM now, Mr Ranken, because in your explanation of the steps involved in the automation process, one of them in 54(h) of your statement, which you've already referred to, is confirmation that the higher of the customer's stated living expenses or the income adjusted HEM benchmark had been included in the application. And would you agree – you may have heard evidence about this already – would you agree that the HEM is a conservative measure of expenditure, rather than a typical or average figure, which means that many consumers will have higher expenses than HEM?---And – and some consumers would have lower as well.

Do you agree with my proposition to you, Mr Ranken, that it's not typical or average, it's conservative, and, therefore, many consumers would have higher expenses than HEM?---In terms of – it depends on the category of expenses within HEM. So there's three categories – so the HEM is based on an underlying housing survey done by the ABS. The individual expenses in that have been categorised into three broad buckets: absolute basic, discretionary basic, and then discretionary.

Yes?---The absolute basic expenses, the HEM that's currently used is based on the 50th percentile or the median average of that category. So it's not the average per se, it's the median. So 50 per cent of observations are above that number and 50 per cent are below that number. With the discretionary basics we take the 25th percentile. So one in three Australians spend more than that on those discretionary basic categories, and one in four Australians would spend less than that.

Do you accept ASICs characterisation of HEM as a conservative measure of expenditure?---I – I can only really state the statistical basis it's on. Everyone is going to have their opinion as to whether that's, you know, conservative or otherwise.

Well, what's ANZs opinion on it, Mr Ranken? Does ANZ accept that it's a conservative measure of expenditure?---ANZ has a view that you could improve the level of benchmark that the HEM benchmark has been set at, yes.

Improve in that it should be higher?---Yes. Different components of it, yes.

Yes. ANZs reliance on the HEM has been significant, hasn't it?---Yes.

Both before and after ASIC put out its Review of Broker Remuneration report, which included quite a bit of discussion on HEM?---That's correct.

Could I ask that you be shown a document which is not annexed to your statement. It's ANZ.800.321.0092. Now, in April 2017, KPMG undertook a review of ANZs home lending processes?---Yes.

And they did that at the request of APRA?---That's correct.

And this is a document that produces the results of that review?---Correct.

And you're familiar with this document, Mr Ranken?---Yes, I am.

And could I ask that you look first at 0093. And we see there, from the covering letter, that the targeted review was:

A review of ANZs policies, procedures and controls to ensure that borrower financial information received and captured as part of the home loan underwriting process was complete and accurate in ANZs systems.

Yes. Now, could you turn to 0095. And do you see there under 1.1, Exceptions and Findings, that:

5 *KPMG undertook a detailed review of a sample of 418 loan files, and for those*
418 files KPMG made 138 separate observations, and 68 of those related to
incomplete or incorrect borrower financial information used in the bank's
assessment of the home loan, with 24 of the 68 due to incomplete borrower
income being recorded as a result of the bank's practice of only verifying
10 *income to the extent necessary to demonstrate that uncommitted monthly*
income is positive. In 10 of the 68 cases there would have been negative UMI
had the correct financial information been used.

Now, could I ask you to move to 0096. And do you see there under the table that KPMG expressed concerns about the highly manual nature of the systems and loan
15 assessment process at ANZ which made it prone to error?---Yes.

And KPMG made a number of comments and recommendations in relation to a variety of matters but they included ANZs processes for the verification of income, liabilities and expenses; is that right?---Yes.
20

And could I ask you to look at 0100. Do you see there under the heading Expenses in the table, ANZ Policy:

25 *Loan applicants are required to state their monthly expenses on the statement*
of financial position. Monthly expenses are broken down as follows: credit
commitments, rent/board, insurances, child maintenance, general living
expenses and "other". Credit commitments are verified for ANZ liabilities but
are subject to the same limitations for non-ANZ liabilities as outlined above.
30 *Other expenses such as rent or board and insurance are not verified to external*
evidence. Other general living expenses are not further broken down. They
are not verified as such, but are compared with an income-linked household
expenditure measure and ANZ adopts the higher of the two amounts.

And that's all I need take you to there. I see that there is a redaction. And then if I
35 could take you to .132 and 131. If they could be displayed on the screen at the same
time, we see what you've already told us: KPMG found that the officer or assessor
would use the amount stated by the customer on the statement of position. I will just
wait until that comes up so you can see that, but I think that has been your evidence
already. Yes. In which case we can move straight to 103, where we see the
40 percentage of files that KPMG reported involved the use of the HEM. So at 103, do
you see there under Verification of Expenses, Description of Finding:

45 *There is an inherent difficulty in verifying the completeness of a customer's*
living expenses. The bank's policy is to adopt the higher of customer stated
living expenses or the HEM benchmark. We noted a heavy reliance on the
HEM benchmark with 73 per cent of files tested defaulting to the benchmark.

Do you think that remains the sort of percentage that you see today in ANZ files resorting to the HEM benchmark?---Yes, it is.

5 Yes. And KPMG made a number of recommendations about your policies in relation to the verification of expenses. You will see those at 101. Do you see under ANZ Specific, the first dot point:

10 *ANZ could ask customers to provide a more detailed breakdown of expenses. This would provide ANZ with greater insight and assist customers in ensuring stated expenses are complete and accurate. ANZ could ask customers to provide documentary evidence of their major expenses.*

And then the third dot point:

15 *In order to address the risk that customers fail to disclose major items of expenditure, ANZ could ask customers to supply bank statements for their main transaction accounts as well as credit card statements.*

Final dot point:

20 *Bank statements could also be reviewed for general account conduct to identify where there are any obvious inconsistencies between a customer's stated expenses and transaction history, or any general indicators of financial stress.*

25 Now – so these are the recommendations made by KPMG. In light of the evidence you've given today, I assume that ANZ will not be taking up any of these recommendations?---No, it's only the final one, that fourth dot point – dot point. The other three are in place or being trialled at the moment.

30 And why is that, given that you say it's too hard to look at these documents once you have them and you should be entitled to just rely on the statement of financial position?---Because it's – that fourth one is the only one that really pertains to general living expenses. If you look at the first one – do you – I can – do you want me to go through what we're doing.

35 Yes, please, yes?---So if we look at the first one, breaking down detailed expenses, that's in place now across all our channels, and we've taken general living expenses and broken that down into 15 separate categories. The results to date have been about, I suppose, balanced, so positive and negative. On the one hand, customers and bankers really appreciate the ability of having the further detail of expense
40 breakdown means they have a richer conversation with the customers and customers report having a better understanding of what their expenses are. The actual outcomes are, though, that the amount that's still – that have to default to HEM, as a result of even breaking that down further, is it hasn't changed a bit. What it has done is
45 actually increased the number of customers who have stated expenses outside of the general living expense bucket. So things like insurances that wouldn't have sat

within the general living expense bucket. So people generally – sort of just reflective of the fact that customers generally seem to understate their expenses.

5 Is there anything else you would like to say about these - - -?---In the second dot point, documentary evidence of major expenses. We're – we're trialling that at the moment, just within – I think – our proprietary channels, looking at three-month bank statements. The trick there is can you identify from the transaction history, you know, the way that transaction is actually recorded, whether it's actually enough to allow you to say, "That's your rent or that's a child maintenance expense", or what it is. But, again, those are for the bits that are outside the general living expenses category.

10 And that's not for the broker channel?---We haven't – so we – we tend to trial new things within our proprietary channel first until we bed down the process and get rid of all the bugs before we roll it out to the broker channel. Transaction credit card statements could – high level review, under – yes, the credit commitment. So that's – that third one is around can we see payments to other financial institutions as a way of identifying if there's a previously undisclosed existing home loan or personal loan, etcetera. Yes. So those three are either in place or underway – being trialled.

20 Being trialled in the - - -

THE COMMISSIONER: The proprietary channel.

25 MS ORR: - - - proprietary division?---Yes. And if they're successful we would – we would likely roll that out if we can – you know, make sure that the process works appropriately and is, you know, achieving all the things it needs to.

30 And the fourth dot point is not being taken up, the idea that you could review bank statements for general account conduct to identify any obvious inconsistencies?---And that's the one where, as I've previously stated, the complexity, the time, the cost for the benefit, we don't think that that's a material uplift to having the detailed, you know, in combination with the first one, having the detailed conversation with the customer, then attesting to that, and signing that's the correct statement of position and us referencing that to an independent statistical benchmark.

35 So is the answer yes, it's not being taken up at the moment?---It's not being taken up. There is – there is one exception to that, I suppose, is – and in this report we talked to some strategic solutions we're looking at, where ultimately a lot of this hangs on the quality of that conversation you're having with the customer about their stated living expenses. We are investing heavily towards – it requires industry initiative – where you could actually transfer digitally those transaction amounts between banks such that we could – and we could then look at those individual transactions, categorise them into different buckets of expenses, bring that together in a summarised position and present that as a prepopulated statement of position to a customer based on their, you know, whether it's three months, six months or probably likely 12 months, and

5 that would then form the basis of a good conversation with the customer, here is your last 12 months of expenses neatly summarised and characterised across a range of bank statements or bank accounts you have, including credit cards. You still need to have the conversation, how many of those are one off and non-recurring, they would still have to refer to – ultimately we would still be relying on the customer’s stated number and then we would still, prudently, have to refer that to an independent benchmark.

10 THE COMMISSIONER: Just staying with those first three dot points, as you say, you rolled them out beginning to roll them out in the proprietary channel. How would they work in the broker channel? Would you have the broker do that or would the bank do that?---The first one is rolled out in – in all channels. So it’s the breakdown of living expenses. So the brokers do that already.

15 You’re dependent on the broker there. What about the second and third?---How would you roll it out in the broker channel?

20 Broker channel?---Yes, I – I would be hypothesising about a process that we haven’t yet bedded down in the proprietary. We’re only in trial.

Because unless the bank checks those things, what’s the value of rolling it out and asking brokers to do it? Ultimately, it’s the bank that’s going to have to do the checking, isn’t it?---Sure. If we can make it easier for the brokers to even have that conversation, say, via, you know, the prepopulated statement of financial position, that would be great.

30 The word “conversation” is commonly used in this field of discourse. I understand that. But can I come back to that basic question: what’s in it for the broker to make sure that the client is telling the truth or facing the truth, not that the client’s misleading – but that the client is facing the truth of his/her expenditure? There’s nothing in it for the broker, is there?---If the – if the broker, at the moment, is writing a lot of loans that go into default within a short period of time, that would warrant – that would come up on our dashboards and would warrant a detailed file review of their files, and if it was seen that they weren’t exercising their obligations
35 appropriately we would look to, you know, consequence manage of that, which could be disaccreditation with ANZ.

MS ORR: Commissioner, I tender this document.

40 THE COMMISSIONER: That will be exhibit 1.87. ANZ.800.321.0092, KPMG targeted review 2016/2017.

45 **EXHIBIT #1.87 KPMG TARGETED REVIEW 2016/2017 (ANZ.800.321.0092)**

MS ORR: Could I ask you also to look at ANZ.800.321.0214, Mr Ranken?---Have I got that?

5 It will come up now. This is a letter dated 18 September 2017 from ANZ to APRA dealing with the findings of the KPMG review. Are you familiar with that document?---Yes, I am.

I tender that document, Commissioner.

10 THE COMMISSIONER: Exhibit 1.88, ANZ.800.321.0124 letter, ANZ to Horton, APRA.

15 **EXHIBIT #1.88 ANZ TO HORTON AND APRA (ANZ.800.321.0124)**

MS ORR: I want to return to deal with one final limb of the automated – I’m sorry, the manual component of the process you’ve described in your statement, Mr Ranken, and that’s referred to in 54(j) of your statement. One of the steps is the
20 recalculation of the customer’s UMI, the uncommitted monthly income based on the financial information determined through the steps above?---Yes.

25 Yes. So having done all of those steps, the uncommitted monthly income is revisited; is that right?---Yes, it is.

Yes. And could I ask you to go back to your third exhibit, ANZ.800.282.0001. This is the mortgage credit requirements. And I will ask that you be shown 0048 in that document. We see there that this part of the mortgage credit requirements deals with assessing the ability to repay:
30

Credit facilities are only to be offered to borrowers who can demonstrate an ability to repay over the life of the loan.

35 And the way that’s done is by looking at this uncommitted monthly income. If the UMI is positive, then the customer is considered to have the capacity to repay. And the UMI, as we’ve discussed, is determined by deducting from net income personal living expenses, credit commitments, and any other regular fixed commitments the borrower may have. This is ANZs policy about assessing the ability to repay?---Yes.

40 And are you familiar, Mr Ranken, with section 131 of the National Credit Act and the obligation it contains to assess a credit contract as unsuitable for a customer if a customer could only comply with their financial obligations under the contract with substantial hardship?---Yes.

45 And are you aware of the statutory presumption in section 131 subsection (3) that a credit contract will be unsuitable for a customer if the customer could only comply

with their obligations under the credit contract by selling their principal place of residence?---Yes.

5 And ANZs assumption that a customer has the capacity to repay based only on whether the UMI is positive, I want to put to you is rather too broad-brush an approach to deal with the responsible lending obligations that I've just directed you to?---In what way?

10 Well, how does this take into account substantial hardship to the customer? There is a positive figure at the end of the day. We don't know what that positive figure is. It might be small, but there is a positive amount and therefore ANZ assesses that there is an ability to repay. Where in that does ANZ assess whether that leaves the customer, nonetheless, in a position of substantial hardship to meet their obligations under the contract?---Yes. So it looks at – that calculation of UMI looks at firstly the
15 items of income, to the extent that any of those items of income are seasonal or potentially have a level of volatility in them, there's buffers applied to those levels of income so we reduce those amounts. So we're sensitising the income level. Then we look at the major expense items and then general living expenses. We take the higher of what the customer says. So if the customer says, "These are my living
20 expenses, those are my income – that's my income level," we've sensitised down the income, we've then sensitised the existing – any existing credit limit – you know, obligations they have for other credit contracts such as if they've got existing home loans or personal loans or credit cards. We then put buffers above what they're currently paying on those to ensure they can meet those obligations. Plus, we
25 sensitise the repayments for the credit contract being assessed for at the higher of the – you know, the floor of 7.25 or a buffer of 2.25 on the customer's effective rate and then we take their general expenses and compare that to the benchmark. So it's a sensitised calculation.

30 So, accepting all those sensitivities factored into it, you don't accept it is too blunt an approach to ensure there is some figure left, some positive figure left, as the UMI at the end of this?---No. Because it – the reality is within that calculation, there would be large – or, you know, there would be more than positive actual balances there.

35 All right, Mr Ranken. I want to ask you about the evidence of Mr Robert Regan. You heard, I hope, the evidence of Mr Regan - - -?---Yes, I did.

40 - - - on Friday afternoon. And you've read the witness statement of Mr Regan?---Yes, I have.

And the bundle of documents that Mr Regan provided to his broker and which were then provided on to ANZ are annexed to your witness statement; is that right?---Yes, they are. Although, if I recall in his witness statement, he talks about utility bills were provided but we've not seen those.

45 I see. So perhaps - - -?---Utility - - -

- - - with the exception of utility bills?---There were two points, utility bills and something else, but I don't remember.

5 So what's contained in your exhibit WAR7 are the documents that ANZ got from the broker – from Mr Regan's broker; is that right?---That's correct.

Okay. And one of those documents was a letter from Centrelink dated 4 February 2016?---Yes.

10 I think you've also – sorry, I will just find the reference so that can be brought up for you?---3076.

15 3076, thank you, Mr Ranken. Now, you gave evidence earlier this morning that ANZ's policies in relation to government benefits such as an age pension, which is what we see here in Mr Ranken's document?---Regan's, sorry.

I'm sorry, Mr Regan's document?---I do it myself.

20 You told us this morning that your internal policies for the verification of that income required a letter from Centrelink within 60 days of the signed statement of position confirming ongoing payments, or a transactional history in a bank account?---That's correct.

25 But this Centrelink letter provided by the broker used by Mr Regan doesn't meet your requirements, does it, because it's dated 4 February 2016?---Correct.

30 So ANZ did not receive documentation that allowed it to comply with its own policies for the verification of Mr Regan's income?---That's not correct. That's why the bank statements were also submitted.

Well, the bank statements, according to your policies, needed to be for a three-month consecutive period showing consistent receipt of the income over that period. Do you say that you had three months worth of bank statements for Mr Regan?---No.

35 No. So you did not have documentation from Mr Regan's broker that enabled ANZ to comply with its own policies for the verification of income?---No.

40 No?---It's an example of a – what we call an override, which is where our assessors have a credit authority discretion where they can still comply with the spirit of the policy, then they will – they will do that.

Well, what – are you confident that there was an override rather than just a failure to comply with your policy?---Yes. Confident it's just an override.

45 THE COMMISSIONER: I'm sorry. Could you repeat that, I missed it?---Yes, I'm – I'm – I'm confident that is – that's an example of an override.

MS ORR: And what's the basis for the override here?---We have the statement from Centrelink. It's for the life of – it's a pension. The nature of the income is that it's for life. We have no reason to believe that the Centrelink pension would be cancelled for this customer. What we're trying to verify is what's the actual amount, and it's – as you can see here, it's – when you compare it to the bank statements, it's actually a slightly higher in the bank statements. We've seen one bank statement. There's two payments of that, fortnightly payments. The assessor would have said, "That's fine, that's all I need. I don't need to get another couple of months. It won't show me anything new."

10 And have you annexed anything in your documents that record that override and the basis for that override?---No, we haven't.

15 No. Are there any documents that record there was an override and the basis for the override?---No. Recording of overrides for verification has only been in place since the end of September last year.

Right?---So they weren't in place at this stage.

20 Does that mean you're assuming, Mr Ranken, that there was an override because you have no documents from which you can satisfy yourself that that in fact occurred?---Yes. Those were the words I used, I was assuming.

25 Yes. You don't know whether instead this was just someone not complying with your policies?---Not complying with the strict letter of the policies, yes.

Well – well, you said before in answer to my questions that the mortgage credit requirements are to be adhered to by ANZ employees?---Yes.

30 You don't resile from that?---No. They do, but obviously I think I also mentioned that our assessors have credit authority discretions. So the policies are written in very strict basis and the assessors have, depending on their level of training, their level of experience, they have a level of authority to apply discretion to those policies to get the – to ensure the spirit of the policy is still met, but the specifics could be, you know, such that there's no – no – the benefit of adhering to it versus the negative customer impact of trying to go through the steps, it's not aligned.

40 You're unable to say whether there was any discretion exercised or whether this might have just been an ANZ employee failing to adhere to your policies?---The assessor who is a credit authority holder makes the assessment based on – I've seen this document. Like, it's in the file, what they've looked at. So either if – in a hindsight review, a credit review, if they didn't have the authority to make that discretion, it would be picked up. It would be part of their performance management.

45

But we only find that out if there is a hindsight file review down the track, otherwise we don't know, do we?---No. But our assessors are very paranoid about hindsight reviews, yes. They take them very seriously.

5 I see. It's also the case for Mr Regan, is it not Mr Ranken, that the statement of financial position that was provided to ANZ by the broker misstated Mr Regan's income. Do you agree?---His income.

10 His income?---Material – is it materially or it's just a – it's a dollar, isn't it?

Are you aware that there was a loan review conducted on Mr Regan's file on 15 February this year?---Yes, I saw that document.

15 Yes. Can I ask that that be brought up. That's ANZ.800.141.3268. So, in the month prior to these hearings commencing, ANZ conducted a review on Mr Regan's file?---Yes.

20 Yes. And could I ask that you look at 3269 in that document. And we see there under analysis, the third paragraph combined income confirmed equals 2,383 net per month. Signed SP, statement of position. Signed statement of position declared income 2663. The lower utilised for servicing. So that disjunct didn't raise any flags in ANZs systems?---I'm not aware – I don't understand where the 2383 comes from. I've been trying myself to try and understand how you get from the documents that – that both the superannuation statement and the Centrelink statement and the items coming through in the bank statements for his income, how they align to the 2383. I
25 - - -

But that was the income confirmed by ANZ, 2383?---On – on review?

30 Yes?---Yes, on – actually in the assessment system at the time of assessment, it was 2662.

35 Yes. But do you say that – I'm trying to understand, sorry. When do you understand this disjunct was identified? When do you say the \$2383 per month was used in ANZs processes?---All I am saying is I also don't understand when that's used in the processes.

I see?---I don't understand that figure, how it was derived.

40 I see?---I would like to.

Yes. Well, I hope the ANZ employee who completed the loan review understood, Mr Ranken?---Me too.

45 Yes. Have you discussed it with her? Her name is on the document?---No, I haven't.

Ms Margaret Delahunty?---No, I haven't.

No, you haven't. I will tender this document, Commissioner.

5 THE COMMISSIONER: That will be exhibit 1.89, document ANZ.800.141.3268, loan review Regan 15 February '18.

10 **EXHIBIT #1.89 LOAN REVIEW REGAN DATED 15/02/2018
(ANZ.800.141.3268)**

MS ORR: Now, could I ask you some questions about the documents that were provided to ANZ by Mr Regan's broker, which are exhibit 7 to your statement. They include the statement of financial position, which is 800.141 – ANZ.800.141.3020. Now do we see there, Mr Ranken, that Mr Regan's total living expenses are listed as \$1140 on a monthly basis?---Yes, that's correct.

20 That is about \$50 less than the HEM benchmark figure of 1189?---That's correct.

So ANZs UMI calculator defaulted to the higher HEM benchmark figure of \$1189?---Correct.

25 And you've heard evidence from Mr Regan – and you've read his witness statement – that the figure that came to be listed in this statement of financial position of \$1140 underestimated his monthly living expenses by approximately \$1800?---Yes.

30 And you've made clear in your statement that the bank statements that were provided to the bank for Mr Regan were used only for the purposes of verifying the income amount, not for expenses?---That's correct.

35 Now, can I take you to those bank statements, which are at ANZ.800.141.3066. Now I think it's clear, Mr Ranken, that the ANZ employee who did the assessment of the suitability of this loan for Mr Regan would not have looked at the summary of the amounts of money going in and out of his six accounts at Credit Union Australia for the purposes of assessing or verifying his expenses; is that right?---That's correct.

40 So the ANZ employee would have paid no regard to the fact that Mr Regan's Everyday 55 Plus account was approximately \$4000 up at the end of this month, but the Platinum Plus account was about \$5000 down and the eSaver Reward Account was about \$15,000 down?---That's correct.

45 And it doesn't take more than a few seconds to see that, does it, Mr Ranken?---No.

And based on this, if someone had looked at it, it would have been obvious that Mr Regan's expenses in this month were much more than reflected in the statement of financial position?---Yes.

5 But despite ANZ's obligations under the National Credit Act to make reasonable inquiries into Mr Regan's financial position, and the short period of time it would have taken to see that there was something wrong with the expenses listed on the document, ANZ ignored this bank statement for anything other than verification of income?---That's correct.

10 Yes?---The – the inconsistency with this bank statement to the signed statement of position.

15 Yes?---That's equally there in the revised signed statement of position that Mr Regan submitted subsequently.

In the revised statement of financial position?---Yes, that Mr Regan submitted as part of his – his documents.

20 Yes. Now, have you annexed that to your statement, Mr Ranken?---No, I haven't.

Right. Are you talking about as part of a hardship application?---Yes.

25 Yes. I see. I see. Now, can I ask you to look at a document that I would like you to consider so that I can ask you some questions about the manual assessment of Mr Regan's loan. We've heard your evidence about the steps involved in that manual assessment, and ANZ keeps a log of its employees' interactions with customers and third parties in that manual assessment process; is that right?---There's – I think it's in the DNA tool that's then included in the MOS system – or a log of the assessors' comments, is that what you are referring to?

30

Yes, it is. Can I show you a document ANZ.800.141.3095. Is this the log of the assessor's comments, Mr Ranken?---That's my understanding, yes.

35 And can I take you to 3103 in this document. Now do we see there, Mr Ranken, towards the bottom of the page some assessment notes relating to income, relating to the assessment of the government benefit, and do you see in the third starred point:

40 *Government benefit assessed at \$509 fortnightly. This is a superannuation scheme verified through CSS document provided by Australian Government. Considering only the untaxed component for a conservative approach as applicant is aged.*

45 Do you see that?---Yes.

And that's the only point in these notes that we see any reference to Mr Regan's age being taken into account in the assessment process?---It's the only specific reference, yes.

5 Yes. Despite the fact that Mr Regan was 71 at the time the loan was offered to him, and despite the fact that the loan term was 30 years?---Correct.

And over the page on 3104, we see a reference – perhaps if we could have 3103 and 3104 together, so that you can see that this is part of the same set of assessment
10 notes. Do you see at the top of that page Exit Strategy:

Lower LVR –

that's loan to value ratio –
15

*and unencumbered property with all services connected. Applicant can
downsize if required and pay out the loans as he don't have any dependants.*

Do you see that, Mr Ranken?---Yes.
20

So the assessor has identified an exit strategy being that Mr Regan can sell his house, if needed, to make the repayments?---Mr Regan or his estate.

Yes, I see. If Mr Regan has passed away by that time, his estate could sell his house.
25

THE COMMISSIONER: Downsizing talks about a transaction in life, I would have thought, doesn't it?---Correct.

Yes. The only thing spoken of there is not what the estate can do but what Mr Regan
30 can do, isn't it?---Yes, that's correct. Sorry, I withdraw my - - -

The reference to estate was a red herring - - -?---Yes.

- - - wasn't it?---In this circumstance, yes.
35
Yes.

MS ORR: Mr Ranken, you've given evidence earlier of your understanding of the
40 statutory presumption in the National Credit Act that an individual can only comply with their obligations under a credit contract with substantial hardship if they could only make their loan repayments by selling their home?---Yes.

So you're aware of that?---Yes, I am.

45 But this appears to be exactly what the ANZ staff member is contemplating when assessing whether or not Mr Regan could make his loan repayments?---Yes, it is. I –

I understand there's – there might be reference to that type of an appropriate exit strategy in ASICs guidance RG209.

5 Do you think it's appropriate for the assessor to have been assessing Mr Regan's application for his loan on the basis that, if necessary, he could sell his house and downsize?---If that had been an exit strategy that Mr Regan had stated he was comfortable with, then yes.

10 Well, it's not Mr Regan's exit strategy, is it, Mr Ranken? Mr Regan did not discuss wanting to downsize at all with the bank. This is the bank saying that if he gets into trouble, he can sell his house and move into a smaller house and, therefore, we will approve the loan?---The gap in terms of the information we have in that interview guide – or the interview that the customer has with the broker versus the information our assessors have, not actually having the details of that discussion, is something
15 that we're right on the verge of fixing so that not only is it clear that the customer has to state what an appropriate – or what the customer's exit strategy is, the assessor would have that when they're looking at the loan. So if Mr Regan was to – actually, it will be in force in April. So, you know, end of April if Mr Regan was to apply to that loan, the assessor would be assessing that with the information about what Mr
20 Regan's desired exit strategy is.

Are you on the verge of fixing this, Mr Ranken, having ANZ officers assess loans as suitable for a customer in circumstances where they could only comply with
25 substantial hardship by selling their home?---This isn't talking about complying with substantial hardship.

I know. I'm sorry, I'm trying to draw your attention to the reference in the legislative framework, the presumption being that if you need to sell your home then
30 you are only complying with your repayments with substantial hardship and, therefore, the loan is not suitable for you?---So there's two components, as I understand. One is the substantial hardship component.

Yes?---Which is can they meet their repayments.

35 Yes?---That part is dealt with in terms of the serviceability assessment and the positive UMI. Here, the exit strategy is around the loan term. We think of exit strategies under two scenarios. Largely, it's where the source of the income may not last for the term of the loan, such as approaching retirement, in which case we need to consider what's an appropriate exit strategy for someone. So take a 30 year loan
40 term, still have 20 years to go before you retire, you know, it's – I don't think customers would expect that we decline a loan on that basis if they have an exit strategy that they could downsize and sell that loan. That's not the case in Mr Regan's circumstances given his income is guaranteed for life. So it would have been much more focused towards the loan term might have exceeded his life
45 expectancy.

THE COMMISSIONER: What I am hearing, Mr Ranken, is that you stand by this decision; is that what you're telling me?---Yes, I do.

5 MS ORR: No one at the bank talked to Mr Regan about whether it would be acceptable to him to have to sell his home to make the loan repayments, did they, Mr Ranken?---No, they didn't, and that's the process deficiency that we're fixing.

Thank you. I tender that log, Commissioner.

10 THE COMMISSIONER: That will be exhibit 1.90, ANZ.800.141.3095, log of assessor's comments re Regan.

15 **EXHIBIT #1.90 LOG OF ASSESSOR'S COMMENTS RE REGAN
(ANZ.800.141.3095)**

MS ORR: You tell us in your statement, Mr Ranken, that Mr Regan's loan was approved on 15 March 2017. That's paragraph 59(d) of your statement?---Formally approved on the 15th, yes.

And 10 May 2017, when Mr Regan first made contact with ANZ requesting hardship assistance, requesting that action be taken in respect of the loan?---That's correct.

25 And on 11 May ANZ gave Mr Regan a form, a hardship application form to fill out?---That's correct.

And on 7 June that form was completed over the phone with Mr Regan; is that right?---Yes.

30 And you recognise in your statement that that application was completed by your staff member incorrectly?---Correct. That's correct; it was incorrect.

And you state that:

35 *If it was completed correctly, it would have shown then and there that Mr Regan's revised statement of financial position had negative UMI.*

?---That's correct.

40 Which means that he had no capacity to make the loan repayments?---Not that he had no capacity. That he would – there might be hardship involved, or additionally would need to adjust other items of expense.

45 Well, doesn't negative UMI mean that there's nothing left to make the repayments?---No, because that's still sensitised.

Within the UMI?---Within the UMI.

5 So what should ordinarily happen if a hardship team member assesses that someone now has negative UMI?---Generally, hardship is appropriate for where there has been a change in circumstances for the borrower, and that's of a short-term nature, in which case there's certain arrangements ANZ comes to with that customer to allow them to get through that difficult period until they can get back on their feet, per se. So whether it's family member sick, they have to do reduced hours or indeed lose their jobs, etcetera, the arrangements can go to the customer until they find
10 employment, etcetera, and they're back to where they were before. Yes, that's the type of process.

15 But on this occasion nothing like that was offered to Mr Regan because, firstly, no one had worked out that he had a negative UM because the person who filled out the form for ANZ got it wrong?---Correct.

20 And he was, therefore, contacted in June, on 20 June last year, and told that his application for hardship assistance had been declined on the basis that he could maintain his current scheduled payments without needing any variation?---That's correct.

And - - -

25 THE COMMISSIONER: And do you stand by that decision?---No, not at all.

MS ORR: Mr Regan then sought the assistance of a community legal service to engage with ANZ on his behalf; is that right?---I think it was Financial Counselling Australia first.

30 Yes?---Is that a community legal service?

That's a good question. So at least a financial counsellor?---Yes.

35 And subsequently a community legal service; is that right?---Yes.

Thank you. And, in response to correspondence from them, ANZ gave Mr Regan a credit assessment statement; is that right?---Sorry, CALC gave us a letter.

40 No. I'm sorry, ANZ gave Mr Regan's representatives a document called a credit assessment statement which you've annexed to your - - -?---Yes.

- - - statement?---Sorry, yes.

45 It's WAR18 at ANZ.800.141.3284. And the - that's the covering letter. If we could have the following two pages brought up on the screen together, we will see there - I assume you're familiar with this document - - -?---Yes.

- - - Mr Ranken. We will see there that, on 2 February this year, ANZ told Mr Regan that it had assessed his loan as being not unsuitable, and that it had concluded that he was able to meet his financial obligations without substantial hardship?---It's – my understanding is that's referencing at the point in time that it was approved.

5

Yes. I see?---Yes, yes.

So this is a document that ANZ is required to provide under the National Credit Act, is it not, if a consumer requests a document explaining the assessment that's been undertaken as to whether the loan is suitable for them or not they're entitled to receive one. And this was a request by Mr Regan's representatives for such a document and it was provided?---Yes.

10

Yes. And it was provided in February of this year?---Yes. Yes.

15

Right. Now, ANZ was provided with a copy of Mr Regan's statement to this Commission on 8 March this year?---Do I have – do I have that?

Mr Regan's statement is dated 8 March. It's in evidence?---Sorry, yes.

20

And it can be shown. Do you accept that ANZ received a copy of that statement from the Royal Commission?---Sorry, I thought you were in the - - -

I am sorry to have confused you?---Sorry, I thought you were in the train of events. Yes.

25

Yes. So I am in the chain of events. So having provided this credit assessment statement to Mr Regan's representatives on 2 February this year, on 8 March this year ANZ was told by the Royal Commission that Mr Regan would be giving evidence and provided with a copy of Mr Regan's statement?---Yes.

30

And on 9 March this year, the day after receiving Mr Regan's witness statement, Mr Scott Clark from ANZ notified Mr Regan's representatives that ANZ would provide a three month moratorium on his repayments; is that right?---Yes.

35

I can have that document brought up to assist you, Mr Regan?---I can take your word for it. I have seen a document of that nature, yes.

Yes. For the record that's RCD.0014.0002.0001. So that was the day after ANZ received the statement. And then on 15 March 2018, the day before Mr Regan gave evidence, ANZ provided RCD.0014.0002.0002, a letter dated 15 March 2018 to Mr Regan's representatives; is that correct - - -?---Yes.

40

- - - Mr Ranken. Thank you, Mr Ranken. Those documents are both in evidence, Commissioner, already. I have no further questions.

45

THE COMMISSIONER: Yes. Thank you. Does any party other than ANZ who has leave to appear seek to cross-examine this witness? Very well. Dr Collins.

DR COLLINS: There's nothing arising. Might Mr Ranken be excused.

5

THE COMMISSIONER: Well, Ms Orr? No. Mr Ranken, just before you leave the witness box, I want to give you one last opportunity: do you stand by the decision to make the loan to Mr Regan?---With the information that we had available at the time, and applying the policies and procedures that we apply for those types of loans at the time, it was in accordance with our policies and procedures.

10

Well, the answer is either yes or no. I take that as a positive answer, that is, that you stand by that decision. I want to give you this last chance: do you stand by that decision?---In hindsight, it's hard to have that, you know, make that clear delineation. At the time, with the same – with the same information available to us, the same decision would be made.

15

Yes. Thank you. You may step down?---Thank you, Commissioner.

20

<THE WITNESS WITHDREW

[11.33 am]

MS ORR: Commissioner, that concludes the evidence in relation to home loans in this part of the hearings. The next topic is add-on insurance and the first witness will be responded to by barristers from a different entity. So if the Commissioner wouldn't mind a brief break.

25

THE COMMISSIONER: If I come back at, what, 20 to midday, or - - -

30

MS ORR: Yes, I think that should be sufficient.

THE COMMISSIONER: 20 to midday.

35

MS ORR: Thank you, Commissioner.

THE COMMISSIONER: Yes. Very well.

40

ADJOURNED

[11.33 am]

RESUMED

[11.40 am]

45

THE COMMISSIONER: Ms Orr.

MS ORR: Commissioner, in our opening address last week we identified six consumer credit topics that would be addressed in the course of these hearings. Last week and this morning you have heard evidence about the first of those topics, being home loans. The topic to which we now turn is add-on insurance. As we explained
5 during our opening address there are a number of forms of add-on insurance. One common form is consumer credit insurance which is sold with a number of credit products, including credit cards, personal loans, home loans and car loans. It is designed to protect consumers if they're unable to meet their credit repayments in circumstances where they have lost income because of disability or involuntary
10 unemployment, have become permanently disabled or have died.

For many Australians, the purpose of consumer credit insurance forms part of the experience of acquiring a consumer credit product, whether or not that was the consumer's original intention. The insurance premiums for that product will
15 sometimes be added to the loan. ASIC has taken the view that consumer credit insurance has long been associated with poor consumer outcomes in Australia and overseas, including consumers being unaware that they have purchased the insurance, consumers being ineligible to make a claim on their insurance policy, and consumers who are able to make a claim but receive little back in comparison to
20 what they have paid in premiums.

During our opening address last week we noted that, since 1 July 2010, over \$128 million in remediation has been paid to consumers by financial services entities as a result of particular conduct in connection with add-on insurance. In July last year,
25 ASIC convened a consumer credit insurance working group. ASIC expects that this working group will progress a range of reforms, including a deferred sales model for consumer credit insurance sold with credit cards over the phone and in branches. The deferred sales model, which is expected to form part of the revised Banking Code of Practice, will mean that consumers cannot be sold a consumer credit
30 insurance policy for their credit card unless at least four days have lapsed since they applied for their credit card, as long as their application was made over the phone or in a branch.

In ASIC's view, this reform will reduce the risk that a customer will feel pressured to purchase the insurance product or purchases a product that does not meet their needs.
35 As at August 2007, the working group was also considering improvements that could be made to bank sales practices for consumer credit insurance on credit cards sold online, and improvements that could be made in respect of other loan products in all sales channels. It appears that some changes to the online process for selling
40 consumer credit insurance may also form part of the revised banking Code of Practice. Our consideration of consumer credit insurance in these hearings will focus on a case study that concerns the sale by CBA of two types of consumer credit insurance, being Creditcard Plus insurance and loan protection product for home and personal loans insurance.

45 In its submissions to the Commission, CBA acknowledged that approximately 65,000 of its customers had purchased Creditcard Plus insurance in circumstances

- where they may not have met the employment eligibility criteria in the product terms and, therefore, may not have been able to claim benefits under the policy in the event of disability or involuntary unemployment. CBA acknowledged that refunds of approximately \$10 million, including interest, had been made to those customers as at the date of CBAs submission on 29 January this year. CBA also acknowledged that a further 20,000 customers had purchased a loan protection product in circumstances where they too may also not have met the employment eligibility criteria to claim benefits under the policy.
- 10 CBA indicated that its investigation into this conduct was at an early stage but that it estimated that approximately \$3.4 million of refunds would need to be made to consumers. Both of these events were described by CBA in its submission as conduct falling “below community standards and expectations”. They were not described as misconduct as that term is used in the terms of reference.
- 15 Commissioner, I will shortly call evidence from a purchaser of a CBA Creditcard Plus insurance policy, Ms Irene Savidis. Ms Savidis purchased the insurance policy at the same time as applying for a credit card with CBA in circumstances where she was not eligible to claim on parts of the policy due to being unemployed at the time.
- 20 We will then hear evidence from Mr Clive van Horen, CBAs executive manager of retail products. Mr van Horen’s evidence will touch on a number of topics of interest to the Commission. One such topic is the processes that CBA had in place to ensure that these products would only be sold to consumers who could obtain value from the products in the sense that they would be eligible to make claims under all parts of the policy. A second topic of interest is the way CBA responded when it became clear that Creditcard Plus insurance and loan protection product insurance were being sold to people who were not eligible to make claims under parts of the policy due to their employment status. A third topic of interest is CBAs decision, a fortnight ago, to cease selling Creditcard Plus insurance and part of the loan protection product.
- 25 Commissioner, I now call Ms Irene Savidis.
- 30

<IRENE SAVIDIS, SWORN

[11.47 am]

35

THE COMMISSIONER: Now, Ms Savidis, do sit down, and if I may be so bold to suggest take a big deep breath, then we will start. Go on, Ms Orr.

40 **<EXAMINATION BY MS ORR**

[11.47 am]

MS ORR: Ms Savidis, could you please state your full name?---Yes. Irene Savidis.

45 Thank you. And you’ve provided your address to the Royal Commission. What is your occupation, Ms Savidis?---Home duties.

Home duties - - -?---Home duties, yes.

- - - did you say? Thank you. And, Ms Savidis, did you receive a summons requiring you to attend to give evidence today?---That's this one.

5

You have – you have the summons there?---Yes.

I tender that summons, Commissioner.

10 THE COMMISSIONER: Exhibit 1.91, summons to Irene Savidis.

EXHIBIT #1.91 SUMMONS TO IRENE SAVIDIS

15

MS ORR: Ms Savidis, did you make a statement to the Royal Commission on 9 March 2018?---Yes.

And do you have that statement there with you?---Yes.

20

I tender that statement, Commissioner.

THE COMMISSIONER: Exhibit 1.92, statement of Irene Savidis.

25

EXHIBIT #1.92 STATEMENT OF IRENE SAVIDIS DATED 09/03/2018

MS ORR: Now, Ms Savidis, what bank do you bank with?---Commonwealth Bank.

30

Thank you. And how long have you banked with CBA?---Since I was a child.

And in January 2013 what accounts did you hold with CBA?---Just a standard savings account and a joint GoalSaver account with my father.

35

What was the GoalSaver account for?---That was – my dad was the primary account holder and that was a savings account for my oldest son at the time.

How many children do you have, Ms Savidis?---Now, two.

40

Thank you. How old are they?---Seven and two and a-half.

Thank you. Now, in January 2013, did you receive a notification on your CBA internet banking page that you had been preapproved for a credit card?---Yes.

45

And did you pursue that preapproval?---Not straight away, but I did.

Later?---Yes.

Yes. And was it October 2014 when you applied for that credit card?---Yes.

5 And what was your income at the time you applied for the credit card?---Roughly around 1260.

\$1260?---Yes.

10 Over what period?---Fortnightly.

A fortnight. Thank you. And that was the source of your income?---Centrelink benefits.

15 Thank you. And how did you apply for the CBA credit card?---Online.

And when you applied, did you nominate a credit limit for the credit card?---No.

20 What information did you include on the online form?---Your name, address, if you have any children, how much your income is, so provide them the income statement, yes, pretty much all your personal details and anything about how much money you get.

Could I show you a document, Ms Savidis?---Yes.

25

This is an exhibit to Mr van Horen's statement. It's CVH1 and the doc ID is CBA.0507.0002.0001.

30 THE COMMISSIONER: If you look on the screen there – if the system is working, it should be there?---Yes.

MS ORR: Now, this is a document that has been provided to the Commission by CBA, Ms Savidis. You have been shown this document?---Yes.

35 And it appears to be a paper representation of the information you would have submitted on the screen - - -?---Yes.

- - - when completing the online application; is that right?---Yes.

40 And do we see there, if we turn to 0002, we see your income?---Mmm.

Now, that appears to be annual income based on some information you would have provided. Do you recall whether the form asked for fortnightly or monthly?---It would have been fortnightly if I had put income – putting the income amount in.

45

And we see there a costs and risk date in 25. So that appears to record 6 October 2014, using the American date system?---Yes.

That was the date on which you submitted your application online?---Yes.

Thank you. And having reviewed this document provided by CBA, does it accord with your recollection of the information that you put into the online form
5 - - -?---Yes.

- - - when you applied? Thank you. Now, do you recall uploading – I won't tender that document yet, Commissioner, because it will form part of Mr van Horen's statement. Do you recall uploading any documents to the CBA website when you completed this online form?---Yes, my Centrelink income statement.
10

Yes. And do you recall seeing anything on the online form in relation to insurance?---I can't recall exactly, but I do remember reading something.

15 You've said in your statement at paragraph 8 that you may have read something to the effect of "55 cents of every \$100", and that you don't remember whether or not you ticked any box about taking out credit card insurance when you applied for the credit card online?---Yes, that's correct.

20 When you decided that you were going to apply for a credit card, did you intend to also purchase credit card insurance?---No.

And at the time you had completed the online form on the CBA website, did you believe you had applied for insurance?---No.
25

Now - - -?---Well, I wasn't too sure at the time.

Yes. And following submission of the form, were you told the result of your application?---Yes.
30

Was your credit card conditionally approved?---Yes, that's correct.

And were you told of a credit limit?---Yes.

35 Do you recall what that was?---Yes. 4000.

Thank you. And, after you received that conditional approval, did you receive any correspondence from CBA?---I think it was on the same – the same letter that said conditionally approved, it asked for – like if I haven't already said to provide any other documents, so any identity – IDs, things like that.
40

And I will have brought up onto the screen the first exhibit to your statement, which is RCD.0014.0001.0001. Is that a copy of the email that you received from CBA on the day - - -?---Yes.
45

- - - that you submitted this application on 6 October 2014?---Yes.

And do you see under the heading What You Need to Do that you were told, if you haven't already, you have to upload your proof of income?---Yes.

5 And then further information was provided about the sorts of documents that could be used?---Yes.

Do you recall going into a CBA branch after receiving this correspondence?---Yes.

10 Was the branch that you went to close to your home?---Yes.

And what happened when you went to the branch?---Provided them with my licence for photo ID.

15 And do you recall any conversation at the branch in relation to Creditcard Plus insurance?---Yes. I – I did speak to someone about it, but I can't recall everything about it.

You've explained what you recall of that conversation in paragraph 11 - - -?---Yes.

20 - - - of your statement. You explain there that the staff member gave you the impression that you should take out insurance with your credit card because it would be a good thing to do?---Yes.

25 Can you explain what gave you the impression that you should take out the insurance?---They said – the way they spoke to me, they were telling me it's good for me, it will benefit me, it will help me in the long run if anything happened to me. I explained to her, like, how – like, I wasn't working, because she said if I stopped working that would – you know, it would help cover any sort of costs that I couldn't afford, for example. Yes. And when I told her I wasn't working she said I can still claim on it. Basically, it will still help me. Yes. So she just kept repeating themselves by saying I should get it, and it will help me, it's good for me.

35 Did she saying anything about the cost of the insurance policy?---Yes. It's just like a small – costs like, you know, a cup of coffee every month, or something like that, she said.

40 Okay. And by the time you had left the branch on that day, had you agreed to purchase Creditcard Plus insurance?---Just a moment. I can't recall if it was the exact – that exact day that I said yes to them or not. But I do recall eventually, after speaking – you know, that, yes, they said to add it onto the credit card.

Could I ask you to look at the exhibits to your statement - - -?---Yes.

45 - - - Ms Savidis. The first one I would ask you to look at is your second exhibit, RCD.0014.0001.0003?---Which one's that?

That's a letter from CBA to you on 7 October 2014, the day after you - - -?---Yes.

- - - submitted your online application, advising you that your application had been approved?---Yes.

You had a low fee form of credit card; is that right?---Yes.

5

And on the same day, did you receive the document which is exhibit 3 to your witness statement, RCD.0014.0001.0007?---Yes.

A letter from CommInsure to you, “Welcome to Creditcard Plus”?---Yes.

10

So do we see from that, Ms Savidis, that by 7 October, the day after you submitted your online application for the credit card, CommInsure had sold you the - - -?---Yes.

- - - Creditcard Plus insurance product?---Yes.

15

And could I ask that we turn to .011 in that second letter from CommInsure. This is the policy schedule in relation to your Creditcard Plus policy. Do you see there monthly premium, 55 cents per \$100 of the closing balance on your monthly credit card statement?---Yes.

20

Do you think this is where you saw the reference to 55 cents per \$100?---I think so.

Yes. Now, can you tell the Commission how you went, having purchased this insurance policy, with making the premium payments?---At first it was okay, at the start, but after a short time, things were getting difficult in money wise. So I basically was trying to find a way to reduce – if there was a way to reduce my credit card payments, and the only thing I could figure out by looking at the statements was the insurance. I didn’t think – it didn’t seem that it would benefit me. So I thought to try and take it off or turn it off. They said I could turn it off whenever I wanted to, so, yes, that was the first thing I tried to do.

30

So did you try then to cancel your - - -?---Yes.

- - - insurance policy? And how many times do you think you tried to cancel?---Multiple times.

35

And can you explain what happened when you tried to cancel the policy?---They kept telling me that it was, you know, it’s important that I didn’t do it, didn’t cancel it, because it was good for me. That, you know, if something happened to me it would really help me. I – they didn’t really give me, I guess, an exact specific on how it would help, because I told them if I’m not working, how would it – you know, it’s not going to help. Yes. I guess they would say something like if you were terminally ill, and I didn’t think I was going to get that sick, so, yes, they just kind of kept pushing it on me saying, you know, “It’s good for you, it will help you.” I just felt pressured or kind of like, you know, no matter what I said, it was the opposite. So I couldn’t – I felt like I couldn’t cancel it.

45

And were you speaking to people in branches or on the phone?---Both.

Okay. And did you eventually succeed in cancelling - - -?---Yes.

5 - - - your Creditcard Plus insurance policy?---Yes.

Could I ask you to look at the fourth exhibit to your statement, RCD.0014.0001.0013?---Yes.

10 We see there a letter from CommInsure on 1 May 2015 cancelling your policy?---Yes.

Did you ever make a claim on your Creditcard Plus insurance policy, Ms Savidis?---No.

15 Now, could I ask that you look at the fifth exhibit to your statement, RCD.0014.0001.0015?---Yes.

20 Is this a letter that you received from CommInsure – if we could pan back a little bit so Ms Savidis could see the date – on 16 January 2018?---Yes.

And by this letter CommInsure told you that you might be entitled to a refund - - -?---Yes.

25 - - - from CommInsure of \$88.73?---Yes.

What did you think when you received this letter, Ms Savidis?---It was a little bit kind of confusing, I guess, at first. It was like, “Why have they sent me this”. Yes, so basically it says on here that I may not have been working, which I wasn’t. So that’s when I kind of seek legal advice about getting a full refund, if possible.

30 And did you have any contact with CBA after you received this letter?---Yes. I did call them up to ask about an extension because it specified on the letter that you have 30 days to contact them.

35 Yes?---So I was a bit worried in case if I didn’t call them or accept it by that 30 days, does that mean it would be cancelled maybe, I thought, so that’s why I called them up and asked for some sort of extension. The lady told me that, yes, I can call any time after and I could still claim that – the refund.

40 And is the next exhibit to your statement RCD.0014.0001.0017, an email from a person at CommInsure to you on 13 February this year - - -?---Yes.

45 - - - that you received after the phone call that you’re referring to?---Yes, that’s correct.

Now, have you received anything else from CBA since this time?---After that, the only thing I received is – which is on the last one – it was a card from the bank.

5 Yes. And you've provided a copy of that card to the Royal Commission - - -?---Yes.

- - - Ms Savidis. So this is a card and in a handwritten envelope?---Yes.

That you've retained?---Yes.

10 A card headed Just a Note to Say. Is this the card you're referring to?---Yes, that's correct.

With a handwritten message inside it?---Yes.

15 Now, you've exhibited a copy of that card to your witness statement as exhibit 17. The card is from CommInsure:

Just a note to say, dear Irene, thank you so much for your time and understanding with CommInsure. We thank you for your ongoing loyalty.

20 So that's the card that you received, the handwritten card from CommInsure, Ms Savidis?---Yes, that's correct.

25 Do you know when you received this - - -?---It was 28 March.

28 March?---Of March.

I think you've dealt with this in your witness statement?---Yes, I think it was – I will double-check.

30 Ms Savidis, at paragraph 23?---Yes, 28 February, sorry.

28 February you received this card.

35 THE COMMISSIONER: This year. This year?

MS ORR: This year. So a matter of - - -?---Sorry about that. It's just that time has gone quick.

40 A matter of weeks ago?---Yes.

I tender this card – a copy is annexed to Ms Savidis' statement, but I tender this as well, Commissioner.

45 THE COMMISSIONER: Exhibit 1.93. What shall I call it? Card from CommInsure to Savidis.

MS ORR: Received on 28 February.

THE COMMISSIONER: Yes. Has it got a franking date on the envelope? That will - - -

5

MS ORR: Not a clear one that we could see, Commissioner.

THE COMMISSIONER: There we are. Received 28 February '18.

10

EXHIBIT #1.93 CARD FROM COMMINSURE TO SAVIDIS RECEIVED 28 FEBRUARY 2018

15 MS ORR: Have you had any further contact with CBA since this time, Ms Savidis?---No.

Thank you.

20 THE COMMISSIONER: Any preceding contact CBA, before this card came out of the blue, other than the letters you have told us about? Did you ever get any other greeting card from them?---Not that I can recall. I don't think I've ever received a card like this.

25 MS ORR: And the card is signed by HZ, Ms Savidis. Do you know who HZ is?---No.

Thank you. I have no further questions for Ms Savidis, Commissioner.

30 THE COMMISSIONER: Does anybody other than CBA seek leave to cross-examine, Ms Savidis? Yes, Mr Scerri.

MR SCERRI: I don't have any questions, Commissioner.

35 THE COMMISSIONER: Yes. Thank you very much, Ms Savidis, for coming and giving your evidence. You may step down?---Thank you.

Thank you.

40

<THE WITNESS WITHDREW

[12.06 pm]

45 MS ORR: Commissioner, I call Mr Clive van Horen.

THE COMMISSIONER: Perhaps he will unravel the mystery of the card. Yes.

<CLIVE RICHARD VAN HOREN, SWORN

[12.07 pm]

5 THE COMMISSIONER: Yes, do sit down, Mr van Horen. Yes, Ms Orr – sorry,
Mr Scerri.

<EXAMINATION-IN-CHIEF BY MR SCERRI

[12.07 pm]

10

MR SCERRI: Mr van Horen, what's your full name?---Clive Richard van Horen.

And what is your business address, sir?---1 Harbour Street Sydney.

15 And you have received a summons from the Commission to appear today?---I have,
yes.

Do you have that with you?---I do.

20 I tender that summons.

THE COMMISSIONER: Exhibit 1.94. Summons Clive Richard van Horen.

25 **EXHIBIT #1.94 SUMMONS CLIVE RICHARD VAN HOREN**

MR SCERRI: Mr van Horen you have made a number of statements to the
30 Commission, but in relation to this topic you've made three statements haven't
you?---That's right.

One dated 9 March, one dated 5 March, and a third one in relation to Ms Savidis
dated 9 March?---Correct.

35 And I understand you wish to make a correction to one of your statements?---Yes,
please, if possible. So this is for the primary witness statement on the CCI matter
which is the one dated 9 March. And if we go to paragraph 57, which includes a
table describing the remediation approach. In the third dot point, I would like to
40 amend that to – where it says plus interest was the last line, plus interest was paid on
the total refund amount, to delete the word “total”, and to add “if the card balance
had been paid off” to the end of that sentence.

THE COMMISSIONER: Yes. Well, you make the amendment that you think
45 necessary, and initial that amendment, would you please, Mr van Horen?---Sure.

MR SCERRI: Mr van Horen, is there a similar amendment - - -

THE COMMISSIONER: Just let him make the amendment, because I will then get him to read it out so that there's no doubt of what the amendment is and we're all working off the same script?---Yes. And just to be clear, it applies to both columns on that table.

5

So make the amendment and then I will get you to identify it with some particularity. Now, can you tell us what you've changed? It is in paragraph 57 and the table, is it?---Yes. In the table, so the second row which is called Refund Calculation.

10 Yes?---And the third dot point the revised statement says:

Refund amounts included interest charged on premiums debited to customers cards, plus interest paid on the refund amount if the card balance had been paid off.

15

And the same is repeated in both columns.

I see.

20 MR SCERRI: Did you delete the word "was", Mr van Horen? I don't think you said it?---I didn't delete the word "was".

You did not delete the word was?---No.

25 Thank you. Now, with that correction, is that statement true and correct?---It is.

Now, the other two statements to which I've taken you, true and correct as well?---Yes.

30 We tender those, Commissioner.

THE COMMISSIONER: Should we deal with them perhaps separately, and designate each with a separate exhibit marking.

35 MR SCERRI: Yes, sir.

THE COMMISSIONER: - - - Mr Scerri which then would you treat as the – the one on the screen, CBA.9006.0001.0001,

40

EXHIBIT #1.95 STATEMENT OF CLIVE VAN HOREN (CBA.9006.0001.0001)
)

45 THE COMMISSIONER: 1.96 will then become which one, Mr Scerri?

MR SCERRI: Perhaps the one in relation to Ms Savidis which is also dated 9 March, Commissioner.

THE COMMISSIONER: Have we got a doc ID for it?

5

MR SCERRI: Yes. CBA.9005.0001.0001.

THE COMMISSIONER: Yes. Thank you. That will be exhibit 1.96.

10

EXHIBIT #1.96 STATEMENT OF CLIVE VAN HOREN IN RELATION TO MS SAVIDIS (CBA.9005.0001.0001)

15 MR SCERRI: And then the third one is headed Supplementary Statement. I am not sure that has an ID on it. I will just – it's on the screen, Commissioner. So it's - - -

THE COMMISSIONER: WIT.0001.0008.0001.

20 MR SCERRI: Thank you, Commissioner.

THE COMMISSIONER: Yes. Thank you, Mr Scerri. Yes, Ms Orr.

25 <CROSS-EXAMINATION BY MS ORR

[12.11 pm]

MS ORR: Mr van Horen you're the general manager, retail products, within the banking services business unit of CBA?---Yes, I am.

30

And you've been put forward by CBA to give evidence about two add-on insurance products offered by CBA, Creditcard Plus insurance, and loan protection product insurance which is available for home and personal loans?---That's right.

35 Now, three statements have been tendered by Mr Scerri. In fact, you signed five statements relating to this topic, but you replaced two of them with later versions of the same statement. Do you recall that?---I had draft statements which were then finalised. I had other statements that I prepared and signed on other topics, personal overdrafts being the primary one.

40

Yes. No, I'm not talking about those ones at the moment. I just want to be clear about this in case an issue arises with the sequencing. Three statements have been tendered, one on 5 March and two dated 9 March. Both of those 9 March statements are later versions of another statement that you provided and signed in final form on 45 2 March 2018. Now, do you recall this?---Yes. I recall changes having been made to those statements, yes.

Yes. And that the changes were minor - - -?---Yes.

- - - in those statements?---Correct.

5 So the Commission received statements on 2 March, which are substantially the same as the statements that are in evidence dated 9 March - - -?---Yes.

- - - is that right?---Yes. Yes.

10 Thank you. Now, the first insurance product your main statement deals with, which is – and when I say the “main statement”, I’m referring to the statement that is dated 9 March 2018 which deals not with Ms Savidis’ evidence but more broadly with CBAs sales and processes in relation to these products. So will you understand that that’s - - -?---The main statements, yes.

15

That’s the statement I’m referring to, unless I indicate otherwise. So the first insurance product that your statement deals with is Creditcard Plus insurance, which you refer to in your statement as CCP insurance?---That’s right.

20 And CCP insurance is issued by an entity branded as CommInsure?---Correct.

And the entity branded as CommInsure is Colonial Mutual Life Insurance Society Limited?---That’s right. I think Life Assurance Society Limited.

25 I’m sorry. Life - - -

THE COMMISSIONER: Assurance.

MS ORR: Assurance?---Assurance, not insurance.

30

I’m sorry, thank you. And CCP is insurance for CBA branded credit cards that’s issued by CBA as opposed to insurance for Bankwest credit cards which are also issued by CBA?---Correct.

35 And how long has CBA sold CCP insurance?---I believe it goes back to around 2003. Certainly a number of years.

And CCP insurance provides two different types of insurance cover; is that right?---CCP is a – what we call a bundled insurance product, meaning it’s one policy but it has multiple benefits. There’s in fact probably more like five benefits, but they fall into two categories.

Yes?---So one category is one that would pay off the credit card balance in full if, for example, the customer dies or is permanently disabled. The second category would apply where temporary disability, unemployment or similar circumstances arise, and it would pay off the monthly instalments for approximately five months.

45

Thank you. And during the period from 2011 to 2015, customers were offered CCP insurance as part of their application for a CBA branded credit card?---That's right.

5 And that's still the case, that the offer of CCP insurance happens at that time?---Yes.
The complication is, as you referenced, we've made the decision to stop offering CCP.

Yes?---So that process is busy being executed.

10 Yes. We will come to that?---Yes.

15 But presently it still remains the case that the offer of insurance is made at the time that the consumer is applying for the credit card?---That's correct. There is another set of circumstances where customers approach us after having acquired a credit card later on, and it could be at any time, where they can also and do also open the insurance policy.

20 So this assumes they've declined the initial offer to take out the insurance made at the time that they acquired the credit card?---Correct.

25 Yes. And the offer that's made in connection with the acquisition of the credit card can be made either in the branch, if the customer comes in and applies for the credit card in the branch, or on the phone if the customer applies for the credit card that way, or on an internet platform if the customer applies for the credit card online?---That's right.

30 Now, during the period from 2011 to 2015, you tell us in your statement that 29.54 per cent of CBAs credit cards had an associated Creditcard Plus policy?---That is the number quoted in my statement. I should clarify that slightly, because the numerator and dominator may not relate to each other. So the way we answered that question was the total number of credit cards sold during the period and the total number of CCP policies sold during the period, it doesn't follow that they all were sold at the time of acquiring the credit card because some could have been taken up a bit later.

35 Yes. So I'm sorry, my question was not directed to whether they were sold at the time?---Yes.

My question was directed to in total in that period?---That's right.

40 29.5 per cent of the credit cards had a Creditcard Plus insurance policy attached to them?---Yes.

So nearly a third?---That's broadly correct, yes.

45 And we know that most people get the Creditcard Plus insurance policy at the time that they apply - - -?---Correct.

- - - for their credit card?---Correct.

Thank you. Now, CBA staff have sales targets for selling CCP insurance?---Yes.

5 And you say in your statement that, prior to 2014, these sales targets were part of a
quarterly recognition program for CBA front line staff that allowed them to receive a
dollar payment for performance above sales targets?---Yes. I can explain the – the
broader remuneration structure if helpful, but, yes, there were direct campaign-
related incentives in place for a period up to 2014. They were not specific to CCP.
10 They applied to a full spread of different products.

I will take you to some documents about that, but not only could they get a dollar
payment, CBA staff, for performance above sales targets but they could win prizes
for selling the most insurance?---Yes. There have been campaigns along since
15 scrapped, but there were campaigns during that period.

Well, they were in place relatively recently weren't they, Mr van Horen?---To my
knowledge, the individual based sales campaigns were scrapped in 2014. Thereafter,
they moved to team-based or branch-based campaigns.
20

Well, can I show you two documents that are annexed to your witness statement as
part of your exhibit CVH12. The first is within that very large annexure, it's at
CBA.0507.0014.0010?---Yes.

25 So this is an example of a promotion that CBA ran in 2012 that gave prizes such as
iPads, iPhones and JB Hi-Fi vouchers for selling the most insurance in a particular
period?---Correct.

And we see from – just below halfway down the page, we see that Creditcard Plus
30 insurance was one of the forms of insurance captured by this promotion where we
see CC and the plus sign?---Yes, correct.

Yes. And within that same exhibit to your witness statement can I take you to
another more recent document which is CBA.0507.0014.0017?---Yes.
35

This is another example of a promotion that CBA ran, this time in 2014?---It is.

The “don't forget your toothbrush” incentive 2014?---That's right.

40 And this was an incentive program that gave rewards, this time in the form of a
payment to a team social fund, for high selling of insurance products?---That's right.

And, again, it included CCP insurance?---That's right.

45 And you say in your statement that in 2014 the quarterly recognition program shifted
towards a team-based approach, and you've referred to that this morning. So the

sales targets are now at branch level rather than for the individual; is that right?---Yes. Simplistically, yes.

5 And incentive payments are determined according to a range of factors now?---That's right.

And those factors still include volume of sales of these insurance products?---They do, a very tiny percentage of the total.

10 Well, what percentage, Mr van Horen?---Well, if I could just explain how the incentives work - - -

Yes?--- - - - in a nutshell.

15 Yes?---So three core components. The first is the basic salary, which is fixed. It is not variable dependent on sales performance. So that is, obviously, the very largest portion of a front line staff member's remuneration.

20 Yes?---The second component is a short-term variable component which is approximately 10 per cent of the base REM. And that variable component is a function of a balance score card approach which would have multiple categories of performance outcomes in it that would include business performance and within business performance would be sales. Sales not just of credit cards or Creditcard Plus, but all products. There would be customer satisfaction, other measures like
25 self-service, education, training, productivity and so on. So – and then a third category which did apply up to 2014 was those somewhat unusual short-term sales campaigns that you've referenced already. The point I would make about all of that is if you look at the direct component of remuneration attributable to the sales of
30 credit cards or credit card insurance, it would be of the order of one and a-half per cent, because all the others include home loans and deposits and savings accounts and all the other things that a customer might need. One and a-half per cent of the variable part – one and a-half per cent of the business performance measures which are roughly half of the total which relate to the 10 per cent of the variable rim. So if
35 you do the maths and you multiply that all out, it's a very tiny fraction of 1 per cent of a person's remuneration which would be determined by their sales performance on one category.

40 Because your people didn't need to be incentivised to sell Creditcard Plus in connection with a credit card, because your processes required them to attempt to sell Creditcard Plus insurance with the credit card?---That's right.

Yes. Now, could I ask you to look at a document which is not part of your statement, CBA.0001.0049.1198. Have you seen this document before, Mr van Horen?---Yes, I have.

45

And it's a document that sets KPIs and sales targets for CBA staff for FY2015 and '16?---For – yes, for the direct banking business, which is the core centre part of our business.

5 I see. So this applies to call centre staff?---Yes.

And it includes KPIs and sales targets in relation to the sale of credit cards and CCP insurance?---Yes.

10 And if you could turn to 1235. I want to make sure I understand this document correctly. This page has cards sales targets for FY '16. And we see towards the bottom in the column on the far left side Creditcard Plus net premium, and a forecast for FY16 of 38.05. Do I understand correctly from this document that the average full-time employee, we see a reference to average per FTE per week up the top, the
15 average full-time employee was forecast to sell 38.05 CCP policies per week?---No, that's not my understanding. So I've seen this document, have investigated. I didn't ever manage that part of the group, but the context I can give – this is for the card sales team, as it says at the top.

20 Yes, yes?---So it's not the entire contact centre, it's the desk, the group of people who are there to handle customers' queries on cards.

Yes?---And what that specific measure refers to is the Creditcard Plus net premium. So my understanding is that would refer to dollars, not numbers of units, not number
25 of policies or products sold, dollar value of net premium sold by every person on average per week. So - - -

So should we read 38.05 as a dollar figure?---Correct.

30 So per week the people that you've just described were to sell \$38.05 worth of Creditcard Plus net premiums?---Correct.

Okay?---That's my understanding of it.

35 Okay. And there's a document that is two pages later in here which relates to branch sales targets. That's 1237. So how does this branch sales page work? Who was that directed to?---I can see why it's perhaps a little confusing but it says "our branch". Our branch is the name we use inside CBA for the team of people in the contact centre that support our own employees. So think of it as a virtual branch for CBA
40 staff members.

I see?---So it's not to do with branch KPIs or generic branch performance targets.

45 So this refers to the same group of people?---In terms of customers or - - -

No, no, no. The same group of CBA employees?---No. So if you think of the entire contact centre, you know, call it 2000 people, those people are built – are assembled

5 into multiple different teams. You have different areas of specialisation. One of them would be our branch, you know, people whose focus it is to support employees of the Commonwealth Bank. So if I'm a new staff member and I need to make an inquiry about a credit card or about anything else, my call would go through to that team member.

10 Yes, I see. And we see the forecast figures for these people and the sales targets for these people in relation to Creditcard Plus net premium on this page?---Yes, it's very similar.

15 Yes. Thank you. I tender that document, Commissioner.

15 THE COMMISSIONER: Exhibit 1.98, CBA.0001.0049.1198, KPI direct banking financial year '16.

EXHIBIT #198 KPI DIRECT BANKING FINANCIAL YEAR FY2016

20 MS ORR: Mr van Horen, there have always been certain eligibility criteria that have to be met for an individual to be able to purchase CCP insurance; is that right?---That's right.

25 They have always been that they need to be aged between 18 and 64 years old and to be an Australian resident; is that right?---That's right.

And they also have to be a primary account holder for a CBA branded credit card?---Yes.

30 And CBA has processes in place to stop anyone who doesn't meet any one or more of those three criteria from purchasing CCP insurance?---That's right.

35 There were also employment eligibility criteria if the holder of CCP insurance wished to claim disability or unemployment benefits?---Correct.

40 And these changed a little over time, but essentially a person with CCP insurance could not and still cannot receive cover in respect of the monthly credit card repayments if they have suffered disability or involuntary employment – as opposed to death or terminal illness – unless they were employed immediately prior to making the claim; is that right?---That's correct.

And - - ?---You said “employed”. I think you meant involuntary unemployed just for the record, if it matters.

45 You are quite right. I apologise, Mr van Horen. Involuntary unemployment. And in addition, from 28 November 2015, a person with CCP insurance could not and still cannot receive cover in respect of their credit card balance in case of permanent

disability unless they were employed immediately prior to making the claim?---No. So if I heard your question correctly, you asked about the – the payment of benefits if the person dies or is permanently disabled. That is not contingent on their employment status.

5

Permanent disability only?---That's not contingent on their employment status to the best of my knowledge.

10 From – there wasn't a change that you've referred to in your statement on 28 November 2015 that meant from that time onwards, permanent disability cover for the credit card balance was also contingent on being employed immediately prior to making the claim?---Please point me to the paragraph, please.

15 Yes. That's paragraph 27(a). There's a lengthy table that you include in 27(a), Mr van Horen?---Yes. I'm aware there were a number of changes made to criteria for the various benefits over time.

And that's why you've got a number of different parts to this table?---Yes, it is, yes.

20 And 28 November is dealt with in the third row - - -?---Yes.

- - - of that table and that directs us to a Product Disclosure Statement which is exhibit CVH4 to your statement?---Yes.

25 And what I want to put to you is that the effect of that product disclosure statement is that from that date, when those changes were made, cover for the credit card balance in the case of permanent disability was also contingent on being employed immediately prior to the claim?---To be honest, I will have to read the detailed PDS, so I won't disagree with that, if that's your interpretation.

30

It's - - -?---It's not a change I was involved in at the time and it's not - - -

No. It's the PDS which is CVH4 to your witness statement and if you would like to read that over lunch - - -?---Yes, I can do that.

35

- - - and if you disagree with that proposition, you can let us know after lunch. So for many years CBA sold CCP insurance to people who didn't meet the employment eligibility criterion; is that right?---There were many customers who did not meet the criteria to whom we sold it. I think it's – it's not a statement I would make definitively because, in the absence of information, some customers may have been eligible but we weren't able to confirm that.

40

Well, it's the case, isn't it, that you sold this insurance policy to unemployed people?---Yes.

45

You sold this policy to pensioners?---That's right.

You sold this policy to students?---That's right.

5 And unless their circumstances changed, so that they became employed prior to making a claim, they were not eligible for the benefits that required them to be employed?---That's correct, and it is the case that some customers did claim subsequent to taking out the policy when they did become employed, but your statement is right and I'm not going to quibble about the broad thrust of your statement.

10 Well, you can't, can you, Mr van Horen?---No, no.

Because it is the fact that CBA sold large numbers of these policies to people who were ineligible to claim person benefits - - -?---That's right.

15 - - - under them?---Yes.

20 And CBA didn't draw to their attention, at the time it sold them the CCP insurance policy, that their ability to claim benefits under the policy would be restricted if they were not employed prior to making a claim?---We certainly failed to take what I would consider today to be reasonable steps. There was some disclosure, but I don't believe that disclosure was adequate.

25 What was the disclosure, Mr van Horen?---Well, if you look at the sales scripts, whichever channel we're talking about, both branch and telephone-based and digital, there were disclosures in those sales processes and scripts, whether it was online or in their sister channel, which did refer to minimum employment standards and referred customers to PDSs, the product disclosure statement. So - - -

30 I just want to be clear. You say the scripts referred to minimum employment?---Some scripts did have reference to the PDSs, the PDS have all - - -

35 I see that's a different thing, isn't it, Mr van Horen? They had a reference to the PDS?---I think it depends in which time period we're talking about. So if you go back to 2011, the reliance is very much on the disclosures in the PDSs. Customers would receive a letter called a welcome pack which would have the same kind of information again. So that was what applied in the period from 2011 onwards. Progressively through the years, in particular from 2015, much stronger disclosures were put into the sales scripts in the various channels.

40 Yes. So your statement in relation to CCP insurance deals primarily with 2011 to 2015. That is the period in which CBA was selling this product to people who were ineligible to claim for benefits under the policy?---That is the period, yes.

45 And in that period, whether a person purchased the product by phone or in a branch or online, they were told nothing by CBA about the requirement that they be employed to be eligible to make those claims?---I don't think it's quite right to say they were told nothing, because it was clearly disclosed in the PDSs.

It was clearly disclosed in the PDSs. The PDSs are multipage documents?---I understand.

5 Yes. So there was nothing over and above the text in the Product Disclosure Statement to draw that eligibility criterion to the attention of the customer when they purchased - - -?---That's correct.

10 - - - the policy. Now, that was the case in circumstances where the vast majority of claims made under these policies were made in respect of the disability and unemployment benefits categories. Do you agree?---Yes.

15 Thank you. And in April 2015, CBA worked out that some customers who had purchased these products may not have met the employment eligibility criteria; is that correct?---That's right. Through an internal audit.

Yes. Now, can I take you to that internal audit document, Mr van Horen, which is exhibit CVH7 to your statement. CBA.0001.0027.0002. Now, this is the audit report you're referring to, dated 9 April 2015?---That's right.

20 And do we see on the right-hand side under the heading Creditcard Plus Insurance that the audit group have:

25 *...identified that approximately 64,000 customers who were unemployed at the time of a credit card application were sold CCP insurance. Sales staff are not required to disclose to the customer that involuntary unemployment or temporary or permanent disablement benefits cannot be claimed if their situation remains unchanged.*

30 So that was the finding of the audit group - - -?---Yes, it was.

- - - in this report. And then do we see the audit group goes on to say:

35 *In the light of recommendations from ASICs Financial Services Inquiry of November 2014 and recent global risk events such as the UK loan protection insurance issue, these sales practices may not have resulted in a fair outcome for the customer. CommInsure management will analyse data, understand customer impacts and implement changes to CCP product design and sales processes as required.*

40 So as at 9 April 2015 CBAs estimate was that 64,000 customers had been sold CCP insurance in circumstances where they were unemployed and, therefore, unable to claim benefits that were contingent on employment?---Yes. I – I just qualify that slightly. The vast majority were students and we can come to the numbers later, but of the 64,000, the vast majority of students and we would say were ineligible. There was a subset, give or take 17,000, who were potentially ineligible based on the data that we had.

And we see the audit group talking about the fact that sales staff aren't required to disclose that these benefits can't be claimed unless they become employed. This is 2015. So it's nearly four years after ASIC released its report number 256
-- -?---Yes.

5

-- - into consumer credit insurance. Are you familiar with that report -- -?---I am.

-- - Mr van Horen?---I am.

10 And was CBA one of the ADIs whose practices in relation to consumer credit insurance were reviewed by ASIC -- -?---Yes.

-- - as part of that report?---Yes.

15 And CBA would have known at this time, in April 2015, of the 10 recommendations that ASIC made in that report?---That's right.

And would have known about those recommendations for almost four years. One of those recommendations related to sales scripts used in sales of consumer credit insurance over the phone or in branches; is that right?---That's right.

20

Can I show you that recommendation in RCD.0021.0001.0003. If we could turn to 0012. Do we see there that the first recommendation that ASIC made was that when CCI is sold over the telephone – CCI being consumer credit insurance?---Yes.

25

Which the CCP product was?---Correct.

When CCI is sold over the telephone, distributors should have formal scripts in place for their sales staff. Scripts should include –

30

and if we go down to (g):

A clear explanation of the main exclusions that apply to the CCI policy (and where CCI is sold as a packaged product, this should include a clear explanation of the main exclusions that apply to each component of the policy).

35

?---Yes.

That's right?---Yes.

40

That was the recommendation?---Yes, absolutely.

But in 2015, CBAs sales scripts didn't include any explanation of the main exclusions that applied to disability or unemployment benefits under the CCP policy, such as the employment eligibility exclusion?---Yes. I've certainly gone back and looked at what was done in response to this report in 2011, and quite comprehensive programs at work were executed to implement the recommendations. In respect of

45

the specific one around the exclusions, the main exclusion that was built into processes was around pre-existing conditions, or PECS as they are sometimes called, but the exclusions around employment eligibility criteria were not.

- 5 Why not, Mr van Horen?---As I said, I think the main reason is because too much reliance was placed at the time on those disclosures in the PDS. So a flawed – a flawed assumption and a flawed judgment, but essentially reliance was placed on that disclosure to customers.
- 10 A flawed judgment in light of ASICs specific – specific work on this topic and direction to ADIs, including CBA to modify its sales scripts to refer to those exclusions?---I would agree with that, yes.

Yes. Commissioner, could I tender that ASIC report.

15

THE COMMISSIONER: Exhibit 1.99, ASIC report numbered 256, RCD.0021.0001.0003.

20 **EXHIBIT #1.99 ASIC REPORT NUMBERED 256 (RCD.0021.0001.0003)**

MS ORR: And could I take you back to the audit report, Mr van Horen?---Sure.

- 25 Which was CBA.0001.0027.0002. And could I ask that you turn to appendix A, which is 0005. And we see that this is an appendix of – summarising the very high to medium audit issues that were identified by the audit group, and the first issue is the CCP issue?---Correct.

- 30 Which is given a high rating by the audit group?---Yes.

And a high rating is given to the fact that management haven't implemented sufficient controls to confirm that staff are following the defined sales process. What was the defined sales process?---I would have to believe that the defined sales process would have been one based on what was documented at the time in the various assisted channels, branch and call centre, and the – the way the finding is phrased to say we did not have enough controls to make sure that people are in fact following the right process.

- 35
- 40 But what was the right process? What had CBA defined as the sales process at this time?---Yes. You know, I – I would personally perhaps take issue with the way that's worded. The substance of what the issues calling out is that our sales processes were not delivering the right outcome, and I'm – you know, I'm not sure I would agree with the way it's worded in saying that people had a process defined as
- 45 X and were deviating from a process to do Y, because the process X was by and large the process and then people would have to follow that process.

It was the process that was deficient, wasn't it, Mr van Horen?---Yes.

Not that people were departing from the process?---I would agree with that, yes.

5 Yes. Thank you. And management haven't implemented sufficient system controls, we're told here. If we go back to the first page of this document at 0002, we see that the third paragraph on the right relates to the high rated issues:

10 *The high rated issues don't fall within the direct accountabilities of credit card management as they relate to either other products or sales practices in the front line. As a result, we rated management awareness and action as satisfactory.*

Do you see that?---I do.

15

So 64,000 customers had been sold Creditcard Plus insurance in circumstances where they were ineligible for much of the coverage, but the credit cards management awareness and action was satisfactory?---Yes, I can try and explain this. If you look at the very top of that report, it talks about the business unit being the credit card business unit.

20

Yes?---And accountable executive. And that is a person who is the head of the credit card team and it is referenced in various places in this document, but it talks about the way this audit was done was to look at the end to end credit card process, even including components of that process that were managed or delivered or owned by other parts of the group. So it's attempting to give a holistic view, and where it refers here to management awareness, I believe that would have been referring to the awareness of the credit card team.

25

30 So does that mean there's some other group somewhere in CBA that was held accountable for this and who got an unsatisfactory rating for their management awareness and actions?---Yes. I think the – the complexity here is there's the retail bank and there's CommInsure.

35 Yes?---They are two different parts of the group.

Yes?---Obviously for customers they don't care about that, rightly so, but different accountabilities rest with different parts of those teams.

40 So is there a team somewhere within CBA who received an unsatisfactory rating and was held accountable for these issues?---I will have to check whether there's a document referencing that exact conclusion, but there certainly would have been significant documents referencing in the CommInsure side this known issue, and that was reported in board reports and the like, which have been part of our documents submitted.

45

I see. So this issue with Creditcard Plus insurance was first reported to the Colonial Mutual board audit committee on 5 May 2015; is that right?---Yes. That probably would be right, yes.

5 That's paragraph 38 of your statement, Mr van Horen?---Yes, yes.

So this document is 9 April?---Yes.

10 And then it's 5 May when there's a report to the Colonial Mutual Board Audit Committee?---Yes.

And you've exhibited as part of exhibit 8 a paper that went to the board on 5 May 2015, which is CBA.0503.0007.0009?---Yes.

15 It seems that document has two different document IDs on it, but we have it now. Yes, thank you. And we see there from clause 4.1.3, that that board audit committee was told about the 64,000 customers who were unemployed at the date of their credit card application and were sold a CCP product, and we see below that in 4.1.4 a
20 paragraph that reflects what we saw in the other audit report, which is that there's no requirement for front line staff to make unemployed customers aware that they may be ineligible to claim?---That's right.

25 So this is a paper that went to the Colonial Mutual board audit committee in May 2015. When was the matter reported to the CBA audit committee? Is there an equivalent document for them?---I will have to check on the exact timing. Looking at my statement, on paragraph 38 it refers to reports to the board audit committee, which refers to the CBA board, the board risk committee which referred to the CBA board, and in the attachment there are dozens of pages of extracts - - -

30 Yes, there are, Mr van Horen?--- - - - to various boards, yes.

35 We do have a document dated 9 June 2015 in those many documents that form part of these – this exhibit, which is heavily redacted. And if we can find that, I will ask you if that is the report to the CBA audit committee. It's CBA – I'm sorry, it's very difficult to read because the two doc IDs have printed over each other. CBA.0503.0007.0005. Could we bring up the first and second pages of that document. I think we have there the first and the third pages of the document?---That doesn't seem to be the right page.

40 We're looking for 0005 and the page that follows it. I see. So – I'm sorry, there's a page in between the two that has been redacted and not produced in the court book; is that your understanding? Are we missing a page in between there?---It's possible. I can be confident in saying that all of these documents were reported to all of the
45 CBA governance forums regularly.

So we can't tell from this document whether it was part of what went to the CBA audit committee on 9 June 2015?---Well, not from what's on the screen because it's

clearly missing a page in the middle. It goes from 4.11 to 4.25. So I can only assume there's a middle page. We can find that page and supply it.

5 I see – I see. CBA first made an informal notification to ASIC about this matter on 7 May 2015?---That's right.

That was an oral notification?---I know there were multiple notifications, including letters and oral conversations.

10 Well, the first written communication with ASIC according to your statement is on 15 May - - -?---Yes.

- - - 2015, and you've exhibited as exhibit 9 to your statement the letter that went to ASIC?---That's right.

15 Which is CBA.0001.0024.0118?---That's it.

20 If we could have the first and second pages of that document on the screen, that will give us the entirety of the letter. So the first question for you, Mr Van Horen, is about the status of this communication. It's not a report under section 9.12D of the Corporations Act of a significance breach, is it?---No, it's called – it's called a good governance notification, which my understanding is doesn't have any – there's no such legal framing, really. It was a practice that CBA used at the time. We've since stopped doing that. The reason why it was called a "good governance notification" at the time was because it wasn't clear at that stage exactly how material the breach was, because of the bundled nature of the product that I referred to earlier. That doesn't take away from what we believe it is now, which is a breach.

30 But you've identified at this point 64,000 potentially affected customers?---Correct. Correct.

That didn't render it a significant breach for the purposes of ASIC notification?---It didn't at the time.

35 Should it have, Mr Van Horen?---I believe it should have.

40 Thank you. But instead this letter goes to ASIC as a good governance notification, and CBA tells ASIC in this letter that it has recently identified that some Creditcard Plus insurance customers may not be able to claim on unemployment and disability benefits. Do you see that reference there?---I am familiar with the letter. I didn't see it in – which paragraph are you referring to?

Paragraph 1, Mr Van Horen?---Yes, I have got it.

45 And the letter notes – it goes on to note in the third paragraph:

Our preliminary view indicates that of approximately 245,000 current CCP policyholders, an estimated 27,800 may not derive income from employment at the time their policy was issued.

5 Now that figure, 27,800, is substantially lower than the estimate of 64,000 customers that ASIC had communicated – sorry, that CBA had communicated internally?---Yes.

10 Why was ASIC only told about 27,800 of those 64,000 customers?---Yes. I'm not sure what the calculation was behind the 27,000, but what I do know, from having been through multiple versions and iterations and chapters of this investigation is that the analysis of the number of customers impacted is quite complex, which is why the numbers have moved around a lot. And you will see that through many of the –
15 much of the correspondence with ASIC in the meetings we've had with them, the numbers have moved and that applies to the LPP matter as well, which I'm sure you will get to.

Yes, I will. Accepting that the numbers move as you find more out about the circumstances of the individual customers, why did CBA make the decision to not
20 tell ASIC about the potential larger number of customers?---I – I couldn't give you a reason why that number changed.

Well, so CBA firstly chooses not to make this a significant breach notification under section 9.12D, and, secondly, chooses to notify ASIC of only 27,800 potentially
25 affected customers. I'm going to suggest to you that CBA was doing all it could to minimise this in its communications with ASIC?---I – I'm afraid I couldn't agree with that. It's not in our interests to try and mislead the regulator in any way, and that has certainly never been the intent from anything I've ever seen or been involved in.

30 Well, do you think this was misleading to the regulator, Mr Van Horen?---Well, you know, it's quite – quite clearly referenced as a preliminary review. So I can only believe that between the April audit and the May letter work was underway to try and understand the number of customers that were – that were impacted.

35 Whatever work was underway, it had not reduced the potential number of estimated – the potential number of affected customers down to 27,800, had it?---I don't have any basis to agree to that statement.

40 Do you have any basis to disagree with that statement, Mr Van Horen?---Other than the circumstantial evidence of what the letter here says.

THE COMMISSIONER: Mr Van Horen, is it open to me to conclude that internally
45 CBA was telling its board or board committee one thing, and telling ASIC something radically different?---I don't think that would be – certainly - - -

Radically different, because it's half?---It's – I think there's no questioning what the letters say and what the reports say. You know, we could go and try and retrace how the calculation was determined to put this number in this letter, but was there ever any intent to tell a different story to regulators or our internal governance structures?
5 Nothing I've seen suggests that's the case.

MS ORR: Well, what I'm going to suggest to you, Mr Van Horen, is that there was a decision made internally at CBA to give ASIC a figure that was limited to current policyholders:
10

Our preliminary review indicates that of approximately 245,000 current CCP policyholders, an estimated 27,800 may not derive income from employment.

?---Yes, that's correct. There were – yes – yes, there were many categories of
15 customers – and this is documented in all the correspondence with ASIC – which were added as the scope of the investigation continued, and one of those big changes was going from only looking at – initially current policyholders, and then added closed policyholders. And there were others as well.

20 Yes. And by choosing to notify ASIC only of the current policyholders the problem was minimised, was it not?---The problem was incorrectly stated.

Thank you. And if I could just quickly take you to a connected document before we finish for lunch, Commissioner. Could I ask that you look at a document which is in
25 your exhibit 12, which is CBA.0001.0024.0224. This is a later from – a letter from much later in the piece, which I will come back to. You can see it's a letter dated 21 February 2017. It's a letter from CBA to ASIC again. But what I would like to direct your attention to now is a section on the second page of that letter, 0225. Just on the topic of this being a good governance notification, Mr Van Horen, could I
30 direct your attention to the paragraph, "While we have demonstrated":

While we have demonstrated a willingness to engage with potentially impacted customers –

35 this is at February 2017 –

*we consider that CBA and CMLA have not breached any legal obligations in this matter. We notified ASIC of this matter because we thought it may be of interest to ASIC and not pursuant to our reporting obligation under section
40 912D of the Corporations Act. We have, nevertheless, agreed to take the above steps as requested by ASIC.*

Is that an accurate statement, Mr Van Horen? That CBA notified ASIC of this matter because it thought it may be of interest to ASIC?---I wouldn't – I wouldn't
45 choose those words. I don't think it's an appropriate framing of the issue.

Well, those are the words CBA used in its correspondence with ASIC?---That's correct. And, as I said, the rationale for that at the time was this – this fact that the bundled nature of the policy where customers were eligible for a number of the benefits and not eligible for the other benefits was what clouded the issue.

5

Do you still consider, and does CBA still consider, that CBA and CMLA have not breached any legal obligations in this matter?---I – I think on balance, and taking into account all the – all the considerations, I do think that it was a breach.

10 Of which obligations, Mr Van Horen?---Well, of our obligations to act honestly, efficiently and fairly.

Thank you, Mr Van Horen. That's a convenient point, Commissioner.

15 THE COMMISSIONER: Yes. We will resume at 2 pm.

ADJOURNED

[1.01 pm]

20

RESUMED

[2.00 pm]

THE COMMISSIONER: Yes, Ms Orr.

25

MS ORR: Mr van Horen, before lunch I showed you parts of a document which had some redactions within it, which was the – a paper that went to the CBA audit committee on 9 June 2015. You will recall that we had two pages, but seemed to be missing - - -?---Missing a page, yes.

30

- - - at least one page in between. May I ask that CBA.0503.0007.0018 be brought up. Now, it appears that there are multiple pages in between the page that you see on the left-hand side and the page that you see on the right side which appear to have been redacted in their entirety, but there is a reference here at 4.1.20 to these matters.

35

Do you see that?---I do.

- - - Mr van Horen?---Yes.

40 Which indicates to you that there was some notification to the CBA audit committee on 9 June 2015 of this issue in the terms that appear under clause 4.1.20?---Yes.

Yes. Thank you. Now, returning to the chronology of events, Mr van Horen, we had been speaking of the notification to ASIC that occurred on 15 May 2015 following the audit report that identified this issue on 9 April - - -?---Yes.

45

- - - 2015. Now, by the end of May 2015, CBA had updated its sales script for the assisted channels for the selling of the Creditcard Plus insurance product; is that right?---That's right.

5 And could I take you to your first exhibit at CBA.0507.0013.0067. Now, if I could ask you to focus on the page on the left. This is a document annexed to your statement. Is this the amended script for use in the assisted sales channels, so by phone or in branches, for the sale of the Creditcard Plus insurance product after May 2015?---That's right.

10

And we can see the way the script works after that time. If we look at the top of the page, at some point in the script the CBA person is to say these words to the customer:

15 *I would now like to tell you about an optional insurance from CommInsure called Creditcard Plus which could help pay your credit card repayments if you're unable to work, or balance if you pass away. You don't have to take out this insurance, but it may help if something happens to you. It is issued by a life insurance company in the Commonwealth Bank group. It's quick and easy*
20 *to set up now. Can I explain how it works.*

If no, the instructions to the person are:

25 *You can attempt to overcome the customer's objections up to two times during the entire application. If the customer still objects –*

so a third objection –

30 *end the application here, continue with the credit card application if needed.*

So those were the instructions given to CBA staff?---They were.

Now, if the person discussing this with the customer received a yes answer to:

35 *Can I explain how it works?*

Or overcame up to two objections to get a yes answer, the person from CBA was then directed to say to them:

40 *Do you typically work more than 20 hours a week in employment that is not seasonal in nature?*

And then the instructions to the person are:

45 *If no, end the application here. Customers who work less than 20 hours a week are not eligible to claim for benefits on Creditcard Plus.*

So that was the amended script as a result of the changes made in May 2015 for in the branch and on the phone sales of this product?---Yes.

Okay. Now, the:

5

Do you typically work more than 20 hours a week –

question is what CBA seems to refer to in its documents as a knock out question -- -?---Yes.

10

-- - designed to knock out the possibility of selling the customer this insurance product if they don't meet the employment eligibility criterion; is that right?---Yes, that's right. So knock out means if the answer is no, then that customer is excluded from further sales for that product.

15

Okay. Now, at the same time that these changes were being made to the scripts for the sales in a branch and sales on the phone, there were also changes being made to the digital channel. So if a consumer wanted to purchase this product online; is that right?---That's right.

20

And if we move to also within that same exhibit in your witness statement to CBA.0507.0013.0069, we see the changes made not to the script because, of course, there's no script when a person is sitting in front of a computer doing this online, but changes to the text that appears on the screen as they're moving through the process; is that right?---That's right.

25

And the change that was made we see in the fourth paragraph down in the third sentence there. So can you see, Mr Horen, on the fourth line down:

30

If you are working less than 20 hours a week or if your employment is seasonal in nature, then Creditcard Plus may not be appropriate for you, as you will not be able to claim for the monthly benefit.

35

Now, that was the change that was made to the online information for the customer about this exclusion from the policy?---Yes. That was the revised online script or online statement.

40

So in contrast to the revisions to the script for the on the phone or in the branch sales, there's no knock-out question implemented by CBA at this point for the online -- -?---Correct.

-- - application?---Correct.

45

So that a customer using this form could still indicate that they wanted to buy this insurance in circumstances where they didn't meet the employment eligibility criterion?---They could have, yes.

And why did you choose not to include some form of knock out question in the digital channel as you had done for the by phone and in the branch channel?---Well, I think with error – with hindsight there was an error, because we did introduce a knock out question in 2017 into the digital channels. I think the – the primary reason why we didn't do it in 2015 was if you – if you sort of go back to the context at the time, the concerns were very much around the human to human sales process and the concern that there was pressure imposed on the sales – imposed by the salesperson on the customer to take up a product. In digital channels, the customer is reading it in their own time with no such pressure imposed by anybody on our side. And so I believe that was the reason why the – the changes made here didn't go further at the time.

And you accept that that was an error?---Yes.

15 And changes ought to have been made - - -?---Yes.

- - - to the online process - - -?---Yes, correct.

- - - so that a customer could not have proceeded to acquire Creditcard Plus insurance if they didn't meet the employment eligibility criteria?---Yes, correct. So we did make those changes in 2017 and when we came to remediate customers we included digital customers up to 2017.

Yes?---When that knock out question was imposed.

25 In recognition of that error?---Correct.

Yes. So it was two years after this point – so this document is from May 2015?---That's right.

30 It took CBA another two years until, in the period from March to August 2017, it ensured that there was a knock out question in relation to the - - -?---That's right.

- - - online form. So why two years to accept that that was the approach that was necessary, Mr van Horen?---Well, as I say, the – the context for the 2015 changes were very much around miss-selling and needing to have a higher bar in our sister channels. As I said, with hindsight we should have done it earlier, but in the cold light of day when a customer is reading something like this on the screen – it is pretty clear, and if the customer did take the time to read that and said, “Well, actually, no, I do work less than 20 hours a week” – you know, it was fairly clearly stated. It didn't go as far as it should have and did do later.

45 You say it was clearly stated, Mr van Horen, but your own internal documents show that CBA was aware that even where customers ticked “yes”, as they had to here, about having read this information, they may not necessarily have understood that information?---Yes. That's right, yes. That's right.

Yes. All right. Can I move then to the remediation process that CBA commenced in relation to the sale of CCP insurance to customers. Between May and October 2015, CBA undertook an investigation to attempt to work out which customers it ought contact in relation to this issue?---Yes.

5

And this took quite some time, because CBA doesn't hold customer data relating to a customer's employment circumstances?---Correct. So we don't have data that says the customer worked 22 hours a week or 18 hours a week, or – or the like.

10 Why not, Mr van Horen, when that was one of the eligibility criteria - - -?---Well - - -

- - - for claiming under the policy?---As I said, clearly we should have had that clear in our sales process. However, gathering data on the number of hours a week a customer works, you could imagine that data might be relevant today and in a month's time it could be out of date. So it's not a data field typically that we have captured in all of our systems.

15

ASIC was critical of CBA for its poor data on this issue, weren't they?---ASIC were critical of a number of points. I'm not – I don't recall anything specifically about the data on employment hours worked.

20

Well, your poor data made it very difficult for you to work out which customers to get in contact with, didn't it?---It required a lot of work to understand which customers were caught in the net of the remediation, yes.

25

So by 26 October 2015 you had identified some categories of affected customers?---Yes.

30

And you decided – you, CBA – decided at that time to send a letter to current policyholders who had been identified by CBA as people who may not have met the employment eligibility criterion when they purchased the product?---Yes.

Now, you provided that letter that you proposed to send to customers to ASIC; that's right?---We did.

35

You did that on 26 October?---Yes.

As well as giving them some information about the investigation that you had conducted?---Yes.

40

Yes. Now, could I take you to exhibit 10 in your statement, which is your letter to ASIC dated 26 October 2015. I'm sorry, CBA.0001.0024.0114. And it's a two-page letter, so perhaps we could have both of those pages on the screen at once. So in this letter, second paragraph with the dot points CBA told ASIC:

45

We have now completed our investigation with this issue with the following findings: we currently have 43,102 customers who our systems indicate were

unemployed when they purchased CCP. We have paid unemployment claims among this group. Temporary disability benefits can be claimed if the customer is working before disablement regardless of the hours per week worked. Death and terminal illness benefits are paid regardless of working status.

5

So the number of customers identified for ASIC on this date, 43,102, was higher than the initial number given to ASIC, which you will recall was approximately 27,000 customers, but still lower than your internal estimate of 64,000 customers. Why was that? What had caused you to get to this figure by this point?---There were a number of subsets of customers that were being analysed at the time from when the issue was first identified, right through to the final resolution. Those customer groups included categories like people who may not have been employed 20 hours a week, eg, pensioners. Where we had an unknown category, we simply didn't know that there was a -- there was no data captured for that particular customer, students as I have said already, closed/open customer. So there were various groups of customers. And so the work that was going on was to look at, well, how many of those customer groups had claimed benefits to get a sense of whether there was a reasonable level of awareness from that customer group as a whole? In the end, we went all the way to the 64,000 number - - -

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15

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Yes?--- - - - which was the final remediation number.

25

30

Yes. And I will suggest to you now -- and I will do it in connection with documents as we go -- that you eventually went to the 64,000 customers because ASIC pushed and pushed and pushed for you to do so, and at every step of the way, CBA resisted that?---I think that's a little unfair to characterise it like that. CBA certainly did take too long to arrive at the end answer, and I know from my personal involvement in this during that period we did get to that point where we said we would go to the 64,000 number, albeit in two different categories of remediation.

Incrementally, didn't you?---Yes. It was incremental.

35

So there was a point at which you went a bit further, in response to ASICs request, and then ASIC asked for more, and you went a bit future again?---Yes.

And that happened a number of times before - - -?---Okay.

40

- - - ultimately agreeing with ASICs request that you remediate all 64,000 customers?---I agree it was incremental. Absolutely. It's one of our failings. However, I don't believe -- and I'm certainly not aware -- that ASIC ever made a clear request upfront to remediate 64,000 customers. There was a lot of engagement with ASIC along the way to understand the different customer groups, and what the treatment would be for each of those customer groups.

45

Well, I will suggest to you that ASIC queried - - -?---They did, yes.

Queried what you were putting forward?---Absolutely.

Every step of the way. So you made proposals about who you would remediate and ASIC queried why - - -?---Yes.

5

- - - that was the limitation of your proposal and asked you to take it further. And it took a number of - - -?---It did.

- - - taking it further steps - - -?---It did.

10

- - - for you to get to the end point of remediating all 64,000 customers?---Correct.

In this letter to ASIC on the fourth substantive paragraph:

15

We have now updated –

do you see that, Mr van Horen?---Yes.

20

We have now updated the CCP sales script so we do not continue with a sale if a customer advises they are unemployed, employed for less than 20 hours per week, or employed in seasonal work. We also continue to alert customers during the sale process to the exclusions.

25

Now, it was correct that you had updated your sales scripts as they related to the sales in a branch - - -?---That's right.

30

- - - and on the phone. But it was not correct that you had updated the process to prevent this from happening on the digital channel; is that right?---That's correct. I think the – the way this is phrased talks specifically about the sale scripts, which do refer to the assisted channels where there's a human interaction. The last sentence of that paragraph which talks about alerting customers during the sales process would have been referring to the digital side of things as well.

35

Do you think that would have been clear to ASIC? Would they have understood that that last sentence of that paragraph was directed to your digital channel?---It doesn't say so explicitly, and I wouldn't presume on behalf of ASIC.

40

No. Well, it was pretty carefully worded, I want to suggest to you, Mr van Horen, in circumstances where it was known that there was no knock out question stopping the process for the digital customers?---Yes.

This letter attached, for ASICs consideration, the letter that you were proposing to send to your customers, and that is at 0116?---Yes.

45

There we are. So this is a copy of the letter that CBA provided to ASIC and advised ASIC it would be sending out to the 40,000-odd customers that had been identified?---That's right.

And did – I’m sorry, did CBA in fact send the letter in this form to those customers?---Yes.

5 And the key part of the letter is under the heading Can You Claim? So the first part of the letter gives some information about what Creditcard Plus insurance is, and then under Can You Claim:

10 *Your ability to claim on some of these benefits depends on your current employment status. Our records indicate that you may not have been working when you first purchased your policy and may not have been eligible to claim on all benefits at that time.*

15 So this was a letter that was sent to customers with open policies, current policies with CBA?---That’s right.

Not to anyone who had closed their policy?---I don’t believe so.

20 And nothing in this letter told the recipient that they had been sold CCP insurance in circumstances where they may not have met the employment eligibility criterion?---Well, the paragraph does say:

25 *Your ability to claim depends on your current status and our records indicate you may not have been working when you first purchased the policy and may not have been eligible.*

So that was the core of that – of that section of the letter saying, “Customers, you may not have been eligible.”

30 But nothing in this letter offers any compensation to the recipient for premiums that they have paid - - -?---Yes.

35 - - - in circumstances where they didn’t meet the eligibility criterion?---Yes, I agree, and I think, you know, it’s easy to say with hindsight but if you look at the letters that we did subsequently send, they are a whole lot clearer than this. This one wasn’t a very clear letter indicating to customers what they should have done.

40 Well, I will suggest to you Mr van Horen, that nothing in this letter suggested to the recipient in any way that the way CBA had sold them this insurance policy had disadvantaged them in any way?---I’m not sure that’s – it could have been clearer, of course, but if you do read that sentence:

...our records indicate you may not have been working when you first purchased –

45 so that sentence does indicate that customers may not get the benefits that they were paying for.

Well, does it, Mr van Horen?---Well, perhaps it's open to interpretation then, but it seems to me to say that if you are not:

5 ...our records indicate you may not have been working when you took out the policy and may not have been eligible to claim on all the benefits at the time.

So it does indicate to the customer there is a possibility or probability that they weren't going to be able to claim on the benefits.

10 Well, nothing to tell them that they, therefore, ought not to have been sold that policy?---Yes. Again, I agree the letter wasn't well crafted.

There was no offer in here to permit them to cancel their policy?---I don't believe so.

15 It was just a marketing letter, wasn't it, Mr van Horen, and was viewed by ASIC in that way?---Look, absolutely agree. It was a poorly constructed letter. It didn't achieve the goal that it should have set out to achieve, which we did do later.

20 But you say in your statement that, after CBA sent this letter out, it considered that it had effectively addressed the CCP issue by changing its assisted channel sales process and sending out this letter?---I believe that was the view.

But you now recognise that CBA hadn't effectively addressed - - -?---I do.

25 - - - the issue at all?---I do.

30 And not only did the letter suffer from the vices we've just been discussing, but people were still able to apply through the digital channel in circumstances where they didn't meet the employment eligibility criterion for another two years after this time?---Correct. If they didn't see that particular clause in the digital application process and act on it.

ASIC wasn't happy with this letter; is that right?---No, no.

35 That they were not happy; is that - - -?---Correct, they were not happy.

Yes, I'm sorry. And they told CBA that in correspondence?---Yes.

40 Could I take you to your exhibit 12 at CBA.0001.0024.0098. This is a letter from ASIC to CBA dated 1 April 2016?---Yes.

45 And if we turn to 101 in the letter we see, under the heading Letter to Customers, a reference to the letter that was mailed or intended to be mailed, and can I take you to the paragraph that commences:

Whilst the letter contained some information regarding the eligibility to claim as noted above, we are concerned that the headline claim of How Your

5 *Creditcard Plus Policy Helps Protect You, together with the first half of the letter emphasising the benefits of the product, may detract from the message in assisting customers to assess their suitability for CCP. We are also concerned that the letter may not adequately draw the customers' attention to the possibility that they may have been mis-sold the insurance product.*

Now, do you agree with those concerns, Mr van Horen?---I do.

10 Thank you. And in this letter, if we go back to 0099, we see that ASIC asked for further information from CBA on a number of points. Do you see at the top there:

In the light of the above findings, please provide the following information.

15 ?---Yes.

And a written response was requested by ASIC by 18 April 2016. We see that from 102. And while that's being brought up – there we go. 18 April 2016. What followed after this was a series of letters that passed between CBA and ASIC for over a year?---Yes.

20 As well as a number of meetings between CBA and ASIC?---That's right.

And during this period, ASIC pointed out concerns that it had about the lack of value of the CCP product?---They did.

25 And ASIC made a number of suggestions to CBA about how it should handle this issue, particularly in relation to which customers it should remediate and how it should compensate them?---Yes.

30 Now, initially, CBA didn't offer to compensate anyone?---I would need to refer to the specific documents. Certainly from my – the time of my personal involvement it was always on the table during that subsequent – that year that you referred to.

35 Well, if we go back to your original communication with ASIC, which is your exhibit 9 at 0001.0024.0118, this was the good governance notification - - -?---Yes.

- - - to ASIC. The action that CBA indicated it would take to ASIC in this letter did not - - -?---Yes.

40 - - - include any compensation for any customer, did it?---Correct. Not at that time. I thought your question was referring to the subsequent year where there was the back and forth between us and ASIC, and certainly from reasonably early on in that process there was always consideration or acknowledgement by CBA that we would remediate customers.

45 So I will suggest to you that, after being pressed by ASIC, an early move was to – an offer to compensate people with open policies only?---Yes.

5 And a subsequent move, pressed by ASIC again, was to move to open policies and closed policies?---Yes. I would add there was a lot of internal discussion about this. It wasn't just, "Let's respond to ASIC now that ASIC have sent us a letter or said something." There was a lot of internal discussion about what the right thing to do was as well.

10 And in terms of the amount of the remediation, the initial offer by CBA was to refund part of the premiums only?---Could you point me to the specific document referring to that?

Yes, I can. We can go to your exhibit 12 at CBA.0001.0024.0224. This is another communication with ASIC. It's one I took you to earlier, Mr van Horen, dated 21 February 2017. And do you see a reference down the bottom of the page 1:

15 *We initially proposed to contact customers recorded as "students" in our systems, inviting them to contact CMLA if they were not working for more than 20 hours per week at the time of purchase.*

20 ?---Yes.

Continuing:

We offered to pay these customers a fair proportion of - - -

25 ?---Yes. That's right.

Continuing:

30 *- - - premiums paid during the period that they remained ineligible to claim the employment related benefits.*

?---That's right.

35 So that was the initial offer?---Yes.

Sorry, the initial offer was no compensation. That became an offer to pay part of the premiums and, after being pressed further by ASIC, eventually there was agreement to pay the entirety of the premiums?---For the student category, yes. The - - -

40 Yes. Now I want to - - -?--- - - - the rationale for that one you were pointing out there is that some students did claim. And so this was part of the process of arriving what was the fair outcome for that subgroup of customers.

45 Well, there was a lot of toing and froing between CBA and ASIC about which categories of people - - -?---There was.

- - - should be paid anything as well, wasn't there?---There was. There was.

And initially students - - -?---Yes.

- - - was what you proposed to deal with?---Yes.

5 But after being pressed by ASIC over the course of this year, in multiple letters, you moved to an offer to also compensate pensioners, people who were pensioners at the time of buying the product?---Yes. And other groups were added as we went along.

Yes. Well, you eventually added retired people?---Yes.

10 And you eventually added unemployed people?---And unknowns.

And people who were performing home duties?---Yes.

15 And some component whose occupation - - -?---Was unknown.

- - - you didn't know?---Yes.

20 So ultimately you agreed to provide compensation for people who were unemployed students at the time of buying the product by refunding all the premiums they had paid, plus interest, on the basis that students were unlikely to have obtained any benefit from the policy as they were unlikely to have dependants and unlikely to need death and terminal illness cover and were ineligible for the other forms of cover under the policy?---Yes. So what we did with the student group was did an

25 automatic refund if our records indicated they were a student at the time of acquiring the policy. What we refunded was four years' worth of premiums from the date on which they took out the policy. We believe that errs very much on the side of the customer, because that assumes that a customer studied for four years and they took out this policy on day 1 of their student period which is, on the balance of

30 probabilities, unlikely. Nonetheless, we said we would move to a point where we would refund four years' worth of premiums automatically from the date in which they took out the policy, regardless of whether they were or weren't working more than 20 hours a week.

35 And you only agreed to refund premiums from a particular date, Mr van Horen, which was October 2011?---Correct.

Why was that?---That's because ASIC issued their guideline RG256 in October 2011, which was the report we covered earlier, which spelt out the – their

40 expectations around the sales process. That was discussed with ASIC and agreed with ASIC that we would start the remediation from that date onwards.

On the basis that from that time you should have been doing things differently because ASIC had promulgated its recommendations for - - -?---Correct.

45 - - - how this should work?---Correct.

Is that right?---Yes.

So that's why October 2011 was chosen?---Correct.

5 And the question of how far to go in response to ASICs concerns about the way the remediation program was being constructed was the subject of very detailed consideration internally at CBA, wasn't it?---Yes, it was.

10 Can I show you a document which is CBA.0001.0025.1404. Do you recognise this document - - -?---I have seen it, yes.

- - - Mr van Horen. So it's a CCP unemployed EGM update from 6 February 2017?---Yes.

15 So it's an update for the executive general manager on that date, which is quite late in the dealings with ASIC; is that right?---Yes.

20 And who was the executive general manager who received this update?---There would have been two. I don't know if it's got it in the next page of this particular pack, but - - -

25 We can bring that page up if that assists, Mr van Horen?---I would have been one of the EGMs and Helen Troup, the managing director of CommInsure, would have likely been the other.

30 Yes. Now, could I ask that you be shown 1407 in this document, remembering that this is a document from February 2017. So do we see there, under the heading Recap CCP Unemployment Issue, that by this time CBA had identified 100,000 potentially unemployed customers who had purchased the product from 2008 to 2015?---Yes, from 2008 to 2015.

35 So not the original internal estimate of 64,000, or the 43,000 notified to ASIC, but now 100,000 over that period comprising 69,000 students, 26,000 others, and 5000 unknowns?---That's right.

And if we move to 1409, we see that there were four models discussed within CBA for how to go back to ASIC about these issues, which ranged from a reactive refund – do you see that in option 1 - - -?---I do.

40 - - - over on the left?---Yes.

45 A reactive refund of part of the premiums, right down to option 4, which was a proactive refund of all the premiums for students and a reactive refund for others. And this document discusses the pros and cons of each of those models?---That's right.

Can you explain the difference between a reactive refund and a proactive refund?---So a proactive refund would be the kind that was ultimately done for the student population. In other words, we would have sent the students a letter – the customer a letter and said, “We are refunding you dollar X.” And that refund would
5 have automatically been processed if we had a bank account for them or a cheque was sent to them if we didn’t. Reactive means where we don’t or didn’t know. So this was the other categories of customers, like unemployed or retired or home duties, etcetera, where our data didn’t tell us they were or were not working that minimum 20 hours a week. We then sent them a letter saying please – “Our records
10 indicate”, etcetera, “Please let us know if this is the case, that you weren’t working 20 hours a week.” In which case we will issue a refund.

And if we turn over to 1413, we see a diagrammatic representation of the evolution of your approach to how to remediate people for this problem, and we see your
15 original commitment was restricted to students with open policies and a partial refund on a reactive basis?---Yes.

And then this diagram depicts the evolved position as well as the ASIC position. So there’s still not harmony between where you’ve got to at this point and where ASIC
20 would like you to get to?---That’s right. That came about – when I say harmony, that overall approach was agreed in April 2017. This was all – a lot of preparatory work leading up to this meeting. I attended that meeting in April myself, along with Helen Troup and a few others where we finally settled the approach.

25 I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 1.100, CBA.0001.0025.1404, CCP Unemployed EGM Update 6 February ’17.

30

**EXHIBIT #1.100 UNEMPLOYED EGM UPDATE DATED 06/02/2017
(CBA.0001.0025.1404)**

35 MS ORR: Mr van Horen, we see references in the documents to call to action letters. Are they – does that connect up with the reactive refunds? Is that a reference to a letter that requires the consumer to come back and tell you some – give you some information before you can consider whether to make a refund?---Yes. That’s
40 what it refers to. We didn’t want the action imposed on the customer to be onerous, and this is something that ASIC discussed with us as well, but it did require the customer to do something in order to get the refund.

In contrast to a proactive refund letter which would just tell the customer that they were getting a refund?---Correct.

45

Yes. And I want to suggest to you that at least part of the reason that CBA was keen to deal with this by call to action letters or reactive refunds is because your

documents reveal that you knew that customers were unlikely – a large number of customers were unlikely to take up the invitation to engage in action in response to those letters?---I don't think that's quite as simple as that. You know, we had to get the right balance here in terms of principle and setting the right precedent. So it was not - - -

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THE COMMISSIONER: Reason for what?---For whatever else may happen in different remediations, because unfortunately there have been a number of different remediations around the bank. The – the purpose of the – the way we want to do – do this call to action was in a very simple way. We did debate internally whether we would ask customers to demonstrate at the time of taking out the policy what their working status was, for example a payslip which might have said worked 37 hours this week or seven hours this week. We decided not to do that because we didn't think that would be a fair thing to do for those customers, given the circumstances. And so in the end, the customer simply had to let us know, "I was not working the minimum number of hours a week", in which case we then dispatched – made the refund.

20
MS ORR: So there were nonetheless a call to action letter in that there was action that had to be taken by the customer to move through to a potential refund?---Yes. There was - - -

25
And there were - - -?---And I think there was good reason for that as well, because our data indicates that some of those customers were working more than 20 hours a week. However, to go through the entire base and have a very different approach by customer, we thought that would be very onerous on them as well.

30
Well, you have internal data, don't you, Mr van Horen, on the take-up rate for call to action letters?---Correct. Correct.

And you know that the number of customers that respond to those letters – you know that it's approximately 30 per cent - - -?---Correct.

35
- - - of people who respond to those letters?---Correct. For this remediation, it's been around 30 per cent.

40
Yes. And, in fact, when it came to budgeting for remediation in connection with a subsequent problem, the LPP product problem that we will come to, you in fact budgeted on the basis that approximately 30 per cent of recipients of your letters would respond?---Yes. Budgeted is a word but I think the more correct word would be we raised a provision. So in our financial statements we need to raise a provision for what we think the future costs would be, and our best point of reference was the response rate to the first CCP remediation.

45
So you worked on an assumption that, if you sent out this form of letter, 70 per cent of people would not respond to it and you would not need to pay them any

refund?---Yes. But bear in mind, as I said, that of that large proportion of those customers could well have been working the minimum 20 hours a week.

5 The finalised approach of CBA to remediating for the CCP problem is dealt with in a table in your statement at paragraph 57. This was a table that you made an amendment to - - -?---Correct.

- - - at the start of your evidence today, Mr van Horen?---Yes.

10 We see that there. I'm sorry, that goes across two pages of your statement. And as at 24 August 2016 CBA estimated internally that impacted customers had been paid a total of about \$11 million in premiums, and had received about .5 million in claims paid out; is that right?---Those numbers are not in the statement.

15 No?---They come from another source.

20 They're in a document annexed to your statement, Mr van Horen. Your exhibit 12 at CBA.0001.0024.0189. This is another letter to ASIC, part of the year of communications with ASIC. And we see, at the bottom of 0190, that ASIC had asked for information from you about the total amount of premiums paid by impacted customers and how much in benefits had been paid to impacted customers resulting from CCP claims?---I see that, yes.

25 And CBA responded that:

...impacted customers have paid a total of \$11 million in premiums –

I'm sorry, I think I put this incorrectly to you before –

30 *they have paid a total of \$11 million in premium and have received .5 million dollars in response to claims made.*

?---I see that.

35 That's correct?---Yes. For that period.

Yes?---It's not the same as the loss rate, however, as I might point out.

40 No – no?---We will talk about that - - -

No, no, I understand that. Now, in terms of the remediation paid out, you tell us in your statement that CBA has paid approximately \$9.8 million to date to customers under the CCP remediation program?---That's right. At the date of the statement, that was correct.

45 And what is the amount paid out as of today's date?---It's slightly more. So it's 9.9.

9.9 million. And when will CBA finish paying customers under the CCP remediation program?---As of last week, we had made all of the refunds to the students. So that was in round numbers 47,000 students. Those refunds were made fairly early. Of the remaining 17,000, there are about 600 cases that are more
5 complex where we've -- we agreed with ASIC we would do what is called a multichannel communication strategy. That is write them a letter, if we didn't get a response we would email, SMS, and so on. These are cases where -- typically there could be deceased estates so there's about five or 600 that we're still working through. We expect to complete those in the next month to six weeks.

10 Is that when you expect to complete the remediation payments?---Correct.

Yes. So all of the -- --?---It takes -- it's not a long time. So between resolving the status of a particular claim and making the payment, that's a matter of days before
15 the payment is made.

So within the next six weeks you anticipate -- --?---Yes.

-- -- you will finish the remediation?---Yes.

20 What do you anticipate the total amount of remediation?---It will be of the order of \$10 million. So it will be, give or take, \$10 million.

Now, I want to show you ASICs media release about this issue before we move on to
25 the other insurance product that you deal with in your statement. That's at RCD.0021.0001.0001. Have you seen this document before, Mr van Horen?---Yes.

And the media release records that you sold:

30 *CBA sold CCP insurance for credit card repayments to 65,000 customers who were unlikely to meet the employment criteria and, therefore, would be unable to claim the insurance.*

?---Yes.

35 Now, the media release also refers to another problem with home loan protection insurance. CBA hadn't adjusted the amount of cover under the insurance policy where the amount the customer borrowed was less than the original loan that they applied for. Do you see the reference to that in this document down the bottom of
40 the first page, Mr van Horen?---Yes. That was an entirely separate matter where there was an error in the charging of premiums on certain CommInsure policies.

So this is one of the other remediation programs that you were referring to
45 -- --?---Yes.

-- -- earlier? So CBA charged these customers -- different customers -- --?---Yes.

- - - for more cover than they needed under the policy; is that right?---Yes. Different customers, different root cause, no overlap with this population as far as I'm aware.

Yes. An entirely different - - -?---Yes.

5

- - - problem?---That's right.

That arose for entirely different reasons?---Yes.

10 And this problem affected around 10,000 additional customers; is that right?---I believe so, yes.

And CBA, according to this media release, was to refund them approximately 586,000 in premiums?---That's right.

15

You will see that from the first – fourth paragraph down in the document, Mr van Horen?---Yes.

20 Has that been done?---To my knowledge, I'm not directly involved in this one, but I have inquired and that remediation, I'm told, is on track.

What does that mean?---I don't know whether – I don't know whether the payments have been made. I can - - -

25 What do you mean when you say it's "on track"?---It's been agreed with ASIC the program has a communication plan, as in how customers are communicated with and refunds are made.

So it appears to have been agreed with ASIC back on 14 August 2017

30 - - -?---Correct.

- - - when this media release was issued. What has happened in terms of making the payments to customers since that time?---I will have to check on that. As I say, I'm not managing that area. So I can check and refer if required.

35

All right. I tender that media release, Commissioner.

THE COMMISSIONER: Exhibit 1.101. ASIC media release MR17-268, MRRCD.0021.0001.0001.

40

**EXHIBIT #1.101 ASIC MEDIA RELEASE MR17-268
(MRRCD.0021.0001.0001)**

45

MS ORR: Now, Mr van Horen, from at least 2011 CBA offered another product issued by CommInsure which was styled the loan protection product for personal and home loans?---Yes.

5 And that's referred to in many of the documents we see as LPP insurance?---Yes.

But it was really two separate products?---It's actually two products, yes.

10 Yes. So the - - -?---The personal loan protection or PLP for short, and home loan protection or HLP for short.

And how long has CBA sold those two types of insurance?---Similar, I believe, back to 2003, as far as I know.

15 And that LPP insurance provides two different types of insurance cover, being loan cover which covers the customer's loan liability in the case of trauma, terminal illness or death, and loan repayment cover, which covers the customer's loan repayments during a time that the customer experiences involuntary unemployment or disability?---That's right.

20 So unlike CCP, LPP was an unbundled product?---Yes, there's a slight complication, which is that after November 2015, I believe it was, the personal loan protection component of that policy was bundled. So it became - - -

25 I see?--- - - - like CCP but - - -

I see?---Yes.

30 But prior to that time it was unbundled?---Correct.

In the sense that benefits could be selected individually or altogether?---Correct. A customer could choose which of those two, one or both, types of policy they wanted.

35 And the premium was then calculated according to the choices?---Adjusted.

The customer had made?---The reason of the PLP the reason it became bundled the premium was the same. So it made sense to offer those to the customer as a bundled policy post-2015.

40 And customers were offered LPP insurance as part of their application for either a CBA home loan or a CBA personal loan?---Yes.

45 And the offer, again, was made either in a branch, on the phone, or online?---Yes. The channel mix is very different, especially for home loans, because as you know a small percentage of home loans are sold or purchased online. The mortgage broker and the branch or the bank's sister channels are the primary channels for home loan protection.

Yes. And customers could also apply for it after they got their home loan?---In the same way as with CCP, yes.

5 But, again, this wasn't common. People mostly acquired it at the time?---Majority were at the time of acquiring the original product.

And during the period from 2011 to 2017, you tell us in your statement that 42.64 per cent of CBA personal loans had an associated LPP policy?---Yes. In the same way as we discussed it for CCP, the same methodology applies here.

10 But higher numbers here, getting up towards - - -?---Yes. Higher for PLP lower for HLP.

Yes. So for the personal loan product we're getting close to half of your customers who have the associated insurance?---Yes. A little shy of half, but yes.

15 Yes. 42.64 per cent. And you said the numbers were lower in relation to home loans. There were only 10.34 per cent of CBA home loans that had the associated policy?---That's right.

20 Now, the uptake therefore, we can see, was much greater in relation to personal loans than it was for home loans?---Yes.

And, like CCP insurance, CBA staff have sales targets for selling these products?---Yes.

25 And selling above those sales targets can lead to rewards?---I think exactly what we discussed in CCP applied here. So no direct sales correlation or commission for sales of PLP or HLP. Certainly nothing remotely like that since those specific incentive schemes were scrapped in 2014.

30 2014, yes?---Yes. And all targets today are branched based not individual based.

But volume of sales is still relevant to the remuneration - - -?---Marginally relevant.

35 Marginally relevant.

Obviously – yes. Yes, I heard you say before it was marginal, but it remains one of the factors relevant in a remuneration for a CBA staff member?---Yes.

40 Now, like CCP insurance, there are eligibility criteria - - -?---Correct.

- - - which were the same. The core eligibility criteria were the same. You needed to be between 18 and 64, an Australian resident, and have a CBA personal loan or home loan?---Yes. Bear in mind the eligibility differed between those two products you described earlier, loan cover, loan repayment cover. The employment criteria did apply to loan repayment cover, not to loan cover.

45

Yes. I'm sorry, I will come to the employment - - -?---Yes.

- - - eligibility criterion, but they had those core - - -?---The age – there was a different age cut-off, I believe, for – it was 54 or 55 - - -

5 I see?--- - - - for the home loan protection product.

So you could only get the home loan protection product if you were between 18 and 54, not 64?---Correct.

10 I see. But as with the CCP product, you had processes in place that ensured that the product wasn't sold to people who didn't - - -?---Yes.

- - - meet those criteria?---Yes.

15 And there were employment eligibility - - -?---Yes.

- - - criteria again, which you just mentioned. And I will summarise what I understand about this, and you can correct me if I'm wrong: in summary, a person could only claim loan repayment cover for loan repayments in the event of disability or involuntary unemployment if they met the employment eligibility criterion?---That's right.

20 But there was no such criterion in respect of loan cover - - -?---That's right.

25 - - - which related to their loan liability in the case of death, terminal illness or trauma?---Correct.

Okay. So in this respect, the CCP and LPP exclusions had similarities but were not identical?---Yes.

30 And as it had done in May 2015 for CCP insurance, in October 2015 CBA introduced a question into the LPP application form used in CBA branches and call centres which was a knock out question that meant that the application would not proceed if the employment eligibility criterion was not met?---Yes, that's right.

35 Can I take you to your exhibit 13. CBA.0507.0013.0001. So from October 2015, for home loans – this is a document that – is the home loan related document; is that right?---Yes. Same – same would apply to personal loans.

40 Yes. But you have the personal loan document - - -?---Yes.

- - - as part of your statement as well?---Yes.

45 But for home loans - - -?---Yes.

- - - the questions that a customer was asked after you made these changes is highlighted:

5 *In the last three months have either of you worked on average at least 20 hours a week in employment that is not seasonal in nature?*

If yes is selected:

10 *Would you –*
either you or –

15 *like to have cover for your minimum monthly loan repayments if either of you are unable to work? How about cover for your loan balance if one of you are diagnosed with medical trauma or pass away?*

?---Yes.

20 This was the change that was made for home loans in October 2015?---Correct. So-called knock out question.

That's the knock out question. And in relation to personal loans 0507.0013.0005, the relevant question is in the end of the last – first third of the page:

25 *In the last three months have either of you worked on average at least 20 hours a week in employment that is not seasonal in nature, yes or no?*

?---Yes. Same applies.

30 Well, you say that, but for this second document – the personal loan document – there's nothing there to suggest that the sales process stopped if that question was answered "no"?---It certainly was a knock-out question. So if the – if the question was answered "no", then it would not have proceeded.

35 And how do we see that from the script that you've provided for us, Mr van Horen?---It is difficult to see it, and there may be another version of the script that has it clear, but the same knock-out question did apply from introduction of this question.

40 THE COMMISSIONER: Where do I see it, Mr van Horen? The script I see there does not have it as a knock out question. If there's some other script, when are you going to produce it?---We will have to go back and find that.

45 MS ORR: Well, I'm going to suggest to you that you didn't insert the knock out question until much later, Mr van Horen. So at this point, based on these documents, it appears there's a knock out question for home loans but not personal loans, and I want to suggest to you the personal loans had the highest uptake for all three

products for the credit insurance. They had the 42 per cent uptake, in comparison to the 10 per cent uptake for home loans, for example?---They did.

5 Yes?---But I don't think that's a result of this, because that coverage rate referred to the period prior to the introduction of this new question.

Well - - -?---So I don't think we should confuse - - -

10 - - - if we could find out when this question was added, because it's not in this document that you've provided?---Yes.

Do you agree with that?---I agree with that.

15 And what I want to suggest to you is that it wasn't until June 2017 that the knock out question was added, some two years later, and can I take you to your exhibit 24 at 0009 – I'm sorry, CBA.0507.0013.0009. Now, as I read your – no, I don't think we've got the right – yes, we do. We do. Do you recognise this document, Mr van Horen?---Yes. This is – this is the – the knock-out question in the digital channel.

20 Yes?---Which was introduced in 2017, as you said.

I see. So - - -?---So this was – the one we looked at previously was the assisted channels, the branch and call centre, this one refers to the digital channel.

25 So this first page relates to the personal loan through the digital channel?---That's right.

And if we go over to 0011, we see the digital channel for home loans?---Yes.

30 So – and these documents are in a difficult form to read, but you accept I think, from your answer, that it wasn't until these documents were created in June 2017 that customers applying for home loans or personal loans on the digital channel - - -?---Correct.

35 - - - received a knock out question?---That's right, yes.

And do you maintain that in relation to the assisted sales channels in branches and over the telephone, there was a knock out question in - - -?---2015.

40 In 2015?---Yes, that's certainly my understanding. I do agree this document does not show that. We will revert and check on that.

45 Can I – I'm sorry, if we could just go back to where we had that document zoomed in. I just want to understand a reference in here to “knock out Q”. Now, I'm sorry, we need to go to a separate page, because this is the home loan one. If we go to the personal loan one, which is 0009, I want to ask you about the entry under “knock out Q” there.

THE COMMISSIONER: This is 0009 we're in. Is that the one you want?

MS ORR: I'm sorry, yes. Here we are. Knock out question, hours worked/seasonal employment. Yes, live in R46.1, 9 June 2017. Can you explain what that means, Mr
5 van Horen?---Sure. So R46.1 stands for release 46.1. We have a number of releases of our various systems, and release 46.1 is simply that release. And that – that refers to the date in June '17. So this, as I said, covers the digital knock out question.

10 Yes and does this - - -?---Which was produced in 2017.

Does this suggest that for the non-digital channels the knock out question was introduced on 9 June 2017?---No, that's not what it's saying. This one is referring to PLO – if you look at the top of that page, personal loans origination, is the digital origination flow or system or path for our online personal loan applications, in which
15 the personal loan protection policy was embedded.

So I want to try and summarise where I think we've got to, Mr van Horen?---Yes.

20 It's clear from the home loan assisted channel document that we started with, when I started this series of questions, that in October 2015 you introduced a knock out question - - -?---That's right.

- - - for that assisted sales channel?---Yes.

25 But you did not deal with the digital channel at that point. You only dealt with the digital channel two years later in June 2017?---Yes. The same as the CCP. So high level, if I can try and summarise it all. So in both, Creditcard Plus and the LPP products, the knock out question was introduced in 2015, in our assisted channels, branch, call centre and so on, and in 2017 in the digital channels. And in the
30 meantime as we discussed for CCP, reliance was placed incorrectly – too much reliance was placed on those disclosures in the digital origination path around eligibility.

35 So there's a two year delay for the digital channel, but in addition to that you're unable to point to any document that shows that a knock out question was imposed for personal loans through the assisted channels in 2015?---Yes, it's not in that document in this exhibit. We will check if there's one that – that does confirm that.

40 Now, in October 2015 when the changes for the assisted channels were made that we've just discussed for home loans and personal loans, CBA was aware at that point that LPP was being sold to customers who may not have met the employment eligibility criterion, and that was the reason for the changes, wasn't it?---The reason for the changes was to try and get a common and consistent approach that was meeting our internal and ASICs expectations for making sure we got the eligibility
45 criterion right.

Well, I'm suggesting to you, Mr van Horen, that at that point in October 2015 you knew that the problem was not restricted to the Creditcard Plus insurance, CBA knew that it was also a problem for the LPP insurance?---Yes. So I can expand on that a little. Again - - -

5

Well. I would be grateful if you could first just answer my question?---Did we know.

Do you accept that CBA knew?---Did we know – did - - -

10 THE COMMISSIONER: Just a moment, Mr van Horen. Listen to counsel's question and answer that.

MS ORR: In - - -

15 THE COMMISSIONER: Yes, Ms Orr. Put the question again.

MS ORR: In October 2015, did CBA know that the same problem that had arisen for CCP customers were not eligible to claim because of the employment eligibility criterion was also a problem for the LPP insurance product?---We knew that there was – that the similar problems could occur. We did not know how many customers would be affected. We – we had based our analysis on assumptions around the nature of a home loan or a personal loan is quite different to the nature of a credit card, and, therefore, in the sense that people are far more likely to be employed when they're taking out a home loan, and, therefore, our assumption flawed again, at the time, was that to the extent any remediation would be required for LPP, it would be much smaller.

20

25

MS ORR: Well - - -?---Based on that assumption. And I know that with hindsight it's incorrect.

30

Let's try and unpack that a little bit - - -?---Sure.

- - - Mr van Horen. You knew, in October 2015, that the problem extended to the LPP product?---Yes.

35

You didn't know how many customers it affected yet?---Yes.

But you knew there was a problem that affected customers?---Yes.

40 All right. And when did CBA first become aware of that problem for LPP?---So the problem was known in the sense that the sales processes had followed the same course as CCP. We first became aware of the issue in – as a group in May 2017 when an issue was raised in our internal RiskInSite databases saying we had an issue with our LPP product around eligibility.

45

Well, I'm going to put to you squarely, Mr van Horen, that that is not when you became aware of this issue. You did not become aware of the issue in 2017, you

were aware of the issue in October 2015?---I think you need to – if we can try and unpack what were we aware of.

Well, you were aware - - -?---We were aware - - -

5

- - - that the product was being sold to customers who would not meet the employment eligibility criterion to claim?---We were aware that our sales processes were deficient. We had not yet identified customers or groups of customers that were ineligible. The conversations that we had with ASIC all along were very
10 focused on CPP, and this was an industry wide thing, but certainly for CBA. When we met with ASIC, the conversation – and I was in this meeting and it’s certainly my recollection of the meeting – we said that having sorted out CCP, we would move on to LPP. Again, we should have done it earlier. I’m not going to deny that for one
15 second. We should have done it earlier. But the assumption was that the number of customers that would be affected in LPP by the same root cause issue was much, much smaller.

Well, just to be very clear about this, you knew at this time that it was a problem that would affect customers. You just did not know the size of the problem and you
20 chose not to investigate the size of the problem in 2015?---I was certainly never aware there was a deliberate choice made by myself or anybody else saying we are choosing not to investigate this issue. Our focus was very much on fixing the CCP problem, fixing the problem on a go forward basis on all of our channels, and then to look and see if we would have to remediate anybody in the LPP space.

25

So did you investigate the LPP problem in 2015?---Not to my knowledge.

No. Could I show you a document, Mr van Horen, which is CBA.0001.0025.1453. Could you explain what this document is, Mr van Horen?---Yes. We have an
30 internal database called Risk Insight, which is our single source of all issues and incidents and the like. And this page you see is an extract of the RiskInSite entry that was made on 31 May 2017. It referred to the LPP matter off the back of the original CCP matter, which is why the incident in the current state would refer to the CCP matter, but this matter was only identified in May – in May ’17.

35

Why do we read the incident occurrence date of 7 May 2015 as referring to the CCP incident when this document is about the LPP incident?---Yes. I – that is the only logical explanation I have for why that incident occurrence date refers to 7 May
40 2015.

40

Well, it’s because, isn’t it Mr van Horen, that CBA knew from 2015 that there was a problem with the LPP insurance?---Well, I can only restate what we said earlier. We knew that the root cause of the scripts weren’t addressed until 2015. We did not know that there was a significant number of customers to be remediated.

45

No. Because you had not investigated to find out how many customers were affected, had you?---That’s correct.

5 Yes. So the incident discovery date on this document is recorded as 29 May 2017. What happened on that date?---So I believe what happened was CommInsure had been investigating this matter, doing background work trying to understand the number of customers that could be impacted. On 31 May was the date on which this was entered into RiskInSite.

10 And what was the discovery that occurred on 29 May?---I couldn't really answer what happened on that specific day. I know CommInsure had been doing work on this issue and had quantified the fact that there were going to be some customers impacted by the eligibility problem.

15 Well, I'm going to suggest to you, Mr van Horen, that the incident was not discovered on the date recorded here of 29 May 2017. The incident as described under incident name in this document was discovered in 2015?---I can cover the same ground again, if it's helpful.

No?---You would like me to or - - -

20 No, no?---No.

Unless you have anything further to say about that, Mr van Horen. So in – I will tender that document, thank you Commissioner.

25 THE COMMISSIONER: Exhibit 1.102. CBA.0001.0025.1453, RiskInSite incident report, 31 May '17.

30 **EXHIBIT #1.102 RISK INSIGHT INCIDENT REPORT DATED 31/05/2017
(CBA.0001.0025.1453)**

35 MS ORR: Your evidence has been, Mr van Horen, that CBA decided not to – or CBA did not investigate the LPP issue in 2015. You said that you didn't know that there was an active decision not to do so?---Correct. That's a better way to frame it, yes.

40 But there was no investigation of this issue in 2015?---No. I think our problem – our mistake – one of – one of a number – was to manage this sequentially, and sort out CCP first and then move on to PLP.

45 That was a problem or an error that affected customers, didn't it, Mr van Horen?---Yes, that's right. And so part of our approach to all of these matters – and I fully appreciate it's not only about financial compensation, there's a lot more, there's real customers, real human beings affected by these things, but all along our principle was that we would compensate customers, whatever the number was, to put them in the right position, and we would adjust for any interest that they had incurred or the

time value of money so that, at least from a financial point of view – if not in all other respects, from a financial point of view customers were not disadvantaged.

There was no report to ASIC about the LPP issue in 2015?---No.

5

And the only action that CBA took in relation to the LPP product in 2015 was to make changes to the scripts that we've looked at in October 2015 for the home loan part of the product and the personal loan part of the product?---That's right.

10 To take no action in relation to digital sales of the product, nothing happened there until 2017?---No. Well, the same applied as in the CCP side. So disclosures in the application flow, which with hindsight we should have introduced the knock out questions earlier, but they were there.

15 In your statement at paragraph 98, you say that:

CBA decided it would prioritise the CCP matter on the understanding that the scale of the issues in relation to the LPP matter would be less than for the CCP problem.

20

?---That was certainly the expectation at the time.

And why did the CBA think that the scale of the issues for the LPP issue would be less?---Because if you think of the basic problem we were trying to address here was eligibility from an employment point of view, and an assumption around the eligibility requirements for a home loan are quite different to a credit card or even a personal loan are different to a credit card, and therefore our assumption – incorrect – was that fewer customers would have not met the employment criteria for those two products.

30

And you made that assumption in circumstances where you knew that the uptake of LPP for personal loans was much greater than the uptake of CCP for credit cards?---Yes. Two different points, but yes.

35 Yes. But the potential customer base who would be affected, that was a relevant matter for that, wasn't it?---It didn't feature in our thinking about what to do, but it's a fact that there are more customers in the PLP - - -

40 And was the – was the scale of the issues in relation to the LPP product in fact less than the scale of the issues for the CCP product?---As – as we sit here, we think that there are more customers who are potentially ineligible for LPP than were for CCP.

Yes. So it was actually a bigger problem, the LPP problem affecting a greater number of customers than the CCP - - -?---Correct.

45

- - - problem?---Correct.

Now, having logged the issue on the RiskInSite database in May 2017, you say in your statement that CBA then spent a number of months working to analyse the nature and scale of the problem. That's at 106 - - -?---Yes.

5 - - - of your witness statement, Mr van Horen. And you say that in or about late September 2017, CBAs analysis of the issue was continuing and CBA was preparing to notify ASIC about the issue.

10 That's at 111 of your witness statement?---That's right.

So this was more than two years after the May '15 date referred to in the RiskInSite database that you were preparing to notify ASIC about the issue?---Yes. we had – we had met with ASIC in April 2017 to settle the CCP remediation approach. Indicated in that meeting that we would then look at whether there were issues of a similar nature in LPP. And that's - - -

15 Sorry, do you say you indicated that to ASIC in a meeting?---Yes.

20 Do you have any document that records - - -?---No.

- - - that?---That was my recollection of the meeting. I checked independently with another person who was in the meeting and that was their recollection as well. It's not recorded in the documents.

25 And when did that meeting occur, Mr van Horen?---It was April '17. It was the one where we settled the CCP approach.

Well, ASIC had in fact asked you in correspondence over the course of your communications about CCP, they had asked you whether there were issues with any similar products, hadn't they?---There were certainly a number of questions. I would have to check whether there was a specific question on that point.

35 Well, can I show you CBA.0001.0025.0173, which is part of your exhibit 12. This is a letter to CBA from ASIC dated 21 October 2016, and if we go to 0178, the final page of that document, we see that in October 2016 ASIC said to CBA:

Please confirm if CBAs improvements in the scripting and monitoring of CCP also covers potential similar issues concerning the distribution of other products that may have unemployment or income features.

40 ?---Yes.

You see that?---Yes.

45 Can I take you to CBAs response to that letter which is CBA.0507.0014.0001. This is a letter from CBA to ASIC dated 25 November 2016 that responds – do you see responds - - -?---I do, yes.

- - - to the 22 October letter?---Yes.

If we go to 0008 in that document, we see CBAs answer to that question:

5 *Improvements in scripting have been made for other loan protection products that have employment related exclusions similar to CCP and core monitoring is undertaken across direct banking. We are also reviewing the online application processes for these products to align with planned CCP changes.*

10 ?---Yes.

So at this point you're telling ASIC that you've changed scripts for other products, but you had not reported the LPP issue to ASIC?---That's right. So we said we had fixed the scripts across all of our products. At that stage we still did not know that
15 there were significant customers potentially affected.

And you did not know because you hadn't investigated that?---I think that's fair to say.

20 Yes. And you hadn't even logged it on to your internal risk database - - -?---Correct.

- - - at this time. Now, back to the chronology of notification of ASIC, in your statement I mentioned you said that in late September 2017 you were preparing to notify ASIC about the issue, but before you could do that on 25 September 2017
25 ASIC contacted you in relation to the issue?---That's right.

Is that right?---That's right.

And ASIC asked CBA whether its investigation into CCP insurance had included an investigation into the LPP product?---Yes.
30

And ASIC expressed a concern - - -?---Yes.

- - - to CBA that it had not been notified by CBA of the likelihood that the LPP product was affected by a similar problem?---That's right.
35

And ASIC and CBA agreed to have a discussion about this and there was a teleconference on 27 September last year; is that right?---That's right.

40 And you weren't part of that teleconference, but you received a report about it by email - - -?---Yes.

- - - on the same day?---That's right. Yes.

45 And you know from that report that ASIC was not happy about the fact that CBA had not reported the LPP problem to it?---Yes, that's right.

Could I ask that you be shown ASIC.0010.0001.0613. You've been shown this document, as I understand it, Mr van Horen. It's an internal ASIC file note of that teleconference on 27 September 2017?---Yes, I've seen it.

5 And you see there under the heading ASIC:

10 *Monika provided an outline to the reason for the teleconference, namely ASIC recently received information regarding a consumer who was sold CCI with a personal loan, who did not appear to meet the employment definition of the product, and have since been offered by CBA an ex gratia payment.*

What's an ex gratia payment, Mr van Horen?---I would understand that to be a one-off payment in relation to the query or complaint that the customer had raised.

15 And do you know why this customer was offered an ex gratia payment by CBA?---No. I haven't -- I haven't had sight of the individual customer matter. I'm aware of the process around all of this, though, which I have reviewed, happy to talk about that. So - - -

20 We will come to that?---Okay.

25 But I want to understand what you know about this first, because what this document tells us is that ASIC learnt of the LPP problem because a customer came forward and told them of the problem, and also told ASIC that CBA had paid them an ex gratia payment?---There was a customer who had complained -- if it's the same -- I believe it's the same customer being referred to here who had complained to FOS. That FOS complaint found its way back to -- through our standard process to our retail bank compliance team and that team was investigating the specific complaint, which did relate to the broader question of eligibility for LPP benefits.

30 And why was the ex gratia payment made to this customer?---I would need to check on the circumstances related to that. I wasn't party to that decision at all. The -- the teams who manage these complaints have mandates to address complaints and resolve complaints quickly and, depending on the delegation, those decisions would be made on the spot - - -

35 Do you know - - -?--- - - - by the person dealing with - - -

40 I'm sorry. You said you weren't dealing with it?---No. It would be made by the person dealing with the complaint on the spot.

And do you know the quantum of the ex gratia - - -?---No.

45 - - - payment that was made to this customer?---No.

So we see from this file note under the heading CommInsure that Craig, who is the general manager of life products and distribution at CommInsure, advised those on the teleconference that they, CBA:

5 *Are aware of potential issues extending to other products and is subject to legal*
feedback in terms of what they can do. The number of consumers potentially
impacted would be relatively lower than that seen in CCP. However, unable to
provide rough numbers at this point. Still working at the data. The payout
10 *figure per person, however, would be higher due to the nature of products sold*
with CCI. Jennifer raised –

And we see from the top that Jennifer is senior manager DCI – that’s within ASIC, as I understand it?---Yes.

15 Is that right?

Jennifer raised that we wrote to CBA CommInsure in October asking whether
the issues seen in CCP potentially extended to other products. Raised concerns
as to why ASIC was not informed by the bank but rather through a complaint to
20 *the consumer. It was further raised whether the matter should have been*
reported under the breach reporting obligations. Larissa, from CBA, advised
that the focus was to solve the problem with the underlying issue of CCP. It
wasn’t until recently that the bank have gone back to look at customers and is
currently subject to legal advice as to what they can or can’t do with the issues
25 *as the matters are complex, for example, changes were made to the mortgage*
product more recently.

So that is what is recorded by ASIC as to this teleconference. I tender that document, Commissioner.

30

THE COMMISSIONER: Exhibit 1.103 will be ASIC.0010.0001.0613, ASIC file note 21 September ’17.

35 **EXHIBIT #1.103 ASIC FILE NOTE 21 DATED 21/09/2017**
(ASIC.0010.0001.0613)

40 MS ORR: And have CBA made its own file note of this conversation, Mr van Horen?---I believe that would have been the email that Larissa circulated.

Yes. It was sent to you, wasn’t it?---Yes.

45 Yes. And could I take you to that. It’s CBA.0001.0027.3000. Now, this might need to be magnified. It’s – the writing is quite small. But we see that this is an email from Larissa who participated in that teleconference?---Yes.

5 To people that include you and Matt Comyn and Helen Troup, who you have also referred to, and there is a summary of this conversation with ASIC noting ASICs disappointment at having found out about the issue via a complaint rather than from CBA. And do you see the reference to their view that this is a systemic issue that is reportable to ASIC?---Yes.

10 And this document records that CBA told ASIC that CommInsure had looked into the potential for the unemployed customer issue to impact CCI products other than CCP, and had implemented scripting and process changes to ensure this did not continue to happen?---Yes.

And that the initial focus was on CCP as there was more significant customer impact, although that didn't end up being the case?---Correct.

15 Yes. Do you see the reference to – under, “It is likely that”:

It is likely that ASIC will take a strong approach to this matter given the concerns expressed.

20 ?---Yes.

Continuing:

25 *ASICs focus may extend beyond the insurance issue to consider compliance with breach reporting obligations, compliance with responsible lending, risk management, culture, accountability, etcetera.*

?---Yes.

30 And:

Legal advice was received today and a breach notification will be prepared as a matter of urgency.

35 ?---Yes.

I tender that document, Commissioner.

40 THE COMMISSIONER: Exhibit 1.104, CBA.0001.0027.3000, email 27 September '17 Shafir to Comyn and others.

45 **EXHIBIT #1.104 EMAIL SHAFIR TO COMYN AND OTHERS DATED 27/09/2017 (CBA.0001.0027.3000)**

MS ORR: Now, ASIC wrote to you after this teleconference as well, on 28 September 2017, and that's exhibit 25 to your statement, CBA.0001.0025.0606?---That's right.

5 And there's a reference here under the heading Complaint Received by ASIC to the complaint from an individual who was sold loan protection in 2014 and who allegedly did not meet the employment criteria of the product at the time of sale:

10 *The person's claim under the loan protection policy was denied due to the employment criteria not being met. We understand that the person has since been offered an ex gratia payment from CBA. Now, ASIC expresses in the next paragraph concern to CBA that the eligibility issues arising from the sale of Creditcard Plus to CBA credit card customers may extend to customers sold loan and mortgage protection insurance who didn't meet the employment*
15 *definition, and would, therefore, receive minimal or no benefit.*

?---Yes.

20 And ASIC expresses the view in this document, on the – perhaps if we could have the second page brought on the screen as well – that these are issues that require a significant breach report under section 912D of the Corporations Act?---Yes.

25 And ASIC tells CBA that they want to have a report from CBA by Monday, 9 October 2017?---Yes.

So then on 4 October 2017, more than two years after the issue was first identified and about two years after the changes to the scripts for LPP, CBA formally notified ASIC of a significant breach under section 912D?---We did notify them, yes.

30 And that letter containing that breach notification is exhibit 26 to your statement, CBA.0001.0027.3043?---That is.

35 It's a two-page letter with an annexure. If we could have the two pages brought up. CBA didn't tell ASIC anywhere in this letter that it had known about this issue since 2015?---Well, as I said earlier, known about this issue, we did not know the number of customers. So I think the test in - - -

40 THE COMMISSIONER: Well, let's just understand each other. Knowing the number of customers is one thing. You knew that there was at least a possible issue, didn't you - - -?---Yes.

- - - in '15?---Yes.

45 Well, number of customers is a further step down the track, isn't it?---It is.

You knew there was a problem, you did nothing about it till '17, did you?---From a remediation point of view, correct, yes.

Or reporting point of view?---Reporting point of view.

MS ORR: Or an investigation point of view, Mr van Horen?

- 5 THE COMMISSIONER: What am I to make of that, Mr van Horen?---Yes. I think it's clear there were a number of errors of judgment on our part, and I'm not going to pretend that wasn't the case at all. The question is whether there was deliberate intent or deliberate - - -
- 10 Let's attribute goodwill all around the shop and let's assume that it was just a series of unintended consequences. What am I to make of that?---Do you want me to try and answer that?
- 15 You're the person representing CBA in the witness box, Mr van Horen. What do you say I am to make of that on the assumption that there was no malice, it was a series of unintended consequences, all of them coincidental. What am I to make of it?---I think a couple of points, Commissioner. The first is definitely no mal intent. Was there poor judgment? Was there poor execution on our – on our part? Yes. Did we make a number of errors of judgment along the way? Absolutely. Should
- 20 we have reported it to ASIC earlier? Yes. Part of our assumption always was, you know, rightly or wrongly, that we would put customers right in financial terms, that they would be no worse off, and that included compensating for interest or time value of money where appropriate.
- 25 Is that to assess things on the best possible footing for CBA? Namely, no mal intent, series of unfortunate mistakes all coincidentally occurring; is that right? That's the best set of circumstances to be considered, is it? Because the alternative that I want you to consider is whether it is open to me to conclude that CBA swept the problem aside in the hope it would go away?---Yes. I can say with conviction that CBA –
- 30 certainly in all of my engagement on this matter, and everything I've observed from investigating, had no intention to sweep the matter aside or pretend – pretend it didn't exist. It's always been our intention that if we know there's a problem, we will fix it, and we will put customers right. And I do believe that whilst we have absolutely been too slow in this case on numerous occasions, when we have known
- 35 there's an issue, we have moved as quickly as with he can to try and address the issue.
- MS ORR: Well, I'm sorry, Mr van Horen, but I've put to you a number of times already you knew there was an issue in 2015, and you did not move to address that
- 40 issue in 2015?---Yes. And I accept that in relation to LPP.
- Yes?---So our attention was all on CCP and we were moving too slowly, but we were absolutely moving to close that issue down.
- 45 The CCP issue?---CCP, yes.

Thank you?---And our mistake was doing it one after the other sequentially, not in parallel.

5 While customers were still buying the LPP product in circumstances where they may not have been eligible to claim under it?---Not – not true for assisted channels, potentially true for digital channels until 2017.

10 Could I show you annexed to this letter at 00 – I’m sorry, 3043.0003 – yes, the 912D notification, Mr van Horen?---Yes.

And we see there that the notification was made on the basis – do you see 3 description of the breach:

15 *CMLA and CBA have breached the efficiently, honestly and fairly obligation, which is an AFSL licence condition, and the matter is reportable to ASIC under section 912D of the Corporations Act.*

?---Yes.

20 Why did CBA acknowledge a breach of the efficiently, honestly and fairly obligation in relation to LPP but not in relation to CCP?---I think at this point it was fairly clear that there was a breach. When we were talking about CCP earlier, I mentioned there was a debate – wrong – wrong conclusion, but there was a debate that because customers were eligible for a portion of the benefits on the bundled product, it wasn’t
25 as cut and dry that there was a breach. I think with hindsight we’ve all agreed that there should have been a breach reported back then.

30 Yes, I see. All right. Can I show you an additional document from around this time, Mr van Horen, which is CBA.0001.0033.0095. This is an internal CBA email chain, starting with an email from Helen Troup to Ian Narev?---Yes.

And Michelle Keed on 4 October 2017 relating to a flash report process?---Yes.

35 Can you explain what that is?---A flash report is the means by which we as leaders in the business escalate to the CEOs office any material issue that could have a significant impact on the group, whether it’s customers or reputation or financial loss.

40 So this - - -?---Or even avoided loss.

So this is an elevation to the - - - It’s an escalation.

An escalation - - -?---Yes.

45 - - - of this issue to the CEO - - - Yes. It’s a semiformal escalation. There could well have been conversations occurring between – prior to this email being sent.

And Helen Troup, who was – can you remind me again who Helen Troup was at CommInsure?---Helen is the managing director of CommInsure.

The managing director of CommInsure says to Mr Narev and Michelle Keed:

5

I believe the current flash report process is to send to Michelle and to be flagged with you at the next appropriate forum meeting. Given Annabel is on leave, she asked me to inform you in her absence the current environment in regard to potential high reputational issues/incidents and CCI in general –

10

and 3:

ASICs tone in a call last Friday, I thought it best to send to you both concurrently.

15

So those are the matters that have led Helen Troup to escalate this to the CEO on 4 October 2017?---Yes.

I tender that email chain, Commissioner.

20

THE COMMISSIONER: Exhibit 1.105, CBA.0001.0033.0095, email Troup to Narev and associated emails 4 October '17.

25 **EXHIBIT #1.105 EMAIL TROUP TO NAREV AND ASSOCIATED EMAILS DATED 04/10/2017 (CBA.0001.0033.0095)**

MS ORR: And on the same date, 4 October 2017, CBA produced a slide presentation dealing with these matters, which is CBA.0001.0025.1047. Have you seen this document before, Mr van Horen?---Yes.

30

So Apollo II. Can you explain what that is?

35 THE COMMISSIONER: Apollo II, not 11?---I thought the same when I saw it. What it is, is – Apollo was the internal name used to refer to the CCP remediation and then Apollo II refers to the LPP remediation.

40 And this document obtains a number of what appear to be PowerPoint slides. If I take you to 1056. Do you agree that – is that what this is, a PowerPoint slide or some sort of internal document - - -?---It's an internal document, yes.

45 Yes, okay. So this is a page within that internal document about Apollo II that shows that as at 4 October last year, CBAs scoping on remediation indicated that the breach notification would cover – do you see at the bottom 115,000 customers?---Well, you can – you can see this page is broken down into two categories. The first is – you

would recognise the total. It says total unemployed. The first is the category mainly students but also including unemployed, home duties, and so on.

5 Yes?---In other words some of the CCP categories that we previously addressed.

Yes?---18,000 odd customers, \$300 million of potential refunds.

10 Yes?---If I fast forward very quickly, those are the numbers that found their way into our 29 January submission, which you may want to come back to.

15 Yes?---And so at that stage we had started to analyse – not started – work was underway to analyse the different customer categories that could potentially be in scope for remediation. The second half of the page, the biggest category there is around part-time workers.

15 Yes?---Which is a category different to CCP. So these are people where we had data saying they were part-time, not full-time. Again, are they working less or more than 20 hours was the obvious question.

20 So at this point there's potentially 115,000 consumers in the remediation scope with potential refunds of \$10.89 million?---Yes.

25 And your evidence is that subsequent to the creation of this document, CBA has decided that there's less customers that are affected by this and a smaller amount of remediation necessary?---Yes. So I think the same approach that applied in CCP was adopted here. In the end, I think we got to the right place, however the process to get there involved a few iterations, can I say.

30 I tender this document, Commissioner.

THE COMMISSIONER: Have we got a date for it, Ms Orr?

MS ORR: Yes. There's date on the front page, Commissioner. 4 October 2017.

35 THE COMMISSIONER: Thank you. Exhibit 1.106, CBA.0001.0025.1047, Apollo II, 4/10/17.

40 **EXHIBIT #1.106 APOLLO II DATED 04/10/2017 (CBA.0001.0025.1047)**

45 MS ORR: As at the date of your 9 March statement, Mr van Horen, you said that the LPP remediation program had not commenced?---That's correct. So we're busy going through the customer groups. We still need to settle those with ASIC. We also – as with CCP, we agreed the letters that were sent to customers. ASIC is very particularly about the wording of those letters. So that is all – that is still to happen.

So it's still the case that remediation hasn't commenced?---That's right.

And you're proposing to use call to action letters again which require the consumers who receive the letter to take some action in response?---We propose a broadly
5 similar approach to CCP. So there will be a category where it's an automatic refund, so the first half of that page, and others where customers will need to let us know that they were not eligible for the benefits at the time in which case they will get the refund. There are slight differences in the quantum of the refund between CCP and this one, which I can explain if it's helpful, but the same approach overall will apply.

10 And you acknowledge in your 9 March witness statement that CBAs identification of both the existence and scale of the LPP problem was too slow?---Yes, I do.

And at the time of that statement, your estimate was that 139,000 customers might be
15 affected by the LPP issue?---Yes. Based on that large group of part-timers, and it really depends on what the feedback is from those customers as to who was eligible or not.

Now, this is where the fact that you signed statements and replaced them with
20 subsequent signed statements becomes tricky, Mr van Horen, because the estimate that you originally gave of 139,000 customers affected was in your 2 March original signed statement?---Yes.

And it's repeated in your 9 March - - -?---Yes.

25 - - - signed statement?---Yes.

But in between those two, you provided a supplementary statement, dated 5 March
30 2018?---Yes.

And in that supplementary statement, you told the Commission that CBA had determined that the number of customers that were ineligible or potentially ineligible to receive certain benefits was, in your words, "significantly greater" and CBA would now be communicating with approximately 140,000 - - -?---Correct.

35 - - - customers?---Yes.

Now, is that connected with the 139,000 customers that we've seen references to in the earlier statement, or is it additional?---No, same thing.

40 Yes?---So approximately 140, you know, given that there's still a lot of work to do to land on the exact number, we said approximately 140. We didn't want to pretend there's a high level of precision on that number at this stage.

45 Yes. Now, at the time that CBA made its first submission to this Commission on 29 January 2018, there was disclosure to the Commission about the LPP issue?---That's right.

Is that right? And if I could have brought up RCD.0001.0003.0004. That's the submission from 29 January. And if we could have on the screen pages 0030 and 31. We see there the information provided to the Commission about CCP and LPP in this document?---Yes.

5

Now, at 134 – paragraph 134, we see a reference to LPP, and the investigation work having begun to refund customers in a manner consistent with the CCP customers?---The investigation work has begun, not the refund.

10 Yes?---Yes.

Yes. ASIC was notified on 4 October 2017 and the investigation work has begun to refund customers - - -?---Yes.

15 - - - in a manner consistent with the CCP customers.

?---Yes.

20 Then if we go to 137, we see that as at the date of this submission on 29 January 2018, CBA tells the Commission:

For LPP, while the investigation is at an early stage, we have so far identified approximately 20,000 customers eligible for refunds estimated at approximately \$3.4 million.

25

?---Yes.

30 But it's true, isn't it, that by the date of this submission CBA knew that the potential number of customers affected by the LPP issue was much higher?---Yes. So if you go – if you recall the slide we looked at just a few minutes ago which had those two parts to the page, what this document referred to was the roughly 20,000, I think it was.

35 Yes?---18,000 customers that we were fairly certain would require remediation. What was not included at this stage was the part-time – largely the part-time category which is what we have subsequently included.

40 Yes. So as we saw with your original communication to ASIC about the CCP issue, CBA elected to tell this Commission about a part of the problem, not the full extent of the potential problem?---I think the facts speak – the facts speak for themselves and that's the conclusion. I have to add that is definitely not – it was certainly not to my knowledge any intent to suggest or conceal anything, which is why we've gone to great lengths in our supplementary statements to provide the additional information.

45

Commissioner, could I tender the relevant paragraphs of this document, which if we can pan back from the 137, I will be able to identify as paragraphs 131 to 138 of this document.

- 5 THE COMMISSIONER: Exhibit 1.107 will be paragraphs 131 to 138 of CBA group response, 29 January '18, RCD.0001.0003.0004 at 0030 to 31.

10 **EXHIBIT #1.107 PARAGRAPHS 131 TO 138 OF CBA GROUP RESPONSE DATED 29/01/2018 (RCD.0001.0003.0004)**

15 MS ORR: Mr van Horen, on 5 March 2018 in your supplementary statement, you told the Commission that over the course of 2017 CBA had been considering how best to meet the protection needs of its customers, including a review of consumer credit insurance products, in parallel with considering how to design the next generation of insurance products. Do you see that in paragraph 2?---Yes.

20 And you then told the Commission in paragraph 3 that:

CBA had determined it will cease the sale of CCP.

?---Yes.

25 And that it would cease the sale of PLP being the personal loan protection stream part of LPP?---Correct.

30 When was the determination made to cease the sale of CPP and PLP?---So the timing of those two were slightly different. As I said in the statement here, we had been considering – well, if I rewind a lot, you could imagine there's been a lot of conversation over a long time about these products and their long-term role in meeting customer needs. The decision to stop selling CCP was made – there are a couple of key meetings and milestones, and I believe some of these documents have
35 been produced, but there was a meeting with a number of executive general managers in CommInsure and the retail bank in January, at which the decision was made to – well, a recommendation was agreed upon with consensus of all those parties to terminate the sale of CCP, date – still some months down the track. The recommendation in that document was to review PLP and part of the rationale, which
40 is referenced here in the witness statement – part of the rationale was the deferred sales model that you referred to earlier, which had been agreed at an industry level to be implemented for CCP. However, our view – and certainly my personal view – was the same applied to PLP, and therefore if it was going to work for CCP it needed to work for PLP as well. And so that was why we accelerated the decision to close
45 PLP and to make the announcement prior to this Commission's hearings.

Could I show you a document from Monday, 5 March 2018, which is CBA.0508.0003.0203. That's an email chain within CBA, Mr van Horen?---Yes.

An email chain from Monday, 5 March?---Yes.

5

And we see there that an internal request to cease the sale of CommInsure's personal loan protection and Creditcard Plus products was made at 5.41 pm on 5 March?---Yes.

10 Continuing:

Approval is sought prior to the issue of any media statements by the CBA Group. Currently, this is scheduled for 12 pm tomorrow afternoon, 6 March.

15 ?---Yes.

And in the email that follows that, we see that less than an hour later, at 6.33 pm on 5 March, Helen Troup – who you have referred to – approved the ceasing of CCP and PLP by 30 June 2018?---That's right.

20

I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 1.108, email Troup to Kerins and others, 5 March 2018, CBA.0508.0003.0203.

25

EXHIBIT #1.108 EMAIL TROUP TO KERINS AND OTHERS DATED 05/03/2018 (CBA.0508.0003.0203)

30

MS ORR: And CBA did issue a media release after this decision was made?---Yes, we did.

It was released on 7 March?---Yes.

35

Two days after that email chain?---Yes.

Could I show you RCD.0021.0001.0262. We see there that the title of the media release is CBA to Implement Loan Insurance Refund Program?---I see that, yes.

40

And at page 263, we see there that the media release discusses both the loan insurance refund program and CBAs decision to end sales of its current Creditcard Plus and personal loan protection products?---That's right.

45 And the media release quotes Matt Comyn as saying that BA has:

found it hard to achieve the right balance between simplicity and accessibility on the one hand and limiting the product to the right group of target customers on the other hand.

5 See that in the second paragraph?---I do, yes.

And Mr Comyn is again quoted further down the page as saying that CBA has concerns that some customers who have been sold these products may not have been eligible to receive all of the employment related benefits?---Yes.

10

And the media release records at the bottom there that CBA is going to:

...proactively contact customers who could be affected and has set aside approximately \$16 million for refunds, including interest, to an estimated 140,000 customers of the PLP and home loan protection products.

15

?---Yes.

I tender that document, Commissioner.

20

THE COMMISSIONER: Exhibit 1.109, CBA media release, 7 March '18. RCD.0021.0001.0262.

25 **EXHIBIT #1.109 CBA MEDIA RELEASE DATED 07/03/2018
(RCD.0021.0001.0262)**

30 MS ORR: And your supplementary statement touches upon a number of similar issues to those that Mr Comyn spoke about in this media release?---Yes.

And you told the Commission in your statement that there were three principal reasons which led to CBAs decision to cease selling CCP and PLP, and they were the scale of the LPP remediation, the likely regulatory change on the horizon, and the sale of CBAs life insurance business?---Yes. If I can expand on those a little. I think the – at the heart of the challenge we have here, and it was referred to in that media statement where Matt Comyn was quoted, is what we have found difficult to do is get right this balance between having a simple and efficient way of providing protection insurance to our customers – because I do believe there’s a real need there – and doing it in a way on the other hand that’s safe and gets the right protections and processes in place. And, you know, that is the thing that we and many others have grappled with for a long time, is how you deliver what I do believe is a valid and a real customer need for protection in a way that’s safe and delivering it to the right customers. And so that is a core – one of the core challenges that we have grappled with here, as you can see.

45

So we’ve spoken about the first matter - -?---Yes.

- - - that you've touched on in your witness statement - - -?---Yes.

- - - which is the scale of the LPP remediation. I want to ask you some questions about the second matter which is the likely impact of regulatory change. You deal with this in paragraph 5 - - -?---Sure.

- - - of your statement, where you note that:

10 *For several years consumer credit insurance products have been the subject of regulatory and internal review.*

And you refer to CBA having:

15 *...engaged with and supported ASIC and the industry's move to deferred sales for credit card insurance.*

?---Yes.

20 Now "deferred sales" means that there's going to be a four-day period after a credit card is purchased before the credit card insurance - - -?---That's right.

- - - product can be sold to the consumer?---Yes.

25 But that's only through the assisted channels, the branch and the telephone?---Correct.

30 And doesn't apply to the digital channels?---It doesn't. What's being contemplated in digital channels is to have very clear separation between the customer acquiring the credit card, say, or the personal loan and the insurance. And I think the – the problem trying to be addressed there is some customers might have a belief that taking out insurance is necessary in order to have their credit card approved, which is not the case, but those are some of the changes that we committed to – to make to make sure that it is clear for customers in digital channels.

35 And you refer in this paragraph of your statement to CBAs view that:

40 *...a similar deferred sales model is appropriate and likely to be implemented for personal loan insurance. This will have an impact on the sales process and will require significant reengineering of and investment in our processes if we continue to sell the existing products.*

45 ?---Yes, that's right. So I – I've been part of those conversations with ASIC and consumer groups and other insurers or banks and we agreed, middle of last year, to move to deferred sales by 1 July this year for CCP. The conversation was always very focused on Creditcard Plus. My personal view – and I think others share this view – that the same would apply to personal loan protection sooner or later, therefore if we're going to do it, we may as well do it sooner. So - - -

Can I take you to an internal document that appears to be authored by you and Helen Troup that refers to that view?---Yes.

5 Which is CBA.0508.006.0017. This is a memo that – if we could have the last page displayed on the screen at the same time. It’s a memo written by you and Ms Troup on 4 March 2018?---Yes.

10 And do we see there on 0019 at clause 3.11 a reference to the view that you’ve just expressed?---That’s right.

Which is that while PLP was not in scope for the deferred sales model change, you believe the same rationale will apply in due course?---Absolutely.

15 Yes?---I think the logic is entirely consistent for both.

Now, I’m going to come back to this document, but I will ask you some other questions first. Could I tender this document, Commissioner.

20 THE COMMISSIONER: That’s exhibit 1.110, draft memo re CCI Troup and van Horen 4 March ’18, CBA.0508.0006.0017.

**EXHIBIT #1.110 DRAFT MEMO RE CCI TROUP AND VAN HOREN
DATED 04/03/2018 (CBA.0508.0006.0017)**

25

MS ORR: In your witness statement, Mr van Horen, you don’t refer to the ongoing profitability of these products, do you?---Not directly, but we do – if you look at paragraph 5 – I did say in the last sentence that these new deferred sales approaches for the two products will have an impact on the sales process and will require significant reengineering of and investment in our processes. And the reason that’s relevant in – is very relevant to the ultimate decision that we announced is that it would be quite a – it does require a significant investment to change our sales processes to introduce a deferred sales model for both and our decision was, based on the return we would get on that investment as opposed to starting afresh with AIA, which is really a big driver for why we have chosen the path that we’ve chosen here.

40 Well, it’s the case, isn’t it, Mr van Horen, that CBAs view is that after these regulatory changes are brought in the CCP product will no longer be economically viable?---Well, there’s no question that the introduction of deferred sales will have an impact on the sales volumes, and, therefore, revenues and the commercial equation.

45 Do you accept my proposition that CBA has taken the view that the result of these regulatory changes will be to render the CCP product not economically viable?---I am aware of work that’s gone on in CommInsure to – to calculate – to assess the impact of that, and that has been the conclusion reached from that work.

Yes. And if I could just show you CBA.0508.0003.0014. If we could have the last page on the screen at the same time you will see, Mr van Horen, that this is a Colonial Mutual document headed Life Product Strategy for Bank Channel Distribution – I’m sorry, we need the page before the attachment, which is 0016 –
5 dated 5 March 2018, written by Craig Harrison, general manager of life product and distribution at CommInsure and Adrian Kerins, head of direct insurance and integration at CommInsure?---Yes.

10 And if we turn to 0015 in this document we see, at clause 3.3, that those two people conclude that:

15 *Changes to the banking Code of Practice requiring a deferred sales model for CCP and required changes to digital distribution processes will have a material impact on the ability to effectively manufacture and distribute Creditcard Plus. Project costs associated with implementation combined with reductions in expected sales create a negative investment profile leading to the recommendation that CCP is no longer economically viable in its current form and should be withdrawn from sale prior to the implementation of a deferred sales model.*

20 That is why you have made the decision to cease selling the CCP product, isn’t it?---I think you cannot – yes, but you cannot ignore the fact that we have sold our product manufacturing business, CommInsure Life business, to AIA who is a leading global insurer, and the simple choice we have is do we invest in our existing legacy
25 products with improvements that we’ve made that – we think they are compliant, but they are not world best or do we invest in future capability that AIA will bring? And we’ve clearly chosen the latter.

30 THE COMMISSIONER: Can I just explore some things about that? CommBank began to offer these products in about 2003; is that right?---Yes.

35 At the time CommBank began to offer these products were other banks offering similar or the same kinds of product?---Predates my involvement in the space so I couldn’t give you an exact start date for others, but I could tell you that certainly in recent years other banks have offered similar types of products.

2003, CommBank then – by then had acquired CMLA, Colonial Mutual, had it not?---I believe it was around then.

40 June 2000 it acquired CMLA, I think; is that right?---I can’t confirm that exactly.

Three years later it began to offer – that is the “it” in that sentence, CommBank began to offer these products to its customers - - -?---Yes.

45 At a point when CMLA was part of the group?---That’s right.

It now ceases to offer these products where a point that CMLA has ceased to be part of the group; is that right?---Yes.

Is it a reasonable?---Sorry - - -

5

- - - conclusion – sorry, I did interrupt you. Do go back?---Bear in mind there's three products. So there's credit card, personal loan and home loan protection. It's two of the three that we are ceasing. And we are continuing with home loan protection.

10 It ceased – CommBank ceased sale of the two products after it had agreed to dispose of CMLA?---Yes.

The profit centre that was represented by sale of these products was no longer within the group; is that right?---I should just clarify, it has not yet been sold.

15

No, I understand that?---So it's all in process, and, you know, this hasn't been something we've done lightly or without discussing with AIA because clearly they are – and they've signed a 20 – or will be signing a long-term 20 year distribution agreement with CommBank, and so our premise is that the need – the customer need remains, but the way we're going to meet that need is going to be very different with AIA.

20

Yes.

25 MS ORR: Before we leave this document, Mr van Horen, I want to direct your attention to the part that deals with the economic viability of the personal loan protect product, the PLP product, and we see there that it's not required to have a deferred sales model at this time. However, it is considered a likely change in the future. This, coupled with other ongoing challenges, were expected to impact value and performance which in time was expected to result in a similar economic outcome to CCP. Management were of the view that a withdrawal of PLP from sale was likely outcome in the near term. So the bottom line that I want to put to you, Mr van Horen, is that CBA does not consider that either the CCP product or the PLP product would be economically viable after the anticipated regulatory changes, and that is the reason their sale has ceased?---It's – it's not as binary as that. The – you know, we face a choice in the near term: do we invest quite a lot of money – I'm talking about several millions of dollars in both of these products – do we invest that money in trying to get these two existing products into a future state which is compliant with deferred sales and everything else that we need to do, or do we invest those investment dollars rather in building something that will be quite different. Work has been underway in CommInsure for quite some time – many months, as I understand – around the thinking of what a future type of insurance product or products or suites could look like, and the sale to AIA has accelerated that. So it's – it's one of many factors. Absolutely, there's a commercial reality that we face but there's also a short-term decision that we face about what do we invest in, legacy products or something quite different.

35

40

45

I will ask you some questions about that, but I will tender this document first, Commissioner, if I have not already done that.

5 THE COMMISSIONER: Exhibit 1.111, CMLA life product strategy document 5 March – life product strategy bank channel distribution, 5 March '18, CBA.0508.0003.0014.

10 **EXHIBIT #1.111 LIFE PRODUCT STRATEGY BANK CHANNEL DISTRIBUTION DATED 05/03/2018 (CBA.0508.0003.0014)**

15 MS ORR: I should ask, Commissioner, if the Commission would permit me to finish the examination of this witness, which I anticipate will take another 10 to 15 minutes.

THE COMMISSIONER: Yes.

20 MS ORR: Thank you.

THE COMMISSIONER: Yes.

25 MS ORR: Now, you spoke just then, Mr van Horen, of the significant investment that would need to be made in these products, and I want to suggest to you that there are reasons that have been discussed internally at CBA for not making those investments. And one of them is continued regulatory risk associated with these products. Can I take you back to CBA.0508.0006.0017. This is the – you will recall this is the draft memo that you did with Ms Troup?---Yes.

30 On 4 March 2018. And could I direct your attention to 3.13.1:

35 *It is possible ASIC may reopen previously settled remediation activities or add new requirements. For example, ASIC has questioned whether life insurance should have been sold to customers younger than 25. It's also possible that ASIC may expand the scope of previous remediation exercises, requiring us to remediate more customer groups or adopt a different remediation approach. For example, we may need to expand the CCP remediation to include part-time employed customers. This group was not remediated previously because they were eligible for a substantial part of the product's benefits, and our data on*
40 *"hours worked" is very poor."*

Now, do you accept that this – these regulatory problems that you and Ms Troup referred to in this document have also influenced - - -?---Absolutely.

45 - - - the decision? And CBA has also been concerned about the public scrutiny associated with the continuing sale of CCP and LPP?---I think probably more – yes, but the – the bigger factor has been around consumer groups. We've been engaging

with consumer groups for quite a while now around CCP, both as part of industry AVA forums as well as directly and it's been a loud and continuous, as this Commission has heard, source of unhappiness from those consumer groups as well.

5 Since at least 28 February this year, you and Mr Comyn have been discussing how to deal with the public scrutiny of the CCP product?---Do you mean in relation to this Commission or more generally?

Both?---We've certainly had discussion about how to manage everything that's described in my witness statement here. We've been at pains to say we will not be managing the Royal Commission, just for the abundance of clarity. We've got zero capacity to manage the Royal Commission. However, we can manage our communication very carefully as we've attempted to do in letting the Commission know in advance of us making any public announcements of – of what we're doing.

10
15 Could I ask you to look at CBA.0508.0006.0014. Now, if we could start at page 0015 of this document. This is an email that you sent to Mr Comyn on 28 February this year?---That's right.

20 *A heads up because things are moving fairly on this front and I want to make sure you're aware and comfortable because these are quite material.*

And the first thing you refer to there is public statement:

25 *Currently targeting Friday. Working with Andrew Hall and team on the announcement and timing. The first draft statement is not ready to share with you. We think the core messages will be along the lines of: we've been working to improve CCI for a while/have remediated CCP/have moved on to PLP and HLP, will be remediating customers in a similar way/have decided to*
30 *shut PLP and HLP for new business from 30 April or before 30 June/excited about building new customer centric propositions with AIA who also have vitality in their stable. Will get a draft to you before it goes out.*

35 A draft of what, Mr van Horen?---Of a media release.

A media release?---I have made an error in that email, so just for the record where it says in the third last line:

40 *Have decided to shut PLP and HLP it should have said PLP and HLP –*

it should have said "PLP and CLP – CCP" for new business.

CCP?---Yes.

45 I see. So this is the media release. These are the themes that you want the media release to cover. Which media release are we talking about here?---The one that went out a few days after this.

The one that went out on - - -?---The one you referred to earlier.

On 7 March?---I forget the exact date, but it was thereabouts, yes.

5 There is then a reference to regulators and below that a reference to this Royal Commission?---Yes.

Royal Commission:

10 *Given this is relevant to the CCI witness statement that went in superannuation fund night, we will call the Royal Commission and explain to them what we are announcing so there are no surprises in the witness dock. It's one to manage carefully because there is risk we get them off side. We will work with Clayton Utz (and external counsel if required) to manage this.*

15

What were you referring to there, Mr van Horen?---I think exactly what I – what I just said. You know, we didn't want to spring any surprises on the Royal Commission. We thought if we were going to communicate we would much rather proactively communicate with our customers than have a message come out reported by media where we're not controlling that message at all. So I think the choice we faced was, you know, do we make an announcement proactively to customers saying we will stop selling these products from a certain date? Or does that message come out in some other way that's a little less clear.

25 You had a response from Mr Comyn to your email on the same day?---Yes.

Which – it will assist if we have both 0014 and 0015 on the screen together. Mr Comyn says:

30 *Thanks for the update. A few key points: there should be no public statement until I have reviewed it and I have cleared it through IN and the chair*

IN?---Ian Narev.

35 Thank you:

I am still learning, but it may be something the board would like to be briefed on. We will find out. Point 1 could you please prepare a short paper outlining the background and rationale for this change.

40

Which change did you understand Mr Comyn to be referring to there?---Well, all the ones that I referred to earlier, so in particular the decision to announce the closure of the two products.

45 Yes?---Yes.

Point 3:

Good to inform regulators. I think we should also brief some of the consumer groups, eg, Fiona Guthrie and Gerard Brody. All of this indicates this is more likely to be an announcement next week. I want it to be very much tied to the AIA acquisition.

5

What did you understand Mr Comyn to mean by that, Mr van Horen?---What I understood that to mean was to, as you saw in my outline of what the core messages were, the final key message there was around the sale of CommInsure life business to AIA, and that being a key trigger for us to say, “Well, let’s stop selling the existing products and let’s build something new with AIA.”

10

But it wasn’t in fact the reason for the cessation of the sale of these products, was it?---It – as I said, there were a number of reasons, all of them came together and I think it was absolutely a convergence of those factors.

15

Mr Comyn finally says to you:

We should also debate whether no announcement is better, but it just comes out.

20

What did you understand him to mean by that?---I think at that stage he wasn’t clear that –you know, we weren’t clear collectively as to how the witness statements would be made public. If and when, I think the feedback we had had was that they would potentially be made public. Therefore, you could imagine if a customer read my main witness statement as you will recall earlier if that was reported in the media before we had even told customers about it, that would have been quite an unsatisfactory outcome, which is why we wanted to proactively let customers know first.

25

You respond to Mr Comyn’s email later that night at 9.58 pm that night, and you provide him with a paper on the CCI background and rationale. You tell Mr Comyn that Helen – Helen Troup – has provided input?---That’s right.

30

I have kept it draft and not labelled it as an exco or board paper until that’s confirmed and note this may be produced to the Royal Commission once finalised.

35

Now, that a reference to the document that we’ve gone to a couple of times now?---Yes.

40

That was written by you and Ms Troup?---That’s the one.

That had the draft in the title?---Yes, that’s right.

And you also update that paper on superannuation fund, 4 March to reflect recent changes, including the Royal Commission’s announcement last week that they are

45

making submissions public?---That's right. So that paragraph you referred to earlier, 3.13.1, I think it was, was the one that – one of the parts of the paper that I updated.

Thank you. I tender that email chain, Commissioner.

5

THE COMMISSIONER: Exhibit 1.112, emails between van Horen and Comyn, 28 February '18, CBA.0508.0006.0014.

10 **EXHIBIT #1.112 EMAILS BETWEEN VAN HOREN AND COMYN DATED 28/02/2018 (CBA.0508.0006.0014)**

MS ORR: Two final topics for you, Mr van Horen. The first is the decision to continue selling the HLP product. You say in your witness statement at paragraph 9
15 that this was because the customer value proposition for CCP and PLP products was different than that for the HLP product. And what I want to suggest to you is that CBA has made the decision to keep selling the HLP product because it has provided the biggest stream of premiums to CBA?---The primary reason we've made the distinction between the products is the nature of the sales process and the customer
20 need that is being protected is very different. So if you think in simple terms when you have HLP with a home loan you're protecting basically the customer's biggest asset. The nature of the sales process is also quite different with HLP because, unlike a credit card or a personal loan which are generally either bought online on the spot or sold in an assisted channel pretty quickly, it's a very quick decision a
25 customer makes, a very simple need, a home loan is a much more extended process. The application takes longer, it takes four to six weeks to settle a home loan typically, and therefore the concerns that we've had, that ASIC, that consumer groups have had has been much lower for home loan protection than for the other two products.

30

Do you accept, Mr van Horen, that HLP provides the biggest stream of premiums to CBA when compared with the Creditcard Plus and the PLP product?---Yes. I – I would have to check the exact product. I don't manage the PNL, but I do – I know that they're material. That's not to say that PLP is immaterial, though.

35

I will just show you quickly in the document you created - - -?---Sure.

- - - with Helen Troup. CBA.0058.0006.0017. On the final page of that document, which is 0020 – I will just give that doc ID number again. CBA.0508.0006.0017.

40

And if we could have 0020 on the screen as well.

THE COMMISSIONER: 0006 or 006?

MS ORR: 0006. My apologies if I got that wrong. I'm sorry. I just – I wanted to show you the final page, Mr van Horen?---Yes.

45

0020?---That little table there.

Yes. Do we see a portfolio snapshot there?---Yes.

Which shows the premiums received in 2017 from each of these insurance products?---Correct.

5

So the total premiums across all the products, we see there is 151.2 million?---That's right.

10 And the HLP product was the greatest contributor to that at 62.99 million?---Correct, yes.

15 And CBA documents show us that – that the HLP product contributes 62 per cent of the embedded value of new business across these products. Would you agree with that?---That could well be the case. I'm aware that some documents have referred to that. The point I made was that PLP and CCP are not immaterial and not irrelevant alongside HLP.

20 The final topic, Mr van Horen, you heard the evidence of Ms Irene Savidis -- -?---Yes.

-- - today. You've read the statement that she has made -- -?---Yes.

25 -- - to the Royal Commission, and you would have heard from Ms Savidis' evidence this morning that she explained that she received a card from CommInsure in the mail recently?---Yes, I did.

Were you aware that this card was sent to Ms Savidis?---Only long after the fact.

30 Do you know who wrote the card?---I believe it's a staff member in the CommInsure business who handles – so the context for that CommInsure have a team of people who try and bring the personal touch to customers. Clearly, in this case, it was not informed by the right data and so the thank you for your loyalty part of that card was – was inappropriate. But it was absolutely a well-intentioned effort to bring a personal touch to a customer interaction.

35

Does CBA generally send handwritten cards to customers who are entitled to a refund of premiums that they've paid?---Not to my knowledge. Very unusual to have handwritten cards.

40 Do CBA just send cards of that nature to people who are going to be giving evidence in the Royal Commission?---No. And if – if that was the trigger for sending the card, somebody clearly would have scrutinised what was on the card.

45 Well, CBA has been on notice since 19 February this year that Ms Savidis was going to give evidence to the Royal Commission?---Yes. I believe – so having investigated how did that card come about with some of the CommInsure folks, there was an interaction recorded in our customer relationship management system and, without

looking at the specifics of what that interaction was, the staff member wrote that card – it triggered a work item for that staff member and she wrote that card. I think well-intentioned, but misplaced.

5 No further questions, Commissioner.

THE COMMISSIONER: Are there any party other than CBA who seeks leave to cross-examine? Mr Scerri.

10 MR SCERRI: No questions, your Honour.

THE COMMISSIONER: Very well. Thank you, Mr van Horen, you may stand down. I think we are to see you more than once again, are we not?---You will – you will.

15

THE COMMISSIONER: Thank you very much.

20 <THE WITNESS WITHDREW

[4.25 pm]

MS ORR: Thank you to the Commissioner for sitting on late today. That concludes the case study in relation to add-on insurance. We will move to a further case study tomorrow morning.

25

THE COMMISSIONER: At 9.45 am, the forced march continues. 9.45.

MATTER ADJOURNED at 4.26 pm UNTIL TUESDAY, 20 MARCH 2018

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