CBA's Matt Comyn & David Cohen appear at Parliament House - 11th Oct 2018

Summary:
Hansard Transcript - The Treasurer has asked the Standing Committee on Economics to inquire into and report on a Review of Australia's Four Major Banks. This is the Commonwealth Bank of Australia (CBA) appearance at the fourth review. Members of the Bank Reform Now team were in attendance to bear witness.

The MPs on the committee did a magnificent job. The CEOs were not able to bluff their way out of being accountable. We have saved the transcript here for you.

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Standing Committee on Economics - 11/10/2018 - Review of Australia's four major banks - CBA's Matt Comyn & David Cohen

COHEN, Mr David, Group Chief Risk Officer, Commonwealth Bank of Australia

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COMYN, Mr Matthew, Chief Executive Officer and Managing Director, Commonwealth Bank of Australia

Committee met at 09:15

CHAIR (Mr Tim Wilson): I declare open this hearing of the House of Representatives' Standing Committee on Economics for the review of the four major banks. This is the fourth round of hearings that the committee is undertaking as part of its review. These hearings provide an important opportunity to scrutinise the bank CEOs following the shocking revelations of the royal commission. Commissioner Hayne's interim report identified incentives in banks that are against the interests of customers and have led to appalling conduct that is contrary to law, yet either this misconduct has gone unpunished or the consequences have not met the seriousness of what has occurred and must be addressed. These hearings will also be an important opportunity to follow-up on unresolved issues from earlier hearings and to consider how best to ensure that appalling behaviour is not repeated without inhibiting the banks' essential contribution to grease our economy.

In November 2016, the committee published its first report, which followed the first round of hearings in October 2016. The report contained 10 recommendations for reform of the banking sector, including calling for new legislation and other regulatory changes to improve the operation of the banking sector for Australian consumers. In its second report in April 2017, following its March round of hearings, the committee reaffirmed the 10 recommendations in its first report and made an additional recommendation that non-monetary default clauses be abolished for loans to small businesses. In its third report in December 2017, following its October round of hearings, the committee made four recommendations, including that the Australian Competition and Consumer Commission examine the major banks' repricing of interest-only mortgages that occurred in June 2017. The committee anticipates the ACCC's analysis of this repricing will be included in the final report of its inquiry into residential mortgage products, which is due on 19 November 2018.

I would also like to outline a number of matters related to the conduct of today's hearings. I refer members and witnesses to the House's resolution related to procedures for dealing with witnesses at page 123, paragraph 9 of the House of Representatives' standing orders. I know you all have it by your bedside! The resolution provides that should a witness refuse to answer a question, they should be asked to state the grounds on which they object. The committee may either accept that objection or alternatively deliberate at a future private meeting on whether or not to insist upon an answer. If the committee does not consider the matter in private, it may write to the witness with the outcome of its discussions. During the course of the hearing, witnesses may be asked to provide documents at a later stage. If a witness subsequently refuses to provide documents, the committee may meet in private to consider the matter. Under standing order 236 of the House of Representatives, the committee has the power to compel witnesses to produce documents where the committee has made a decision that the circumstances warrant such an order.

I am also mindful that today we have a parliamentary hearing on an important matter and a subject that draws strong emotions. One of the important principles of having a parliamentary hearing is to make sure it's held with decorum and respect between the witnesses and, of course, the parliamentary members. I also encourage that, while this is a public hearing and the public is most welcome to attend, we try to conduct these in a civilised and respectful fashion and that the questions and answers are between the witnesses and the parliamentary members.

We have representatives from the Commonwealth Bank of Australia present for today's hearing. I remind you that although the committee does not require you to give evidence under oath, the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I now invite you to make an opening statement.

Mr Comyn : I'd like to share with you the actions we are taking to make Commonwealth Bank a better and simpler bank by improving our culture, putting our customers first and making changes to the way we work. Our customers and the community rightly expect that we always do the right thing, but we have seen far too many instances of unacceptable customer outcomes. As the royal commission has shown, there have unfortunately been failures of judgement, failures of process,

failures of leadership and, in some instances, greed. We have been too slow to identify problems, too slow to fix underlying issues and too slow to put things right for customers. We became complacent. Our capability has been inadequate in critical areas, particularly operational risk and compliance. We have underinvested in prevention, even though we have invested significantly in customer remediation. This is completely unacceptable.

Since I became CEO six months ago, I have been focused on earning back trust and the reputation of the Commonwealth Bank by driving change and fixing every one of these underlying issues. That change started at the highest level of management, where I have appointed six new leaders to my executive team. Executives across the organisation have faced consequences for our failures. Some have been terminated and there has been a $100 million impact on remuneration. Accountability has not been clear enough inside the Commonwealth Bank. To address this, we have extended the government's new Banking Executive Accountability Regime across more than 90 executives.

The inquiry APRA commissioned into the Commonwealth Bank last year, and its 35 recommendations, provide a road map for the necessary changes for our organisation. We have embraced the report as a critical but fair assessment of our shortcomings. We are implementing the recommendations in full and reporting to the regulator on our progress. We have set clear values and expectations for all of our people and mandated a new code of conduct across the organisation. We have changed the structure of remuneration to reduce the reliance on financial measures. We will continue to examine what more can be done in this area. In June of this year, we announced a decision to demerge our wealth and mortgage broking businesses into a separately listed entity to simplify the bank and allow each business to focus on its core activities and customers. This week we announced further reforms to improve outcomes for customers in our wealth business, including the rebating of grandfathered commissions to customers.

We have also taken a range of actions to benefit retail customers. We have changed incentives for branch staff and have introduced stronger oversight of mortgage brokers. We have strengthened how we lend responsibly with more granular inquiry into our customers' financial circumstances. We are making it easier for customers to choose the right product by simplifying our product range, including across our home loans by reducing the number of products from eight to four. For our small business customers, we have made our contracts fairer by removing clauses that were one-sided. We have expanded our definition of a small business so that more customers can benefit from our new shorter and simpler contracts. We have established a dedicated team to assist small business customers facing difficult times.

I recently wrote to our 8½ million customers about what we are doing to become a simpler, better bank. I have so far received more than 9,000 responses to that letter. We recognise the changes are only the beginning, and we are committed to doing the work necessary to earn the community's trust. I understand why this committee, our customers and the community may be sceptical about any words or promises. I accept that and understand that you will judge me and the Commonwealth Bank on our actions. I welcome your questions.

CHAIR: Thank you very much, Mr Comyn. To open up, I think a lot of Australians are sceptical of the statements that are going to be made by bank CEOs in front of this inquiry. There is a concern that, as you yourself highlighted, there haven't been the right things done, there have been failures, people have been too slow to act and there has been a degree of complacency. That was all highlighted in the royal commissioner's interim report. How did the report make you feel when you read it?

Mr Comyn : Well, I'd say two things. First of all, before the report was published, I can say that the worst part of the overall royal commission process was, of course, listening to individual customer cases, one of whom in recent weeks I actually met with personally. Of course, where there are any instances—and one instance is too many—where a customer has been let down by the actions of the Commonwealth Bank, that is completely unacceptable, and I have previously apologised unreservedly. For me, reading the interim report, of course, is a culmination of some of those individual customer cases and, as I said at the outset, there were a number of significant failures on our part. Those failures are our fault, and we are working very hard to address those failures.

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CHAIR: In your opening statement, you made a series of statements about what the CBA's policy response has been to the interim report and what's been unfolded from the royal commission so far. What processes have been taking place around the ongoing adjustment and ongoing preparedness of CBA to address not just issues that have arisen to date but those that are going to arise into the future?

Mr Comyn : Well, as I said this week, we announced changes to remuneration practices and specifically the rebating to customers of commissions that were previously grandfathered. That's one of the changes that we have made, including also rebating what we consider to be outdated fees and charges. We have also removed some of the exceptions to when FOFA was previously introduced, including the requirement to now ensure that all customers are actively opting into an ongoing service provision by our advisers and ensuring, effectively, that we are now implementing FOFA as it was originally designed in full.

Our approach throughout our customer remediation cases has been to go back as far as practical. In the case of some of the most reprehensible conduct that's been identified at the royal commission, including the unauthorised charging of customers from deceased estates, we have said this week that we have commenced that thorough review process to go back seven years. We have already been through more than 140,000 customers but only over a three-month period, and we want to extend that back. So we absolutely are committed to ensuring that, where we have done the wrong thing by our customers, they are remediated in full and particularly on a prompt basis, which is one of the areas where we have been unable to demonstrate the right level of speed in terms of the way we remediate our customers.

CHAIR: You just highlighted the intention of CBA to implement FOFA in full, in the spirit of its intent, as well as the remediation you have taken around deceased estates. Why do you think it took a royal commission to justify the bank taking such steps?

Mr Comyn : In response to one of your earlier questions, Chair, for us, of course, a royal commission is an incredibly important process for us to contribute to and to really analyse and get to the root cause of those failures. It's not the sole thing that we're relying on this year. We have had the benefit, as I said in my introduction, of a very thorough review by an independent panel, which was a very critical report but, as I said, a fair report. I think that report also, as part of those 35 recommendations, goes to the heart of some of those failures inside the organisation. We have a comprehensive program which we are reporting on externally.

Going specifically to your question—why did it require this?—I don't think there is an acceptable explanation that I can provide to the committee, other than to say some of the things that I mentioned in my opening comments, which are that we have been too slow to get to the root cause, we haven't fixed the issues and, whilst we have invested in things like customer remediation, we simply haven't done enough to prevent instances from recurring. We have worked a lot on improving the overall customer satisfaction, but we haven't put enough time, effort and resource into making sure that we're fixing some of the causes that would lead to the most dissatisfied customer event. Of course, it is absolutely critical that we're able to do that in a way that means both that our customers feel the differences of the organisation and that we can demonstrate the work that we're doing over a sustained period of time.

CHAIR: I come back to an earlier question I raised, which is not just in the context of why it took a royal commission. I understand you've taken certain steps within the bank to make sure that circumstances that have existed in the past won't occur again. To what extent is there a clear pathway and an attitudinal shift in practice within the bank to make sure that, if future examples like this occur, we don't require a royal commission to make sure that there's proper measures in place to get the outcomes for customers that are required?

Mr Comyn : I can assure you there's complete commitment from the board, from myself and from my executive team. I think, for some of the instances, I'm happy to talk about the various elements of the royal commission or some of the factors that have gone into it, from my perspective.

We put out an ASX release earlier this week so that we could answer the committee's questions

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comprehensively as it relates to the changes that we're making. You may have noticed, at the bottom of that release, we've sent $850 million on a combination of customer remediation, administering that remediation and investing in our advice business. If I take a step back from that, I think that we should have implemented FOFA in full. I don't think we went far enough in terms of removing things like conflicted remuneration. When we consider how that occurred, I think at times we focused on things like adviser viability, because the structural reform of any business, including the financial advice industry, is a complex one. Whilst there were a number of changes that occurred, with the benefit of where we're sitting now, there are other things that we would have done differently as well.

The commissioner also quite rightly criticised us for failures of our systems and processes to ensure that we could demonstrate that every single one of our customers was only being charged for the services or products that they were being provided. Getting it right most of the time just simply isn't good enough.

CHAIR: Do you accept that you have traded on the trust of the Australian people that's led to this situation?

Mr Comyn : Trust is absolutely the cornerstone of any financial institution. It needs to be. Of course, we recognise that it's been damaged, and that's of enormous concern to us.

CHAIR: One of the critical issues that's been raised by the royal commission has been alignment of incentives and whether incentives have been focused within the bank in the best interests of bank customers, or whether it's been in the best interests of bonuses and, obviously, the profits of the CBA. Do you accept that there has been a misalignment of incentives within the bank? How would you explain the treatment of customers in that context?

Mr Comyn : I think certainly incentives have played a role in some of the issues that we're facing now. It's very hard to conclude otherwise. There is, of course, a complex interplay of factors which do not only include incentives but, since you've asked about incentives, maybe I should spend a little time walking through that.

CHAIR: Please.

Mr Comyn : I would say—and as I said in the opening statement—there may still be more work to do, but there has been substantial reform to the way all staff inside our bank are paid. Substantial changes were from 1 July, which was the full implementation of the Sedgwick reforms. That varies from tellers in our branches having no financial weighting or contribution to their overall remuneration and extends right through the organisation, including to my remuneration. The aggregate of measures that contribute to my overall remuneration have only a 30 per cent linking to financial outcomes. That's approximately half what it has been in prior years. That's certainly the lowest it's been for a chief executive of the Commonwealth Bank in decades. You might have noticed, as part of the annual report in the remuneration report section, we made it clear that there had been $100 million of consequences to executives through the failures of the organisation to ensure that there was the appropriate level of consequences for executives in the delivery or leading to the circumstances that we currently face.

CHAIR: And how do you explain that systems for the collection of revenue and fees have never seem to fail, yet systems for the provision of services to customers ultimately do?

Mr Comyn : I acknowledge that comment from the commissioner. There certainly are instances of system failure on both sides, unfortunately. Systems are a critical element of a banking system and, as I said earlier, we need to ensure that there is complete accuracy and controls in place to ensure that customers, particularly, are not being overcharged or charged for fees and services that they did not provide. There is no escaping that, in the context of things like fees for service in the advice business, there simply wasn't the requisite level of controls and systems and processes to ensure that we could demonstrate that customers were only charged for the services that they actually provided.

CHAIR: The CBA has obviously had a leadership change. Do you think this tone should be set from the top, or do you think it has been set from the top in the past?

Mr Comyn : Clearly the tone inside any organisation is set from the top. That's a really important contributor to the culture of an organisation. That's something that the chair and I have regularly discussed. There's a role, of course, for the board in setting that tone, for myself, personally, absolutely, and for my leadership team.

CHAIR: A critical follow-on from what's come out of the royal commission, I think, has been a very clear concern around accountability within banks and within the banking structures. What steps has the CBA taken around making sure there are clear lines of accountability? I acknowledge that you said in your opening address that there have been some. Could you outline those for us so that we can be reassured that there's an understanding of the importance of accountability and that people also be held to account for past conduct?

Mr Comyn : Yes, of course. Perhaps I will spend a little bit of time on accountability and then on consequences. In this context, I do think that the government's introduction of the Banking Executive Accountability Regime was a helpful element. Certainly in our experience, the implementation of that actually forced us to go through a very clear accountability mapping exercise which identified areas of ambiguity that had previously existed. That's one of the reasons, as I said in the introductory comments, that we decided to extend that to our 90 most senior executives—to make it clear for each of those 90 executives exactly what they are accountable for and also what steps are required for them to adequately discharge those accountabilities.

Separately, when it comes to consequences, there's $100 million of financial consequences for executives; an introduction of a very clear code of conduct; a set of values expectations; and, importantly, reminders and, where necessary, demonstration of where there has been misconduct or certainly conduct that does not meet community expectations. The consequences will be harsh. They need to be harsh, and they can include termination.

CHAIR: Does that include at all levels of the organisation? Local members of parliament here regularly get customers who come and talk to us, not just about the CBA but also other banks and the issues they experience all the way from what they see as attitudinal problems at the top of the organisation down to the branches. Is that going to flow through to all levels of the organisation?

Mr Comyn : Yes, it is. One of the criticisms in the APRA report was that those consequences were harsher the further you went down inside the organisation and the consequences simply weren't strong enough at the most senior levels of the organisation. That is one of the recommendations that both my leadership team and, of course, the board are ensuring that there is complete alignment, given the importance. The vast majority of these failures are failures that should be attributed to the most senior executives inside the organisation. The vast majority of our people who serve our customers in the Commonwealth Bank have had absolutely nothing to do with the failures here. And it does trouble me the level of abuse that many of our staff have received over the last 12 months, when that criticism and abuse should be directed at the most senior executives in the organisation, starting with me.

Mr Cohen : To support that consequence flow-through to senior executives in the organisation, we have introduced a much more thorough assessment of their behaviours in relation to risk management. As we have seen through the report from the prudential inquiry, there hasn't been enough focus on sound risk management through the organisation. So, in order to deal with that, we have introduced a very thorough assessment on a scorecard basis of the risk behaviours of senior executives, and that's extending through the organisation gradually and it will continue. That has led to a much sharper focus on behaviours and conduct that are not acceptable and that, in turn, has led to a much greater focus on consequences for those people.

CHAIR: I understand the point you're making around risk, but the issue is also one of accountability and the pathways for people to complain internally against problems that they see that may be being played out at the community level or on the ground, which might be connected to conduct at executive level or as a consequence of decision-making. What processes are in place to address

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that?

Mr Comyn : There are very thorough processes, including extending a regular update, on a monthly basis, to the board of any investigations that involve misconduct, particularly those that might involve more senior executives. Of course, at the heart of being able to foster the right culture inside an organisation is ensuring that people at all levels of the organisation feel empowered to challenge any decision that they don't think is in the interests of their customers or, specifically, to call out anything that they don't think aligns with the values and the clear expectations that we have set for ourselves. I think one of the markers of a very positive culture is people being able to do that, both directly to their line manager as well as to senior people inside the organisation, including myself. It's also incumbent on us to provide independent services where people, either as a whistleblower or separately, can go and raise their concerns on a completely anonymous and confidential basis and be assured that they will be thoroughly investigated and that the results of those investigations will be reviewed by independent parties.

CHAIR: I presume the CBA takes an attitude of 'no tolerance' to law breaking?

Mr Comyn : Yes.

CHAIR: The commissioner has been very critical of the challenge that CBA had in pulling data together regarding previous breaches of law, stating that the senior management and the board could not form 'a single coherent picture of the nature or extent of failures of compliance'. Do you agree with that assessment?

Mr Comyn : I think that criticism is fair. If I can give some context: over the course of the commission, we are certainly endeavouring to at all times engage constructively and transparently. We've reviewed more than 10 million documents inside the Commonwealth Bank, and we've provided more than 200,000 to the commission. We've put on 80 witness statements. We've had 15 executives appear during the process of the royal commission. Particularly early on, which is where that criticism was directed, we acknowledged we didn't get it right in terms of providing the right level of information to the commissioner in the time frame that the commission was seeking. At first we gave too little, and then we gave too much. So we've tried to get that right, and I feel like, as the process has gone on—not to excuse our failure initially—we've managed to continue to deliver information that the commission has found helpful. As a secondary point, I would also say that that is an area which came out of the prudential inquiry report, where we have invested in systems to ensure that we can pull together a very clear and aggregate level of misconduct to enable reporting and escalation through the organisation.

CHAIR: Commissioner Hayne also said:

First, changing culture in the Australian banks may not be easy and may take time. It cannot be assumed that entities will embrace change willingly or immediately. It cannot be assumed that entities will make desirable changes at all levels of the organisation.

You said, from what you've outlined today, that you think you have a concrete plan to do that. Do you agree with his observation or do you think it is going to require an ongoing commitment?

Mr Comyn : In our case, as I said, as it relates to the prudential inquiry, there is clearly some overlap between some of those recommendations. We've committed to having an independent expert review our progress on a quarterly basis. We report that progress to APRA. We've also made the first report public, and we intend to continue to make that public so that stakeholders, including the committee here, can review our progress and hold us to account. I do think, in the context of rebuilding confidence and trust in the financial services industry, that some degree of regular reporting and, of course, transparency—so that people can track the progress of major institutions such as ourselves—is an appropriate step.

CHAIR: To finish off, before my time ceases and I hand over to the deputy chair: when you say 'regular reporting', do you have a clear idea about how you plan to do that?

Mr Comyn : As I said, we reported our first report yesterday. We would intend to provide another one in the time of our half-year results, which is in the February time frame.

CHAIR: On an ongoing basis?

Mr Comyn : On an ongoing basis. We report to the market on our financial results twice per year, so we would anticipate reporting on that frequency.

CHAIR: Thank you very much. I will hand over to the deputy chair.

Mr THISTLETHWAITE: Mr Comyn, what happened to the once mighty Commonwealth Bank? This is an organisation that working people had such trust and confidence in. What I don't understand is how an organisation with supposedly the best-trained, best-qualified and certainly some of the best-paid directors and senior managers could allow it to get to this situation, where the corporate image of this organisation has been so tarnished and damaged over the last decade. Why was it not that the case that the board acted sooner when red flags were there, going back 10 years, around wealth management scandals, CommInsure and other practices within the bank?

Mr Comyn : There are many examples of where we would like to have done things differently, of course. We recognise the criticism, as I said during my introductory comments. One of those pieces of work, which I think has now become a seminal piece of work for the industry, was the review by APRA. One of the conclusions that the independent panel true from that was success over that period of time had dulled our senses. I make these comments by way of explanation, not to provide an excuse. I think many elements in these failures are inexcusable. We did as an organisation become complacent. As I said, we made too many mistakes. We were too slow to acknowledge and, particularly, to get to the root cause of those mistakes. We should have taken more preventive action and we should have recognised, as you said, some of the red flags that were visible. Of course, we are wanting to ensure that we implement all the recommendations in front of us. We believe that makes us a much better institution. A big part of my focus, of course, is leading all of that change to make us a simpler and better bank for our customers.

Mr THISTLETHWAITE: What I don't understand—and I think the Australian public are still asking questions about this—is how directors of this organisation who were so well paid and were getting big bonuses, if you go back five and six years ago, were alerted to some of these issues over eight or nine years ago but didn't act. You didn't act until the regulators got involved, until the media started highlighting these issues and the royal commission began delving into them. Why should we accept now that things have changed when you've had a decade to get these things right and you didn't get them right?

Mr Comyn : Two comments, if I may: one is a minor point of clarification. Directors are paid directors fees. They have no variable remuneration bonuses. Certainly, executives inside financial services institutions do earn variable remuneration and over that period of time certainly significant. To the heart of your question, as I said, I don't for a moment expect that the committee will hear the comments and the commitments that we make today and expect that that's enough. I certainly understand that scepticism, and I understand that I and the Commonwealth Bank will be judged on our actions, not by any words or promises that I provide today. I think your criticism in the context of the issues that have occurred and why did it take so long: there is no good explanation to provide. It simply took too long. There is no escaping that.

Mr THISTLETHWAITE: Given the misconduct that's been uncovered in the royal commission, does the Commonwealth Bank now accept that you were wrong to oppose a royal commission?

Mr Comyn : Yes, we do.

Mr THISTLETHWAITE: There has been over 9,000 submissions from bank victims to the royal commission. Some of those—a very, very small number—have had the chance to put their case orally, but overwhelmingly most people haven't had the opportunity to have their say. What do you say to those people? Do you think that they deserve to be heard through the royal commission process, as well?

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Mr Comyn : Perhaps I'd provide a couple of comments. One, I would say that the royal commission process has of course been very thorough and robust, and I think the commissioner made it clear that he has reviewed all of the individual customer submissions. I'm not for a moment suggesting that that is enough in many people's eyes, particularly for customers who, understandably, would like the opportunity for their case and their individual set of circumstances to be heard, either in private or in public. That's something that, as I said, having written to the more than eight million customers inside the Commonwealth Bank and receiving more than 9000 responses, a number of those customer cases and longstanding cases I recognise the importance of our customers having the opportunity to meet with me or to have their grievance heard more broadly. After this committee hearing I'm meeting with a customer who's travelled from interstate to meet with me today. I'm not suggesting that I will be able to meet with every customer—certainly today—but I certainly recognise the need for customers to feel like they've had their case heard.

Mr THISTLETHWAITE: Do you think that the royal commission should provide an opportunity for these people to have their case heard?

Mr Comyn : I think that's up to the commissioner to determine. Ultimately, the commissioner is, obviously, determining the process. I think it would be hard to conclude anything other than it's been a very robust and rigorous process. I certainly acknowledge that not everybody agrees with that, but, ultimately, the scope, the terms and the recommendations of the royal commission are a matter for the commissioner.

Mr THISTLETHWAITE: Earlier you mentioned complacency and the APRA review of the Commonwealth Bank that's recently reported. It was reported today that APRA detailed 153 actionable items from that review that they wish the Commonwealth Bank to report back on by 31 August. According to the reports today, you've only reported back on one of those elements. Why is that?

Mr Comyn : I think that some of that reporting is slightly misleading in the context of the 35 recommendations underneath that. As you said, there are approximately 150 elements to that. We have commenced work on the vast, vast majority of those actions. We would also acknowledge there's a lot of work to do, and it's a multiyear program. For the areas that we've wanted to make progress in, we believe we have. And I think throughout the report it comments on there being substantial progress—acknowledging it's only been a few months and that this is a process that will be ongoing for some time. We certainly expect and believe we will make material progress this year. Of course, it's one thing to actually implement some of the recommendations. As you would appreciate, it takes a much longer period of time to then be able to demonstrate that those recommendations have been demonstrated over a sustained period of time.

Mr THISTLETHWAITE: I want to move on to the issue of Youthsaver accounts.

Mr Comyn : Sure.

Mr THISTLETHWAITE: It was reported on 18 May this year that there was widespread tampering by bank staff of accounts set up in children's names by their parents. Could you outline what this issue was about for the committee?

Mr Comyn : Yes. In late 2012 it was identified that a number of staff were depositing loose change that was left over in a branch at the end of the day into individual customer accounts—presumably, because there is then an ability to activate a customer's account when it has a small deposit in it. At that point in time, a note was sent out to all branch staff saying that that action was completely unacceptable, and the practice promptly ceased. I would say that, certainly by today's standards, that level of consequence is unacceptable and that even though there were clear actions taken at that point in time, they would be dealt with more harshly under today's standards.

Mr THISTLETHWAITE: Why were those staff tampering with those accounts without the authority of the parents or the account holder?

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Mr Comyn : I can only surmise that they were doing that because they thought they weren't causing any harm. Of course, meddling with anyone's account is completely unacceptable, but they were depositing mostly 5c and 10c into an individual customer's account. Secondly, there was some form of incentive—a very modest one, but that doesn't make it acceptable in the slightest—that they would have attracted by activating an account.

Mr THISTLETHWAITE: So that incentive would be part of the One Team Referral process? Is it right that they are potentially eligible for a bonus in terms of a payment by that referral, and by that activation to that account, and by boosting those numbers?

Mr Comyn : Yes. Not specifically in the One Team Referral process. The remuneration and incentive design has changed substantially since that point in time. But, at that point of time, they would have been eligible—it was a very small amount contributed to their overall remuneration, which of course doesn't excuse that behaviour. There is simply no excuse for it.

Mr THISTLETHWAITE: At the time when these issues occurred, I understand that you were the head of retail banking at CBA—is that correct?

Mr Comyn : That's correct.

Mr THISTLETHWAITE: The leaked emails around this issue indicated at the time that, 'This issue is widespread.' Was that the case that this was happening everywhere?

Mr Comyn : No, but it's impossible to determine and I think that's a completely unsatisfactory answer in the context of that point in time. What should have been done was a much more robust and thorough investigation to identify the extent of the practice and ensure that any individuals that were involved in that received very clear consequences. What happened was: it was detected, there were some emails that you're referring to—I've seen those emails subsequently—and it was determined that they'd seen examples of it. And, as I said, an email went out to all staff making it very clear about a range of things, including any practice such as that, and that practice promptly ceased.

Mr THISTLETHWAITE: When were you alerted to this, and how were you alerted?

Mr Comyn : Personally, I was alerted by an email that was forwarded to me, which was the email that went out to branch staff—it was an FYI email. I wasn't involved in any of the investigation and, certainly if I had my time again, I would have focused on that issue more at that particular time.

Mr THISTLETHWAITE: When were you alerted to that email?

Mr Comyn : The email was sent to me—I think it was late 2012 or early 2013. But it was more recently drawn to my attention late last year.

Mr THISTLETHWAITE: And what did you do after you received that email? What action did you take as the head of retail banking?

Mr Comyn : At that point in time, the email that was sent to me was a forwarded copy of an email saying that these practices should stop. I did nothing to go further into the subsequent investigation, and if I had my time again I would have.

Mr THISTLETHWAITE: So, there was no investigation launched by the bank at the time about why this was occurring, how it was occurring, and how widespread the practice was?

Mr Comyn : No, there wasn't.

Mr THISTLETHWAITE: Why? You've got people tampering with other people's accounts here. It's not on the same scale, but a similar issue occurred in the United States with Wells Fargo that sent shock waves through the whole industry. I think it goes back to that issue of complacency and the point that I was making earlier about senior management and the board being asleep at the wheel. Why

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wasn't this issue investigated when you had staff tampering with other people's accounts on a widespread basis without their authority?

Mr Comyn : Unfortunately, we don't know the extent of how often the practice occurred, and of course that's an unsatisfactory answer. There is a very big difference between the example that you referenced in the context of the United States where accounts were opened on an unauthorised basis and customers were charged for those accounts. Of course, any unauthorised activity, whether it's in the customer's favour or not, should be thoroughly investigated. And it wasn't at that point in time and it should have been.

Mr THISTLETHWAITE: I understand that in March 2013 a whistleblower wrote to you asking why this wasn't being investigated. Do you recall that letter or email?

Mr Comyn : I've had several interactions with, I believe, the whistleblower you may be referring to, including an email.

CHAIR: There was an investigation that was later launched into the issue, wasn't there?

Mr Comyn : Yes, there was.

Mr THISTLETHWAITE: And that was undertaken by MinterEllison?

Mr Comyn : Yes, that's right.

Mr THISTLETHWAITE: And when did that investigation occur?

Mr Comyn : There were several investigations over multiple years not specific to this particular case, and I need to be careful: I'm not exactly sure how much of the details of that individual whistleblower's request I should go into. But in that particular case there were a number of different elements that the whistleblower raised. This was not one of the primary incidents that was raised and, over an extended period of time, a number of those issues were investigated. The MinterEllison report was prepared some years later.

Mr THISTLETHWAITE: I understand that the MinterEllison report was prepared in 2016—would that be right?

Mr Comyn : That sounds about right.

Mr THISTLETHWAITE: So, did MinterEllison produce a written report?

Mr Comyn : Yes, they did.

Mr THISTLETHWAITE: Did you see that written report?

Mr Comyn : They produced multiple reports. I have seen reports from Minter Ellison, yes.

Mr THISTLETHWAITE: Did Minter Ellison question you about your conduct regarding your handling of this issue when you were the head of retail banking?

Mr Comyn : Yes, they did.

Mr THISTLETHWAITE: What were their findings in respect of your conduct?

Mr Comyn : I would have to refer you to the report. It basically says exactly what I said. The only involvement from my perspective was having an email—which is the same email that went out to all staff—that was forwarded to me.

Mr THISTLETHWAITE: Did the Minter Ellison report go to the board of CBA?

Mr Comyn : Yes, it did.

Mr THISTLETHWAITE: What actions did they take in the wake of receiving that report?

Mr Comyn : Well, particularly in that context during 2016-17, it was thoroughly investigated. This would be an example of where a whistleblower's request was given board visibility. I was not a participant when those conversations were had with the board, but they certainly had an oversight and overview of the thoroughness of those particular reports.

Mr THISTLETHWAITE: Did anyone in senior management or the board take any action regarding this against anyone?

Mr Comyn : The problem with that particular instance is that, as I said, it referred back to conduct that had occurred approximately five years earlier, for which it is very difficult to go on and identify who had actually been involved, because, as I said, it was identified, it was reported within the branch management team, they sent out a notice at that time for any behaviour such as this to cease and it ceased. So it's actually very hard to recreate who may or may not have been involved.

Mr THISTLETHWAITE: Was the Minter Ellison report provided to ASIC?

Mr Comyn : I believe it was, but I'd have to double-check.

Mr THISTLETHWAITE: Okay. Was the Minter Ellison report provided to the royal commission?

Mr Comyn : Again, I would need to double-check. As I said, we've provided more than 200,000 documents.

Mr THISTLETHWAITE: Okay. We've got a bit of time today, so I'd like you to get on the phone to someone and find out for us if that was provided to the royal commission.

Mr Comyn : Sure.

Mr THISTLETHWAITE: When the royal commissioner wrote to the four banks in the lead-up to the royal commission, he asked for your organisation to provide a list of items of misconduct that the bank had been involved in since 1 January 2008 and where the bank had fallen short of community standards. Was this issue of the youth saver accounts provided in that list of items to the royal commission?

Mr Comyn : The initial submission—David, of course, feel free to supplement or correct me—was basically an outline of instances of misconduct. I think it certainly would have been referred to in broad terms, as you would appreciate. This is one of the issues we struggled with, I think, in our initial submission. The commissioner identified that he would have liked more detail; in our subsequent submission we provided too much detail. I'm certain that, in the context of too much detail, it was in there. I would need to check the specifics, but I'm sure it would have been certainly generally referred to, if not specifically.

Mr THISTLETHWAITE: Okay. Again, could you check for us on that before we close today?

Mr Comyn : Sure.

Mr THISTLETHWAITE: Was anyone dismissed by the bank in the wake of this issue regarding Youth saver accounts?

Mr Comyn : Specifically as it relates to that, I do not think so.

Mr THISTLETHWAITE: I mentioned earlier the whistleblower who raised this issue. It is the case, isn't it—going back to this issue after complacency—that this Minter Ellison investigation occurred three to four years after the bank was first alerted to the issue? I'm instructed that the Minter Ellison investigation would not have occurred if the whistleblower hadn't really pushed this issue with you

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and senior bank executives some three years later. That's correct, isn't it?

Mr Comyn : The whistleblower, as I said, raised a number of issues—I think, from memory, more than a dozen. This was not one of the primary instances. There were several investigations into those issues over an extended period of time. Minter Ellison were brought in to provide another independent review of some of those matters, of which the one you are specifically referring to is a subset.

Mr THISTLETHWAITE: And this whistleblower was made redundant by the Commonwealth Bank, wasn't he or she?

Mr Comyn : That's not correct. But, again, I'm not exactly sure how much of the detail—I'm happy to check during the break—I can go into. I'm very familiar with the circumstances of this particular individual and, provided I'm able to, I would be happy to answer your questions in full.

Mr THISTLETHWAITE: If you could check that as well. I am instructed that this person was made redundant in a restructure in the wake of this.

Mr Comyn : I can assure you that the redundancy occurred a significant period of time before any allegations were raised.

Mr THISTLETHWAITE: Okay, thanks.

Mr EVANS: Thank you both for being here today. I have a long list of questions, including in relation to the government's Banking Executive Accountability Regime and small business lending practices, but I do just want to pick up on some of the questions and answers which I just heard. There are obviously a number of people out there—I think we are all very, very clear on this—including some people in this room, I'm sure, who just believe that they are not being heard. I want you to expand on this question: what exactly is the Commonwealth Bank doing to ensure that its customers who believe that they've been wronged by your bank are being considered properly and that people who have been wronged, under the law, are being properly and fairly remediated?

Mr Comyn : We have reviewed a number of individual cases, and David, of course, has been personally involved in several of those over the years. In some of those cases, they've been reviewed multiple times. They have gone to court. They have gone to the Financial Ombudsman Service. At other times, they've been through, as I said, a very thorough review externally and internally. Over the past several weeks in response to many customers, which I think you are referring to, who would have written to me directly, I have asked both my team internally and our customer advocate to review those cases. In some instances, there has been a real difference to the way that we have looked at those cases; in others, despite the circumstances being tragic, it's not obvious that the bank could have done something differently. That doesn't mean it's not important for those customer cases to be heard.

In the context of responding to more than 9,000 letters or emails from customers in the last several weeks, I and members of my senior leadership team and members from across the bank have been meeting with customers directly. It is really important to me that they feel their case is heard. I don't for one moment expect that we will necessarily be able to deliver exactly the outcomes that they might be looking for.

Mr EVANS: Are you committing to those customers that you are reviewing them and getting back to them?

Mr Comyn : Yes. Any of the customers that have written to me, we are definitely reviewing those cases. That does not necessarily mean we are changing decisions that we have made previously or processes that have been adjudicated in the court. But, of course, if there is any new evidence or if there is anything we have missed or if there is anything that a customer would like to contribute that we may not have considered then we are very happy to do that. As I said, I recently met with one of the customers who had appeared in the royal commission. I went through his file in detail to better understand the circumstances. Of course, it is an extremely difficult process and period for anyone

when their business, unfortunately, fails, when there's any sort of financial loss, and the circumstances, unfortunately, can be tragic. Of course, it's really important that we assess what has happened in the conduct of what we should have done. If we find any instances where we failed or let down our customers then we will remediate them in full, but that is just not the case in all of the examples that I've seen.

Mr Cohen : Mr Evans, I think it is fair to say that, for individual customers dealing with a large bank like us when it comes to a complaint, in the past it has been difficult and it has been slow. I think the APRA report recognised that in a number of ways. It mentioned that we did not give sufficient visibility to customer complaints at senior levels of the organisation, and I think that's a fair comment by the panel. So, in response, we are on a number of fronts giving much greater visibility to customer complaints, not just individual complaints, which are important of themselves, but perhaps most importantly trends, because if we see patterns or trends that might indicate systemic issues, we need to get onto those much faster than we have in the past.

Secondly, we have established a customer advocate team. The purpose of this team, in part, is actually to give customers who are dissatisfied with our initial handling of a complaint another internal avenue. Of course, it's a customer's choice as to whether they take that internal avenue. It is a team that is separate from our customer-handling area. It is intended to be separate so that it can take an objective view of the circumstances. We've had around 14 per cent of matters that have been considered where the decision has been changed by the customer advocate. Whilst it's still early days, we do think that it's a process that is at least adding some robustness to the process.

Mr EVANS: Can I just ask on that: what's the capacity of that team? What does the time line look like?

Mr Cohen : First of all, in our first line of dealing with a complaint we try to turn around complaints within five days. Where that's not possible, we then let customers know how long it's going to take—

It is the case that more straightforward complaints, such as, for example, an incorrect charge that might have been applied, can be dealt with much more quickly. More complex matters, such as some of the ones that I've been involved with personally—say, small business issues—do take a lot longer, and we acknowledge that. We do need to get much quicker at that.

In terms of the resourcing: we are increasing resources significantly in the first line where we are handling customer complaints. The customer advocacy team that I mentioned to you—if you like, the area where appeals can be taken—has a resource level of around 45 people.

Mr EVANS: Okay. I'm conscious of time. I have a lot more questions and I might need to put some on notice at the end. In relation to accountability: initially the Commonwealth Bank, I think it's fair to say, pushed back a little against our government's Banking Executive Accountability Regime—although, to be fair, the last time you were here in the hearings, I think you said that you were supportive, at least in the context of the accountability aspect of it.

You said yourself, Mr Comyn, in your opening comments here today that the lines of accountability were not clear enough in your organisation in the past. Of course, that's exactly what the BEAR was intended to address. In fact I think it's fair to say that the last time we were here, one of the findings of this committee related to the fact that in each of the cases of misconduct that were raised in our hearings it seemed there were very, very few cases where senior executives had been terminated as a result. Most of the repercussions, where any existed, largely related merely to things like career progression. You said in your opening comments just before that the Banking Executive Accountability Regime is capturing 90 senior executives in the Commonwealth Bank. I just want to confirm that you're now crystal clear as to where the responsibility within the bank falls?

Mr Comyn : Yes.

Mr EVANS: Can I clarify this? When you said that it's being applied to 90 executives, were you implying in those comments that the Commonwealth Bank has gone beyond what it considers to be the requirements of the BEAR in having 90 people covered by it?

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Mr Comyn : Yes, that's exactly right. We have found the exercise to be very useful and constructive. Therefore, we have gone further than what we think is required under the BEAR, to extend it across 90 executives to ensure that that level of clarity extends within the organisation.

Mr EVANS: In lay person's terms, what does it mean, day in, day out and week in, week out for the people covered by it? I'm sure that if I asked you the question, 'Are you very focused on it?' you'd say, 'Yes.' But I'm interested in specific examples. The chairman of APRA said that this isn't just about being in a compliance exercise; the whole point of this is to trigger a genuine improvement in the systems of governance, responsibility and accountability. So I want you to tell us: is this just being approached as a compliance exercise? Those 90 senior executives, day in, day out, week in, week out: what does it mean for them?

Mr Comyn : Sure. Perhaps I can give some examples—and, David, feel free to add some yourself.

From my perspective, of course, that clarity of accountability is really important. As the chief executive, ultimately, I'm accountable for everything that occurs inside the organisation. I have a couple of practical examples in the way I meet with my executives. One of the ways that I set out—in terms of the information that we will go through in each of those one-on-one meetings—is effectively to go through each of their areas of accountability. Specifically, BEAR requires that they're able to demonstrate, and that we're able to demonstrate—which I think is a very good practice beyond what's required in the law—that they're taking reasonable steps. In the practice of, let's say, the head of the retail bank, he has then translated a number of routines. We're talking about customer complaints. What he has done to ensure that he's discharging his obligations under his accountabilities to understand customer complaints is to ensure that each one of his direct reports is going through several hundred customer complaints personally per month and then reporting back on any of the issues that they're finding in those particular cases. So what it has done is provide absolute clarity and a lot of structure to ensure that those accountabilities are being discharged appropriately.

Mr Cohen : I'd add again, just as a practical matter, that similarly I have my accountability statement, so each accountable executive has a statement that sets out precisely what our accountabilities are. When I sit with each of my direct reports, we go through matters that go directly to those accountabilities so that I can be satisfied that my accountabilities are cascading down to them and that they in turn are carrying out actions that help meet those accountabilities. I think another benefit of the regime is that not only is it making accountabilities very clear but where there are areas of shared accountability—and they can exist—at least those are no longer just vaguely acknowledged but are very specifically identified. Lastly, another practical example is that I think we are recording a lot more around why decisions are made, the basis for the decisions and what issues we took into account when making that decision. So there actually is now a written record, which I think, going forward, will be very useful as matters come under consideration. It's been an exercise where we are growing into it, but so far it has been a very helpful one.

Mr EVANS: On that mention of shared responsibility or shared accountabilities, I was interested in one of your answers to the chair earlier where you said that your accountability mapping had identified gaps or ambiguity in your accountability structures. Would you care to name some of the major ones?

Mr Cohen : Yes. Financial crime would be one of those, as we have made clear before. I think exactly in the management of risk, with some of those key processes that span across the organisation, there needs to be clarity about who is accountable for what. Processes like payments extend across multiple divisions inside the organisation. It needs to be made very clear, particularly in the accountabilities for operational risk and compliance—which is, of course, a very important focus for us going forward—exactly who is doing what to ensure that we are adequately managing our non-financial risks.

Mr EVANS: Do you believe that, in any of the cases of misconduct relating to the Commonwealth Bank that we've discussed here in previous hearings or that have been raised in other forums, the relevant executives would have been terminated had the accountability regime existed back then?

Mr Cohen : I think it certainly would have made a much sharper discussion of the consequences, absolutely. It has led to termination this year, prior to the accountability regime coming in, but there is no doubt that it certainly provides a very clear road map to understand where the accountability sits and, of course, then what consequences flow from any inaction or misconduct.

Mr EVANS: I want to ask some quick questions as well in the area of small business lending practices. When we last met, and even before that, the Commonwealth Bank had made a series of significant commitments around changing its practices relating to small business customers and lending to them. That includes changes recommended by this committee, by the Small Business and Family Enterprise Ombudsman and by others. Those include—very importantly to my mind—the removal of unfair contract terms, the removal of your ability to foreclose on small businesses for breach of non-monetary covenants and so on. Have you met all of the commitments you've made in relation to changes to your small business lending practices?

Mr Cohen : Yes, we have. We supported the recommendations by Kate Carnell's inquiry, and we've implemented those. In some cases we have implemented them beyond the strict recommendations. As you mentioned, we have also made the changes required by the unfair contracts legislation. That is what we should do. I think our view is that, first of all, lending to small business is critical because small business in Australia is a major employer.

Mr EVANS: I am just conscious of time, so I will just ask a few extra quick questions. Are there any commitments still outstanding or where you're running late in terms of the implementation?

Mr Cohen : No. We have implemented the recommendations and the changes as planned.

Mr EVANS: There was some debate last time we met around the number of your customers in the business space that would be covered by, for instance, the removal of those non-monetary covenants. What was the landing?

Mr Cohen : The outcome—you may recall that the issue was: what would the dollar threshold around lending exposure be?

Mr EVANS: So you've settled on $3 million?

Mr Cohen : We settled on $3 million, together with the industry as a whole and with ASIC's concurrence. However, that said, we have agreed with ASIC that we will review that on a regular basis to see how it is working.

Mr EVANS: It seems I'm out of time. I've got some further questions, including in relation to some specific cases, but I'll submit those on notice.

Mr KEOGH: You referred to this earlier—in an interesting way, actually—but the interim report from the royal commission noted that they made their initial request for information to be provided by the bank in December 2017. Following this and another request in February 2018, the bank had not provided the royal commission with adequate responses. However, miraculously, within 10 days of this being noted at the opening of the hearings of the royal commission, the Commonwealth Bank managed to provide the royal commission with the tables answering the details of the queries that had originally been made back in December. What was your excuse for not providing that information in the first place?

Mr Comyn : As I said earlier, not an excuse; an explanation for what we were trying to do, which at all times was to provide the information at the right level. I think early on, as the commission provided that feedback that we hadn't, and then we—

Mr KEOGH: That's right. They provided that in February. You responded in, I think, late January to the December request.

Mr Comyn : That's right.

Mr KEOGH: They requested more information in February—

Mr Comyn : Yes.

Mr KEOGH: which still wasn't forthcoming. Other banks had provided that detail. And then miraculously it was able to be provided once the matter had been publicly aired. In the interim report itself, the royal commissioner makes the point that it wasn't understood why that information couldn't have been provided when it was initially requested. So I'm asking you now.

Mr Comyn : We were unable to provide the information in the time frame. Again, it hasn't been historically easy enough for us to be able to pull out that information. I can assure you that we have and have at all times had a very large team working on the royal commission, as you would expect—

Mr KEOGH: What distinguished your inability from other banks that were able to do it?

Mr Comyn : I couldn't speak for the other banks. I can only speak to the difficulty, which, again, I don't think is acceptable, but we did have difficulties early on in ensuring that we were providing all of the information. As I said, we continued to work on rectifying that and ensuring that we were delivering the information on a timely basis to whatever level of detail the commissioner and those assisting him required.

Mr KEOGH: Clearly the royal commissioner wasn't so convinced. Yesterday, in the paper, your chief operating officer said that the Commonwealth's move to no longer charge fees for deceased estates was a direct response to the issues that had been raised in the royal commission. Did you really need a royal commission to tell you that?

Mr Comyn : No.

Mr KEOGH: So why would it only happen now?

Mr Comyn : Perhaps I can set out a few of the facts. Since 2015, three advisers were identified as having deliberately charged a deceased estate for which they were not providing a service or they did not have consent to provide a service—completely reprehensible conduct. Those advisers have been terminated. Two were terminated. One actually dissolved their partnership whilst they were under investigation.

As the royal commission went on, what we determined was that, at that point in time and during the last seven years—hence, that's why we've gone back seven years—we want to be convinced that there isn't a single customer that has been charged for a service which they did not receive.

Mr KEOGH: The key point there being that, because these things came out of a royal commission, in a very public forum, that has prompted the bank to go back and look at this, but, but for that occurring, this wouldn't have been reviewed?

Mr Comyn : The conduct that was actually shown in the royal commission we had identified and reported to the royal commission, and that's why it was—

Mr KEOGH: But were you going to go back and review it at that time or before that point?

Mr Comyn : We had not.

Mr KEOGH: You hadn't. I know you hadn't.

Mr Comyn : And I don't for a moment suggest that that's acceptable.

Mr KEOGH: Thanks. One of the matters that's outlined in the report talks about an enforceable undertaking that you entered into for failing to undertake annual reviews for over 31,000 people where there'd been a fee charged in those instances. There was a community benefit payment to be

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made in the order of $3 million, under the terms of that enforceable undertaking, and remediation of $90 million—so, fees charged where there was no work done. That $90 million would otherwise have effectively been profit in those instances. That $3 million community benefit represents only three per cent of that profit, which is clearly obviously a much smaller proportion of your overall profit or turnover as a bank. Given that corporate penalties are now moving to, and in many instances already are, based on multipliers of the profit derived from misconduct, how do you see that $3 million being an appropriate penalty for that misconduct?

Mr Comyn : David may like to add his own comments, given his legal background. I think the most important thing in that context is that we were unable to demonstrate that we provided services for a number of our customers. The $90 million—I believe the total customer remediation is closer to $125 million across our multiple licences over that period of time. Of course one element of that, in addition to, most importantly, ensuring all of our customers are refunded in full—with interest, so they are compensated for the time value of that money—and swiftly and that it's done to a high level—

Mr KEOGH: But that's all going to something that, yes, you need to do because you need to remediate customers.

Mr Comyn : Yes.

Mr KEOGH: I'll come back to that issue in a minute. What I am referring to is that the penalty, the community benefit payment, is such a small proportion of the benefit that had been derived from the bank and would have been derived but for this issue being uncovered. How do you justify that being so low?

Mr Comyn : In the circumstances, at that point in time—I wasn't personally involved in them, but clearly that was the negotiation that was part of us entering into that enforceable undertaking.

Mr KEOGH: That's right. It was a negotiated settlement of an enforceable undertaking. Ordinarily I wouldn't get the opportunity to go and ask a court about the appropriateness, but you volunteered this as the penalty. What was the process of arriving at that amount?

Mr Comyn : As I said, I was not involved. I don't know—

Mr KEOGH: It sort of implies, almost, that you were going to pay less, but I don't know if ASIC asked you to up it.

Mr Comyn : Less to customers?

Mr KEOGH: No. Less in terms of the community benefit payment. If this was a negotiated outcome—I doubt ASIC were arguing for less, but you may have started at a lower amount.

Mr Cohen : Mr Keogh, I can give you some insight into it. It is the case that ASIC has a number of tools. Enforceable undertaking is one. The negotiation around an enforceable undertaking—and we should be frank: it is a negotiation, or it has been in the past—

Mr KEOGH: Yes.

Mr Cohen : I think the royal commission has made some commentary around that process and that particular enforcement tool. It is, or it has been at least, as we understand it from ASIC—

Mr KEOGH: I just want to know about this case, specifically the $3 million. How did you arrive at that figure?

Mr Cohen : It was a discussion with ASIC around what was an appropriate amount to pay.

Mr KEOGH: Did you start at a lower amount?

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Mr Cohen : Yes, I think we did. I think ASIC started at a higher amount. As things panned out, that's where we reached—

Mr KEOGH: So ASIC accepted a lower amount than what they initially sought?

Mr Cohen : I don't have the precise figure in my mind, but I believe it was a little bit higher than the $3 million that we ended up with.

Mr KEOGH: Moving to another area of remuneration—the Sedgwick review into remuneration, which was much trumpeted by yourselves and by the Banking Association, made 21 recommendations. Have all of those recommendations been taken up by the Commonwealth Bank?

Mr Comyn : Yes.

Mr KEOGH: Are they all now in place?

Mr Comyn : Yes, from 1 July. The only exception that I would call out—I don't remember the exact wording of one of the recommendations, but it does relate to mortgage broking. I don't think that the industry could say that that has been implemented in full, and clearly that's a matter that the royal commissioner has drawn attention to. But, certainly, in the context of the employees of the Commonwealth Bank, for which the Sedgwick reforms were required, they were implemented well in advance of what was required under Sedgwick, which I think was 2020. As I said, they came into effect on 1 July from our perspective.

Mr KEOGH: An issue coming out of that, moving away from rewarding bonuses solely on financial performance—I know you've moved to a balanced scorecard approach. The interim report of the royal commission highlighted that, when boiled down, there is still a significant proportion of those balanced scorecards in the different categories that relates back to financial performance of the bank or the section of the bank that those frontline staff are in. How balanced does that look? When you boil it down, as you pointed out, there are still significant financial drivers in there.

Mr Comyn : As I said in the example of a teller, actually there's zero weighting towards financial performance. For other roles, there's certainly—

Mr KEOGH: But there are drivers around referrals.

Mr Comyn : No. In the instances of tellers, we've reformed further than was required in the case of Sedgwick to remove anything other than customer service outcomes. For other roles—

Mr KEOGH: What sits under customer service outcomes though? One of the points the royal commission made—and it made the point generally, not necessarily about your bank—was that, when you looked at what was meant by customer service, some of those things were about supplying additional products or a fulsome suite of products for the client.

Mr Comyn : I understand. In this case, no. It relates only to net promoter score—basically service outcome, so evaluation from customers. For other roles, as you said, if I'm a customer service specialist in a branch, I would have less than 30 per cent because the weightings across all those roles need to be 30 per cent or below, but that would be on a team basis, so it wouldn't be me being measured individually, which, again, is a substantial change from five years ago.

Mr KEOGH: That goes to my next line of questioning. With that team basis where up the chain you have managers that are remunerated on the financial performance of their team, do you not see that that's still going to create a prioritisation by that manager on the financial outcomes from each of the individuals in their team?

Mr Comyn : Yes, and that's one of the reasons why, as it relates to my remuneration, it's been reduced to 30 per cent of financial measures to ensure there is much greater alignment. The year prior, my predecessor would have had a financial weighting of 60 per cent, so I think the potential for that lack of alignment was much greater than it is today. As I said in my opening comments, it's not

to say that there may be further work required to ensure that all of our remuneration practices—

Mr KEOGH: We'll discuss at the next hearings where the further work has gone. That's good.

I go back to an issue raised by Mr Cohen. This all relates to this issue of remuneration as well. Now that you've done that mapping exercise under the BEAR, you have those responsibilities and managers are making sure that they cascade those responsibilities down, why shouldn't senior executives be held personally accountable where those systemic failures in their area of responsibility occur affecting customers? The reality is that the BEAR is about prudential issues and systemic risk issues, but, where there have been systemic failures that affect customers, shouldn't those be executives be personal accountable for that as well?

Mr Comyn : Yes.

Mr KEOGH: So that would be an acceptable expansion of the BEAR?

Mr Cohen : What I would say is that, as you know, that regime looks at reputational issues—so prudential reputational issues—and the impact on the bank of any prudential reputational matter. That does include customer outcomes as well.

Mr KEOGH: I think it clearly doesn't.

Mr Cohen : We certainly consider it does.

Mr KEOGH: I'm glad to hear that and I'm glad to hear Mr Comyn's response to my other question. To flow back from that, though, does it mean that, where you are finding systemic areas or where an area of responsibility is not performing as it should for customers, there are financial penalties within your own remuneration structures for those executives?

Mr Comyn : Yes, absolutely. As I said, there's more than $100 million of consequences to executive remuneration. David also referred to, as part of the performance review process—

Mr KEOGH: We've talked about the weighting of 30 per cent on financials. What's the weighting in terms of where there are issues affecting customers and where there are negative compliance outcomes or living-up-to-public-expectation outcomes?

Mr Comyn : It can be up to 100 per cent because it actually sits as a moderator above anyone's remuneration. In the case of this particular remuneration process, there were 2½ thousand of our people that we gave at least only a 'partially met' to what we considered to be the risk and compliance, which I think you would consider to be appropriate given the issues that have been the subject of the discussion this morning.

Mr KEOGH: Thanks. On Tuesday, I held a roundtable forum hearing from victims of banking misconduct in Western Australia. We had a number of people attending. In fact, people attended not just from my electorate but from the Wheatbelt areas and regional areas of Western Australia as well. I had one person come to that hearing who explained how they were currently paying $1,800 a month to the Commonwealth Bank in relation to a judgement debt that was made against her a few years ago in respect of two loans taken out by her ex-husband that were secured against her home. They separated in 2002, due, in part, to domestic violence. The Commonwealth Bank was aware of this separation because the court orders were filed with the bank at the time, to facilitate the property settlement. She was forced by her ex-husband to sign as a co-borrower on one loan and as a guarantor on another. She was never required to obtain separate legal advice. The documentation was all witnessed by members of her ex-partner's family. The total loans that her husband managed to take out over time, secured against the home, without her having necessarily signed paperwork for each of these loans, was up to $706,000. Her home is worth only $260,000. She still owes $264,000 on these borrowings. There appears to have been no action taken by the bank against her former partner who actually took out the loans.

In September this year, you wrote to her explaining that the Commonwealth Bank is 'making

changes to benefit her', including: 'being there for those who need us most. We're assisting customers experiencing domestic violence to protect them from financial abuse. This support is in addition to the help we continue to give to customers facing financial hardship through a range of solutions, such as deferring, reducing or freezing home loan repayments.' So what about people, like this lady, who have already been victims of domestic violence? And here you can see an example of sexually transmitted debt! What is the bank going to do to help in these circumstances?

Mr Cohen : Thank you for that question. It's an extremely important issue in the context of domestic and family violence and particularly how that, in many cases, obviously extends to financial abuse. Over the last 18 months, we've substantially changed our processes and policies. We've also put in what we consider to be a leading proposition for our customers who are unfortunately victims of domestic and family violence. To explain, we fund an independent 24-hour counselling service. We've paid for all of the financial counsellors around Australia, which is a separate not-for-profit body, to receive free training. We provide financial assistance, no questions asked—

Mr KEOGH: I suppose my question is: what are you doing to go back and find these cases, though? That's great for new cases and where people are aware of these services and can contact the bank about them. But, where you've had prior existing circumstances arise, like this one, and they need to be worked through and assisted by the bank, what are you doing to make sure that they're aware of how to contact the bank, how to raise these issues and how to get that assistance?

Mr Comyn : I've personally reviewed a number of those, and I'd be very happy—if the customer you're referring to is happy to share that consent—to have a conversation with you after this and to take personal accountability for looking into it.

Mr KEOGH: I will absolutely take you up on that offer. I have one final question to ask, if I can, Chair?

CHAIR: Very quickly.

Mr KEOGH: Mr Comyn, in your opening, you referred to 'investing in remediation'. Remediation in no way can be an investment, can it? This is money which those customers are fully entitled to receive. I really fail to understand how you can use the Orwellian term 'investment in remediation'. Where did that idea—to talk about 'investment in remediation'—come from within your bank?

Mr Comyn : Let me explain. In the context of our wealth management business and the more than $250 million that we've compensated to customers for inappropriate advice or fees for no service, I do not consider that an investment.

Mr KEOGH: They were the words you used.

Mr Comyn : I'm now going to provide the colour around that. Unfortunately, the cost of actually ensuring that those processes are robust and that we're able to remediate in a systematic way and in a way that's thorough and comprehensive has cost about $400 million. And what we've done is: invest a lot, to ensure that the appropriate processes are if place to ensure our customers are remediated in full as swiftly as possible. I don't consider that to be something we should be congratulated about, the fact that we've had to remediate customers; even if it's a singular customer, it's one too many and completely unacceptable. I simply share that in the context of: we're certainly putting, as you would expect, a lot of effort into ensuring that we get to the root cause and, for any customers who are affected, we remediate them in full.

CHAIR: In light of the circumstances, I'm trying to be extremely fair with time, Mr Keogh—

Mr KEOGH: Thank you, Chair.

CHAIR: Five minutes more—at the end, there'll be remaining time, and I'm going to have to deduct that from the overall share. But I will now hand it over to Mr Falinski.

Mr FALINSKI: In the interests of full disclosure, many years ago my parents had a loan with the Commonwealth Bank for a business that went bad, and you guys repossessed our family home at

the time. So I have a lot of empathy for people, particularly in business, who find themselves in financial difficulty and are obviously looking for some help from a bank but can't always get it. But what I wanted to start off asking you about is AUSTRAC or the breach with laundering that occurred in the Commonwealth Bank branch in Sydney. Can you tell us a bit about what happened there.

Mr Comyn : As it relates to the contraventions?

Mr FALINSKI: Yes.

Mr Comyn : As has been, I guess, a matter for the public record and as set out in the statement of agreed facts—I'm certainly happy to give you an overview—first of all, we failed to lodge in a timely manner more than 50,000 threshold transaction reports, which require filing with AUSTRAC on a regular basis. We also, during the course of that process, identified failures relating to adequate risk assessments, the failure to promptly lodge a suspicious matter report, and a number of failures relating to ongoing customer due diligence. So, in the context of the total number of contraventions, of course there are a number of root causes that led to that. I'm very happy to talk to that at whatever length you would like.

Mr FALINSKI: How many red flags were missed? Fifty thousand, by the sounds of it.

Mr Comyn : As we've said previously, the vast majority of those contraventions relate to the failure to promptly notify AUSTRAC of threshold transaction reports. That was known at that point in time—going back to 2015, when it was first identified. I believe that in the course of approximately 30 days the full extent of all of the threshold transaction reports that we had failed to lodge were issued with AUSTRAC or were provided to AUSTRAC, and then we rectified and ensured that the systems were appropriate to ensure that that didn't recur. Of course, there have been other contraventions which have been identified subsequently, many of which we were completely unaware of until the statement of claim was filed in the Federal Court on, I think, 3 August last year.

Mr FALINSKI: How much did this cost the bank and its shareholders?

Mr Comyn : We agreed, via a court appointed mediation process, to pay AUSTRAC $700 million and approximately $2.2 million in their legal fees. That's the financial cost. Clearly the reputational cost was much larger than that.

Mr FALINSKI: Under BEAR, who would have borne responsibility for that now?

Mr Comyn : Well, the accountabilities as they relate to financial crime have been substantially clarified as to where they sit within individual business units, as well as within the team that monitors the financial crimes operations, where we have put substantial investments and a much larger team in place. For an example such as AUSTRAC, going through a BEAR process would identify the accountabilities. There would still be multiple parties, but it would be very clear about where that accountability sat.

Mr Cohen : For example, under the BEAR regime, I have specific accountability for the financial crime compliance team, which is responsible for financial crime policy risk assessments, standards et cetera. So that clearly sits with me under the regime.

Mr FALINSKI: So under BEAR, if that were to occur again, you would be facing jail time?

Mr Cohen : I would be one of the people who would be held accountable, yes.

Mr FALINSKI: How do you sleep at night knowing that?

Mr Cohen : It's a significant responsibility, and it's one that we are taking extremely seriously. Just to give you some detail about that, as a result of what happened last year and in years gone by, we have invested hundreds of millions of dollars in the systems, in people and in better capability in the organisation, because it is a major responsibility.

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Mr FALINSKI: So you can assure this committee and this parliament that there is no money laundering going on at the Commonwealth Bank now?

Mr Cohen : What we are doing is everything we possibly can at the moment to ensure that our systems work well, that we have the right people in place and that we are constantly improving. I've given evidence previously to the effect that we are continuing to improve, so we should be under no illusions. There is further work to be done, and we are doing it.

Mr FALINSKI: What personal learnings did you have from that, Mr Comyn?

Mr Comyn : Substantial. That particular matter was the greatest disappointment of my professional career. It was a number of failures of both capability and understanding of the steps that were required to ensure that we were adequately discharging our financial crimes obligations.

As David said, no institution provides more information to AUSTRAC than the Commonwealth Bank. We provide more than four million pieces of information analysis per annum. We're in regular contact at an operational level. We have recruited hundreds of people into our financial crimes operational areas. We have invested hundreds of millions of dollars into ensuring that our systems are strengthened and improved. It would be a very brave and courageous chief executive to say that there is no money laundering occurring in the Australian economy or the banking system, in the same way that that is one of the many things I worry about regularly, including the threat of other risks, such as cyber. For the organisation, that has been a particularly painful process, as you would expect. There were serious failures. They were our fault. We didn't deliver and uphold our financial crime obligations. Ultimately a key responsibility for us is to protect the integrity of the financial system and, ultimately, Australian residents.

Mr FALINSKI: Moving to the royal commission interim report, one of the key findings appears to be that the problem with the financial system in Australia is that there's a lack of competition and, narrowing that down, that consumers seem unwilling or unable to switch products when they find a product at a better price and better terms. What do you think creates that stickiness in the Australian financial system?

Mr Comyn : Firstly, there are and continue to be increasing levels of competition. We see that on a dally basis in terms of the competition in market. The steps that the government are taking in the context of creating greater transparency and ensuring that customers have the ability to more easily compare providers—I say that in the context of reforms, such as the comprehensive credit reform—and, ultimately, things like open banking, there are no barriers for customers to switch. It's really important for us that we ensure that we're providing fair value to all of our customers and providing the highest level of service so they do not want to switch organisations.

Mr FALINSKI: You say that but, in global terms, the big four banks in Australia are some of the most profitable financial institutions in the world. That does not speak to a competitive environment.

Mr Comyn : I'm not sure that one necessarily follows the other. What I would say is that the banking system does benefit from the economic conditions of Australian. No institution is more leveraged to the performance of the Australian economy than the Commonwealth Bank. We are very fortunate that we have had 27 years of uninterrupted economic growth. If you look at comparisons with other markets, particularly with Europe—more recently the US economy is performing well—they have had much more challenging economic conditions to deal with. Point-in-time return on equity comparisons—if that is the source of profitability comparison—are problematic, because, the only thing worse than a profitable banking system is an unprofitable one. We are certainly very cognisant of making sure that we're continuing to provide the best quality services for our customers.

Mr FALINSKI: That's fair enough when it comes to international comparisons but, on domestic comparisons, the big four banks have substantively higher margins on their loans in residential home loans compared to other institutions in the market.

Mr Comyn : That's ultimately going to be a determinant on where the competitors set their prices. I couldn't speak to the net interest margins of all of our competitors. Of course, there are differences

in the context of our operating scale, costs and access to funding. But, ultimately, it's a choice for any individual company competing in an industry about where they set their prices.

Mr FALINSKI: So why would a consumer choose to take up a product with the Commonwealth Bank that's more expensive and not as suitable to them as potentially another product from another institution?

Mr Comyn : For some customers, price is not the only determinant of whether they would choose a product provider. I'm sure that extends beyond banking. It is very important for customers that it's appropriately priced and we're competitive, and we seek to be competitive. So, to the extent that we're not the cheapest, there isn't a huge difference between us. That may not always be the case, but that's certainly what we intend. Of course, we seek to differentiate ourselves on the service we provide and the technology that we provide for our customers. So customers make that decision based on a variety of factors.

Mr FALINSKI: In a competitive market, typically a producer would be trying to gain market share. Is that the case in the Australian financial system? Is that your policy at the Commonwealth Bank?

Mr Comyn : In the context of banking services, generally you're making trade-offs between volume, margin and risk. It's one thing to grow market share but, if it's actually coming at the expense of lower-margin and higher-risk product, that tends not to be a good long-term strategy. At any point in time, we're balancing a variety of factors in how we go to market.

Mr FALINSKI: If you're seeing margins go up, then you would presumably see people fighting for that piece of the market.

Mr Comyn : Yes. There is, of course, a lot of competition in areas of the market that are either growing or are seen as relatively more attractive for one reason or another. Generally when we see things like funding costs increase, banks will compete harder for locally sourced deposits.

Mr FALINSKI: In that case, lending rates for small businesses, and margins around those rates, have gone up since 2008.

Mr Comyn : I would think in the—

Mr FALINSKI: Sorry; it's a matter of record that margins on lending to small businesses have increased for the big four banks since 2008.

Mr Cohen : Yes, there has been a higher rate. But, as you would know, I think, the global financial crisis in 2008 and onwards caused financial institutions around the world to recalibrate their view of risk in relation to lending. And arguably, in the period leading up to the GFC, institutions had lost their way and had lost sight of the risks associated with their lending, and that changed after the GFC.

Mr FALINSKI: I totally understand. Those margins have continued to expand, though, since the GFC. My question is: why has bank lending to small businesses as a share of the market decreased? Wouldn't you want to be fighting for those—

Mr Cohen : Yes.

Mr Comyn : Absolutely. We explicitly—

Mr FALINSKI: Why aren't you?

Mr Comyn : We'd certainly like to be. From a strategic perspective, that's a key area of the market for us. We are currently recruiting business bankers. We have a big focus on small- and medium-enterprise businesses. We've seen growth in our regional and agribusiness. Supporting Australian businesses is a huge priority for us. Of course we will take into account factors such as risk and pricing, but that is absolutely an explicit objective for us, to grow in that area.

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Mr FALINSKI: My question, which you've prompted, is: it's great to see that you're changing course or now paying attention to that part of the market, but why has it taken 10 years for it to come to this? I'm not asking you to answer on behalf of the entire banking sector, but, to your company: why, at a time when this part of the market was becoming more profitable, did you guys withdraw from it, or allow your market share, at least, to decrease?

Mr Comyn : I certainly wouldn't characterise that part of the market becoming less attractive other than, as David said, there was generally a re-evaluation of risk across a number of sectors globally after the financial crisis, because clearly financial institutions hadn't done a great job of pricing for risk. Certainly, at any point in time, for a borrower which met our credit-underwriting criteria, we would want to, and would seek to, generate or provide a loan to that particular company. I think, as we look at the way we service our business customers, there's actually just a much better offering and proposition that we can provide that I think will make us more competitive, in the context of making sure that we can provide fast decisions on lending, getting decisions and ultimately funding into customers' accounts much faster.

Mr FALINSKI: There are companies, like Scottish Pacific banking finance corporation, which lend money against invoices. When you look at their rates and charges, their effective rate is somewhere between 30 and 40 per cent per annum. The question I have is: what rational human being or businessperson would go and borrow from them unless they absolutely had to? And why did you withdraw that product after the global financial crisis and not then subsequently reintroduce it? I mean, can you not make money on 30 or 40 per cent interest?

Mr Cohen : Mr Falinski, you're referring to invoice financing or factoring.

Mr FALINSKI: They're different things, but yes.

Mr Cohen : They are. In both instances, we've made some previous strategic decisions. The fact of the matter is that we took a view as to where risks were not acceptable. We sometimes have to do that, because we need to be able to produce a stable outcome. In those cases, we did decide to. You are right; there are some sectors of the market where very high interest rates are being charged. That is reflective of the risk. Those organisations who participate in those sectors are taking a view on the risk that they take when they lend in that area.

Mr FALINSKI: But, Mr Cohen, it's just simply not the case. Invoice lending is where a company produces an invoice, gets 80 per cent of it borrowed to them before the person pays—and, by the way, the customer then pays back into their account. I would humbly suggest you would have had very low defaults on that in your own product prior to 2008. I cannot understand—unless, as the royal commission is finding, competition isn't operating in the financial sector as you would normally see it in other markets—why you would withdraw from that competitive market. You may have done it for a short period of time, but why have you not re-entered it?

Mr Comyn : Mr Falinski, I'm happy to take that away and confirm it. My understanding is less from a credit default perspective; my understanding is we did suffer some operational risk and fraud losses in that particular time. I think that was one of the reasons that we decided to withdraw from that market. I accept that a 30 per cent to 40 per cent interest rate is extremely high. There are many segments of the market that the Commonwealth Bank simply chooses not to participate in, because the interest rates that are being charged—to arguably compensate for the risk—are simply just interest rates we're not comfortable with. That wouldn't be the only example; there would be many others where we would not participate in the market, where we feel that the interest rate is excessively high. I accept your frustration insofar as why isn't there an alternative provider for customers who could avoid paying a rate such as that. I'm happy to take that away.

Mr FALINSKI: I've run out of time, so I'll put my other questions on notice.

CHAIR: Thank you, Mr Falinski. I am being extremely impartial and reducing the amount of time for each side depending on the number of minutes they go over—that is not to encourage such a practice! We will break in 15 minutes, after Ms O'Neil's questions.

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Ms O'NEIL: Thank you, Mr Comyn and Mr Cohen, for making time to be with us this morning. Mr Comyn, in your opening statement, you acknowledged that there has been a history of some very serious misconduct—conduct that I think you're not proud of, sitting here today. A lot of people have been hurt by that behaviour in the past. I want to focus, initially, on what's been done to heal some of those problems. You mentioned that the stories coming out of the royal commission have been the things that have touched you most. You're probably aware that, of 10,000 submissions, just 27 people have had the opportunity to tell their stories. I don't think that's sufficient, and, as a consequence, I am travelling around Australia, with the help of some of my colleagues, to speak to people who have been victims of bank misconduct. I want to make a few comments about what I'm hearing from those people, and then perhaps get a response from you about some of the things that you're doing to manage these issues.

The first thing I want to make clear is how incredibly hurt people have been by some of the actions of your institution and others. I've met a lot of people who have had very significant mental health issues—I stress, not from the incident that put them into financial hardship but, in fact, from the treatment of your bank and others. I have spoken to people who have got anxiety and stress, people who have attempted suicide, people who have lost their family home and farmers who have lost farms that have been in their families for generations. At every forum I go to, people break down. Men break down in front of me as they talk about the things that have happened at the hands of some of the big banks.

I want people to understand that a lot of the people I'm speaking to have never missed a payment on their loan—some of them have, I accept that, but a lot of these people have never missed a payment. I want you to understand that CBA is overrepresented in these discussions. You're certainly not running the only bank in town that's got problems that need to be resolved, but I'm meeting a lot of people who are having difficulties dealing with your organisation.

One of the issues that I'm most worried about, coming out of these discussions, is the way that I see the Commonwealth Bank is abusing the law. Using the power you have in courts—the power you have to marshal major law firms to take on people, who are powerless, and who are representing themselves in supreme courts around this country—I think that's completely inappropriate. I will go to one of those cases momentarily.

You have said some of the things that you are doing to change the culture within the bank. I want to believe that you're trying to do this. The best way that you can show us is by dealing with the problems that are in front of you, and they are some of the people who have been affected by misconduct.

Firstly, I'd like to understand what you have done so far to appreciate the impact that this has had on people? I believe the only way you can do that is by meeting with people who have been victims of bank misconduct. What have you done about that so far?

Mr Comyn : I would agree with your comment. I certainly acknowledge the hurt and the very, very difficult circumstances that some of our customers have found themselves in, and some of that is a result of our actions. I agree that there is no substitute from hearing that directly and in person. As I said, I've spoken to a number of customers, some over the phone, some face to face—

Ms O'NEIL: Can you give us a sense of how many customers you might have spoken to so far?

Mr Comyn : Face to face less than 10. One of whom I'm seeing today—who may be in the gallery, I'm not sure—who has travelled interstate and offered to see me knowing that I'd be in Canberra today, and I very happily took them up on that. As you would appreciate, to get a proper understanding of the individual cases some of them are very complex and they do take quite a bit of time. It sounds like you have some specific instances, I'd be very happy to follow-up with you directly.

Ms O'NEIL: I'll do that and thank you. Could I invite you to consider whether you might make more of an effort to meet with more people who have been affected by this? I say that because the people who sit down and hear these stories are changed by those stories, and I don't think this problem can

fully understood without hearing straight from the people affected. I would really urge you, and some of your senior staff, to take the time to speak to some more people.

There is going to be a backlog of issues and hurt that's been created by the misconduct that you referred to in your opening statement. Can you explain the process that you are going through to manage some of those past cases where, I think, based on what you are saying the bank might have operated quite differently to how you did back then? How are you repairing some of those issues?

Mr Comyn : David referred to some of this earlier. We have a large team in place both in our complaints team and in our customer advocate. We are also using people from different parts of the business and also making sure that we have people with fresh perspectives. One of the people that I've worked closely with over the last five or six months since coming into the chief executive role is the person who has been running our team responding to the royal commission, because they, as you said, have heard, seen and read all of the different submissions and also bring a fresh perspective to that. I have a quite large team outside my office going through a number of those cases. There are about 15 or so letters which I signed yesterday. I've got another dozen or so to go through.

I accept your point and wherever practical I'm very happy to meet with people face to face. I agree, there is no substitute from hearing and allowing someone to tell their story in person as well as, of course, understanding whether we have done anything wrong. But, unfortunately, when it comes to financial institutions and the extension of credit, whether it's the bank's fault or not when something goes wrong the consequences for individuals are very severe. I have seen that.

I led the bank's remediation of Storm Financial in 2009. I spoke to 600 customers one night in Brisbane. I was able to get a lift home with two of the customers who were there and they told me their stories. They were a similar age to my mother. They'd lost everything. They'd leveraged their home into a margin loan. One of the customers was working part-time in a Subway store; they'd lost all their superannuation. They are harrowing stories for, unfortunately, everyday Australians who have, in some instances, lost their life savings. That's not lost on me for a moment. I do think it's important—

Ms O'NEIL: I'm glad about that. That would be good. A number of us on the committee here have raised the issue of victims of past misconduct. It would be really useful for us to be able to touch on this subject at your next appearance at this committee. Perhaps we could work with your team to understand what some parameters might be around measuring the rate at which you are working through those cases. We'd really like to see some progress, if that's okay with you.

Mr Comyn : I'd be happy to do that.

Ms O'NEIL: I want to raise one case, which is probably one of the worst, and there's a very high bar: the case of Giulia Mandarino, who is a woman I met earlier this week. I have permission to discuss some of the details of her case with you. This woman was a victim of fraud that was conducted by some of the people who were once employed by your bank. As far as I'm aware, she never did anything wrong. She was defrauded by someone who worked in your institution. At the time, she owned her own house, she lived with her two primary school aged children and she was a single parent. Today, she lives in a rooming house and she has been in conflict with your institution for 12 years. The way that she has been treated is nothing short of despicable. I want to understand why the bank has treated someone in this manner.

Mr Comyn : Unfortunately, I don't have a good answer for you today. I haven't read through the case in detail, but, if I'm not mistaken, I believe it's a loan that originated in 2006 and I believe there was some sort of legal process in 2009. I'm not suggesting that was adequate. Again, I'd be happy to talk with you afterwards.

Ms O'NEIL: I would really like you to consider this because 12 years of her life have been devoted to trying to get her house back and she didn't do anything wrong. The bank has put her through a legal hell to try to get justice. It just can't continue. Could I ask you to

look into her case, please, and see if there's something that can be resolved so she can put this episode behind her?

Mr Comyn : Yes, of course.

Ms O'NEIL: She's never going to get that 12 years of her life back. If that happened to you or me, we'd be screaming about injustice right now.

Mr Comyn : Sure.

Ms O'NEIL: I also want to raise the issue of the Perry family. I'm not sure whether you've had any interaction with this family. This is a farming family who are operating a farm in Victoria. They fell on difficult times during a drought. I raise this issue because this is very much in current discussion within the bank and, hence, an opportunity for us to see some different behaviour. One of the things I'm finding very frustrating about this is that they've had opportunities to plant crops. Although they were in financial difficulty, I believe at one stage they got back on their feet, they were in a position to plant crops and the bank would not provide them with a facility to do that, so the land is sitting there without any planting on it. It's economic value going to waste, as I understand it, because of the conduct of the bank. Do you have a response on that one? You're nodding at me, Mr Cohen. I'm wondering whether you know something about this case.

Mr Cohen : Yes, it is a current matter of discussion with the customer. We don't have consent to air their personal affairs in this public forum, so we'd be happy to go into it in detail with you. Obviously, you're familiar with it to a degree.

Ms O'NEIL: Yes. I would appreciate that, Mr Cohen, because we're hearing a lot of very warm noises about the fact that there's a drought, and the fact is that there are farmers right now who are in trouble, and this seems to be a family doing it very tough and they're not getting the sort of empathy that we might expect.

Mr Cohen : We'd be happy to talk to you about it.

Ms O'NEIL: I'll raise a final matter—that of Tasha Keys. Again, I'm not sure whether either of you have had any interaction with Ms Keys. She is a single mum. She's lost her farm. Of all the cases that I've heard, this is probably one where I think the worst of abuse of the law has been instigated against this woman. I think the original sum that was being fought over was $200,000. The estimate is that the Commonwealth Bank would have spent somewhere near a million dollars fighting over this case. This woman—I think she's from Brisbane—travels to Sydney, to the Supreme Court, to go through hearings with the bank. She faces off against a barrister, a partner in a major legal firm and two lawyers, and she is representing herself in the Supreme Court. I do not understand what the bank's objective is here. If you win the case, this woman won't have any assets. Can you help me understand why the bank is using the law in this way against customers?

Mr Comyn : I don't know the precise facts of that matter, but, again, given the public forum nature, I would be happy to take it up with you separately and give you an understanding as to what's happening and why.

Ms O'NEIL: Thank you. I would really appreciate that. These are three of thousands of cases around Australia. They highlight, for me, some of the major issues of concern. As a politician, it's my job to understand what the public standards are. I'm telling you that these, in my mind, don't meet the public standards, so perhaps we can have a conversation about how they can be resolved.

Mr Comyn : I'd be very happy to do that.

Ms O'NEIL: Finally, let me move to another subject, which is the Australian Banking Association's announcement yesterday about fees for no service. I need to share with you how the public, I think,

is receiving this. We had an announcement yesterday where there seems to be the expectation of accolades that the banks are saying they will not charge fees to dead people. That is not acceptable. I can't imagine what discussion is going on around the ABA board where these things are occurring. Commissioner Hayne has made it pretty clear that he thinks this is against the law anyway. Are we really at the point where the code of practice is just saying that the bank needs to follow the law?

Mr Comyn : Of course (a) there should be no accolades and (b) it shouldn't be expected for us to reiterate something that should never have occurred.

Ms O'NEIL: But why the media release and the fanfare yesterday?

Mr Comyn : I can't speak exactly to the process of yesterday. I can only think that it was designed to ensure that there was consistency and confidence about how seriously the industry is taking it. It absolutely should not be designed. It's regrettable if it was interpreted by anyone as seeking accolades. It's unacceptable conduct that should never have occurred.

Ms O'NEIL: Thank you.

CHAIR: Thank you very much, Ms O'Neil. We will now have a break for 10 minutes. We will resume at 11.22 where we will continue with Mr Kelly.

Proceedings suspended from 11 : 11 to 11 : 22

CHAIR: We are going to resume on time. For the remaining time, I have taken the total remainder, divided by half, between both sides and reduced the number of minutes based on the extent to which people have been overtime. It is algorithmic, yes. I am also allowing a few moments just for concluding remarks. We now have Mr Kelly for the next 15 minutes.

Mr CRAIG KELLY: Thank you, Chair. Mr Comyn, you have given a bit of a mea culpa this morning. But we have laws against misleading and deceptive conduct. We have laws against unconscionable conduct. We have common law provisions against unfair penalties. We have our basic contractual laws and obligations. We also have regulations under the Corporations Act that say services provided must be efficiently provided, honestly provided and fairly provided. Do you agree that the laws that we currently have are sufficient?

Mr Comyn : Yes, I think that's a reasonable starting point.

Mr CRAIG KELLY: If the laws are sufficient, how do you explain this conduct that, in many cases, has been in breach, or at least arguably in breach, of these laws?

Mr Comyn : Certainly, the failures that have occurred in the Commonwealth Bank—and some of those have been failures of law, as you said—are inexcusable. There are a lot of complex regulations and obligations. I don't use that as an excuse. I don't think that's—

Mr CRAIG KELLY: I will just interrupt there. Isn't it the issue that people—who we have in the audience today, who have come to see us in our electoral offices and who Ms O'Neill has talked about today—simply haven't had the opportunity, through our legal system, to get access to justice?

Mr Comyn : I think some of Ms O'Neill's examples serve the point that the legal process and the court process isn't always appropriate for everyone. That's why there needs to be both. It's incumbent on institutions to have both comprehensive and fair internal dispute resolutions, and there needs to be external dispute resolutions.

As you would be aware, the new AFCA, which is a consolidated financial complaints tribunal, becomes operational in early November—I think from 1 November, so next month. Of course, it's really important that customers have multiple avenues to ensure they have the opportunity to explain their case and that there's a fair and just outcome achieved.

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Mr CRAIG KELLY: Doesn't it boil down to it that, ultimately, that's been the problem in the past—that customers haven't had that opportunity to have their dispute heard?

Mr Comyn : As I said earlier, there is certainly a complex set of factors. But one of those—and there is no doubting this—is that not all customers have been treated fairly, and, certainly in some cases, the way that we've attempted to redress that has not been appropriate. I did, in the brief break, have the opportunity to meet a number of customers. I think my team have found a room that I'm able to use for the rest of the day, and I intend to spend the rest of the day meeting with them in person.

Mr CRAIG KELLY: Obviously, you're talking about an internal resolution and that you're looking at their cases. Obviously, you have to defend the bank and your shareholders' interests in those cases, as well as trying to be fair. But, ultimately, hasn't the problem been that in the past those people haven't had the legal avenues to have their cases pursued?

Mr Cohen : Mr Kelly, could I add something? I think it's helpful to think of this in two categories. There are those matters that are legal in nature, and I think it's fair to say that the overall justice system tends to be slow and therefore doesn't lead to quick redress. That is No. 1. No. 2: I think the new dispute process that Matt mentioned, that one-stop-shop in AFCA, is going to be beneficial because it is going to expand the range of claims that can be heard, in monetary amounts, expand the level of compensation that can be awarded and also expand the business access.

I think that the second category, however, is one where—as an organisation and perhaps as an industry—we've not done well. The royal commission did make some comment around this, and that is where it might not be a question of legal issues but a question of fairness, or how well people are treated or how poorly they're treated. I think that's where we have to do better. That's where we are trying to supplement, through our internal dispute process that I described earlier, a better way so that people can be heard faster—not just about legality but about proper treatment; compassionate treatment. It's the treatment that people expect to receive from the Commonwealth Bank. That's where we have, arguably, not done as well as we should have and that's what we're trying to improve.

Mr CRAIG KELLY: So we have two issues. We have issues going forward, where people could borrow a sum of money or put their house up as collateral and have confidence that if there's some type of dispute they can get that heard fairly. And we have a new tribunal system coming in, hopefully, but that still has limitations of $3 million. There's also the issue of the previous cases, where we've heard that people didn't have access to that tribunal in the past.

Mr Cohen : Yes.

Mr CRAIG KELLY: What can you offer those people?

Mr Cohen : As we mentioned earlier today, first of all there is a renewed willingness—it is a genuine willingness—to talk to customers. And as Ms O'Neil mentioned, there are cases that we are very happy to discuss.

Secondly, the process internally around raising complaints at a senior level is vastly different from what it has been, so that at least we are getting senior people to look at cases. This goes hand-in-hand with the accountability that senior executives face. In the context of people in the past who have had unsatisfactory experiences and who feel that they have been wronged by the Commonwealth Bank, then our encouragement is that they raise them. Matt has given a good example of our willingness to talk to people today. That's a longstanding and ongoing commitment. We are willing to hear, and where Commonwealth Bank has done the wrong thing then we will put it right because that's what we want to do.

Mr Comyn : As David just referred to, clearly, senior leadership and just active involvement are very important. I think the heart of one of the points Ms O'Neil was making is that large institutions such as the Commonwealth Bank have enormous resources to draw upon in the context of legal processes

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and legal representation. It's very important from our perspective that we're able to reach fair and just outcomes.

The other point I would make, though, is that it is an unfortunate element of a banking business model that not all of the loans we make will be repaid in full. If they were, that would actually be a weakness in our banking system, because we simply wouldn't be providing enough credit to facilitate economic growth in Australia. Of course, that's a very fine balance. With any individual customer who's subject to their business not performing well or their inability to repay their loan, as you said, we do need to take steps to minimise those losses on behalf of the owners of the Commonwealth Bank. So not for one moment am I suggesting that there won't be losses and no customer will ever be harmed. All I can assure this committee and you, Mr Kelly, is that we're taking these matters very seriously and we will look to try and do things very differently in the future. I do know that, despite our best efforts, it will be imperfect, but they will be our best efforts.

Mr CRAIG KELLY: Has there been a reduction, since the royal commission started, in your loans to small business because of those concerns?

Mr Comyn : David might like to add. There's a lot of focus, obviously, in lending to consumers, particularly in home lending, but I'll put that to the side because you asked about small business. Not specifically, certainly not. I do think that the industry quite rightfully feels like it's under a lot of pressure and scrutiny, so it's not to say people don't become inadvertently more conservative. One thing, consistent with our earlier comments, that's important from our perspective is that we are supporting Australian businesses. We're a prime beneficiary of Australia performing well, and small businesses represent an enormous contribution to GDP output, so it's certainly our stated objective to provide credit to any business that we would consider to be credit worthy.

Mr Cohen : We've not, as a specific result of the royal commission, sought to reduce access to credit. It is the case that, in a couple of sectors where we had seen excessive activity, going back before the royal commission, we had made some strategic decisions to moderate our appetite, but not specifically as a result of the royal commission, in business.

Mr CRAIG KELLY: One thing I might say as a passing comment, which I hope that you would agree with, is that it's absolutely essential that, when small-business people decide to take an entrepreneurial risk and they're putting their home and assets on the line, they know that if something goes wrong they have fair access to justice. The last thing we want in this nation is where people don't take that risk—

Mr Cohen : Absolutely.

Mr CRAIG KELLY: because of the concern that if something goes wrong down the track their bank is going to do them over unjustly.

Mr Cohen : That's right.

Mr CRAIG KELLY: The other question I'd like to ask—and maybe, Mr Cohen, you might be best at answering this—is: what do you understand to be the current common law provision involving unfair penalties for late payment fees or increased rates of interest where there's a covenant broken? What do you understand the current common law position to be?

Mr Cohen : Broadly, my understanding is that the case law, or common law as you call it, prohibits what are called 'usurious rates'. That is basically something that is clearly a penalty that has no link to the problem that has occurred. If there's no linkage whatsoever, if it's just a straight-out excessive fee, then that's what the common law broadly says cannot be charged.

Mr CRAIG KELLY: Where people have had loans and they may be in breach of a minor covenant to the loan, and that's enabled the bank therefore to hike up the interest rate or have some other charges, do you think some have really been borderline cases where it's actually been an unfair penalty?

Mr Cohen : Just setting aside any specific cases, at a general level, as you probably are aware, default interest rates do exist. At Commonwealth Bank—

Mr CRAIG KELLY: So if there is a minor breach of a covenant and the default interest rate is then imposed by the bank—

Mr Cohen : Generally speaking, we would not seek to apply default interest rates for minor breaches. That's not appropriate. Our approach around default interest rates is to use them selectively. It's only on a case-by-case basis. We're very conscious that applying default rates in circumstances where a borrower is financially struggling or in difficulty is not appropriate at all. That is why those rates are used selectively. Essentially, default rates are only applied in circumstances where the borrower is able to take steps to remediate a situation—that is, financially able—but for various reasons refuses to do so.

Mr CRAIG KELLY: But, as you said, doesn't the fact that you're putting the default interest rate upon that particular borrower actually make the borrower more risky by the nature of your action?

Mr Cohen : If they are in financial difficulty then applying a default interest rate only aggravates the situation.

Mr CRAIG KELLY: What is the legal basis for the default interest rate? You're arguing it's not a penalty, but it's—

Mr Cohen : Yes.

Mr CRAIG KELLY: So what's—

Mr Cohen : The important distinction here is that it's not a penalty that's unrelated to the situation. In the circumstances of a defaulted loan, for example, the default interest rate is designed to assist the bank to cover additional costs which are incurred. Those additional costs are in the form of additional capital that the bank has to set aside in respect of non-performing loans and, secondly, the additional costs of management, because much closer management does take place when a loan has defaulted.

Mr CRAIG KELLY: In the recent case involving the late payment on credit card fees, there was a class action—I think it went through to the courts—with fairly expensive legal expenditure for both the class action litigants and also the banks in defending that. Do you think that in that area the law is not clear enough? Do you think there's scope for taking what is in the common law and putting it into legislation so that it's crystal clear, or clearer, exactly what limitations the banks have in imposing these late payment fees and these additional interest rate payments?

Mr Cohen : Well, as a general comment, I would say that it is always better if the law or the rules that are applied are very, very clear to customers. That's one reason why the new Banking Code of Practice is an improvement, because it sets out things very clearly. Going to your specific point around default interest rates, if I can call them that, we as a bank—as others do as well—set out very clearly in our terms and conditions what those rates are, but I do accept that not every customer is going to read the terms and conditions in full. We know that. Therefore, I think a better way—I don't think it's necessarily a case of the law setting out because, as the royal commission has already pointed out, the laws are plentiful—

Mr CRAIG KELLY: Just on that, there should be, in my understanding of what the law would be, a limitation on how much additional default interest you can actually charge without it becoming an unlawful penalty.

Mr Cohen : Correct. The common law is there if that needs to be clarified so that everybody can see that in clear terms. As an organisation, we would have no objection to that, because that is in effect what applies under the common law anyway.

Mr CRAIG KELLY: I have just one question to wrap up, on the current drought situation with the

farmers. Are you giving special consideration to the farming community during this difficult time of drought, and what are you doing in that respect?

Mr Cohen : We're very mindful of it, and we have a number of measures that we have announced. In terms of our day-to-day dealings with farmers in those drought-stricken areas, we are doing a number of things. Where they are struggling at all, we are either allowing repayment holidays, as we call them—in other words, holding off repayments—or extending the loan for a period of time, together with some specific measures that we announced at a more general level.

Mr Comyn : Yes. We also have a confidential counselling service to be able to provide whatever support we can—as David said, very bespoke arrangements. We're making sure that customers have maximum flexibility so that, if they want to break things like term deposits, they're able to do so without a penalty. We've also created, effectively, an offset to reduce their balance by deducting their outstanding balance on their loan from any of their farm management deposit accounts. We are, of course, very sensitive to supporting customers through what is a very difficult time. As an institution, we have donated $2 million to various drought aid relief, and through the generosity of everyday Australians we've been able to raise $7 million from our customers both across our branch network and from our mobile banking application.

Mr THISTLETHWAITE: Mr Comyn, were you able to retrieve that information about the Minter Ellison report being given to the royal commission and ASIC?

Mr Comyn : I'm sorry, Mr Thistlethwaite, in the brief break, my information is at this stage complete. I can assure you that it will be looked into as a matter of urgency. I'm happy to come back, both in writing and to discuss the matter with you for fulsomely, but I didn't want do provide incomplete and potentially inaccurate information to this committee.

Mr THISTLETHWAITE: Perhaps you could continue to try and hopefully we can get that before we finish. Mr Cohen, you're a member of the CBA misconduct governance committee; is that right?

Mr Cohen : That's correct.

Mr THISTLETHWAITE: So, in respect of this issue regarding the Youthsaver accounts, I'm instructed that, in the wake of the Minter Ellison report, that went to the misconduct governance committee in December of 2017. Is that right?

Mr Cohen : I can't be specific about the date, but it certainly was towards the end of 2017.

Mr THISTLETHWAITE: Minter Ellison conducted the independent review of what had occurred with Youthsaver accounts and other issues. That report was given to your committee. What did your committee do with that report?

Mr Cohen : Just by way of background, and without going into the detail that I can't go into because of the whistleblower restrictions—legal restrictions that are imposed on us—the report, as we've said earlier, covered a number of areas. I think there were perhaps up to a dozen issues that had been raised in total. The reason for the report was that the whistleblower had expressed dissatisfaction with the outcome of internal investigations. So these were investigations carried out by Commonwealth Bank personnel. There was quite a degree of correspondence with the whistleblower. We decided that, in order to try and put an objective lens on the issue, in order to satisfy the whistleblower's concerns as to whether or not the internal investigation was satisfactory, we would have an external person, and that's why Minter Ellison was appointed. When the report came to the misconduct committee, we considered that report and determined that the report was thorough, firstly, and that it had looked into each of the issues that had been raised, and that the findings of that report were appropriate on each of the specific issues. As a result of that, from memory, the misconduct committee decided that we should go back to the whistleblower with the outcomes of Minter Ellison investigation.

Mr THISTLETHWAITE: I'm instructed, then, that in the wake of that, after your committee had received that report and made your determination that you have just outlined, Minter Ellison then

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reopened their investigation into Mr Comyn and his handling of this issue. Is that correct?

Mr Cohen : I can't tell you that, only because I don't know. I was not privy to some of the aspects of the investigation.

Mr THISTLETHWAITE: I'm instructed that Minter Ellison then made further investigations, and that's when they interviewed you, Mr Comyn. Is that correct?

Mr Comyn : I think they had interviewed me previously.

Mr THISTLETHWAITE: I'm told that that second report went to the misconduct governance committee on 9 March 2018, which is this year. Is that correct?

Mr Cohen : Again, I can't be precise about the date, but I think it was early this year, yes.

Mr THISTLETHWAITE: What did the committee do with that secondary report?

Mr Cohen : From memory, we considered that second report. The report, from memory, found that the allegations of the whistleblower were not well-founded, were not substantiated.

Mr THISTLETHWAITE: What were those allegations?

Mr Cohen : I can't recall precisely what the allegations were. As I said, I was not privy to what the allegations were until I saw the report. My recollection is that the misconduct committee received that report and was satisfied that the report was thorough, firstly, in that it had looked at the issues and that findings of the report in relation to the claim, which, as I said, were unsubstantiated, were appropriate.

Mr THISTLETHWAITE: Were the allegations related to Mr Comyn's actions in investigating this issue at all?

Mr Cohen : I cannot tell you that, only because I don't know the detail of it. I can come back to you and let you know and take that on notice.

Mr THISTLETHWAITE: It was only 9 March this year.

Mr Cohen : Yes.

Mr THISTLETHWAITE: You still can't recall from earlier this year what was in that report?

Mr Cohen : No. I don't want to mislead you and suggest what it may or may not have been. It would be far better, I think, if I gave you that after checking.

Mr THISTLETHWAITE: Perhaps you could take that on notice and provide the committee with—

Mr Cohen : Very happy to.

Mr THISTLETHWAITE: some of the details. It appears—and you can correct me if I'm wrong here—that, whilst MinterEllison were conducting an investigation into Mr Comyn's decisions and actions in respect of this matter and the investigation of them, and that report was going to your governance committee, the misconduct committee, Mr Comyn was appointed as the CEO of the Commonwealth Bank. Is it correct that, whilst an investigation was going on, Mr Comyn was appointed as the CEO?

Mr Cohen : Well, the timing that I can tell you is that that report, as you mentioned, came to us in early 2018, this year, and Matt's appointment as CEO was in early February this year.

Mr THISTLETHWAITE: Yes. But that's the point that I'm making. It appears that you hadn't received that report, but there was an investigation going on, and Mr Comyn was appointed as the CEO in the

interim.

Mr Cohen : That may be the timing. I'm not aware of the exact timing, however, of investigation versus appointment, so I can't tell you right here and now, but we can certainly give you that as a question on notice.

Mr Comyn : I can assure you, Mr Thistlethwaite, that this particular matter, I would suggest to you, is far more extensive than potentially what you're being instructed about. To the extent there are any legal restrictions, but absent those legal restrictions, I'd be happy to share with you all of the information about this particular whistleblower and this case—as it relates to my appointment, just so there can be no misunderstanding. As you would appreciate, during an interview process for a role such as the chief executive, I took it upon myself to proactively raise with the board any issues that I considered needed to be brought to their attention. This was one of them. I'm not sure how much more of that detail—but I can assure you that it's been a very thorough process. I think it's quite an extensive chapter—and, I think, more than you're being instructed—and, as I said, whatever we can legally share, I would be very happy to do so.

Mr THISTLETHWAITE: I'd appreciate you doing that. I'm not reaching any conclusions here; I'm just asking the questions that have been raised with me by an individual.

Mr Comyn : I understand.

Mr THISTLETHWAITE: I just want to ask some questions about remuneration structures within the bank. Can you enlighten the committee on roughly what proportion of staff would be subject to the FOFA regulations?

Mr Comyn : All of our wealth management divisions, specifically our advisers—so our Commonwealth financial planning division would be approximately 600 advisers. We have then advisers in our private bank and also in what we consider our aligned advisers, so Count and Financial Wisdom—ballpark 1,000 or so?

Mr Cohen : Yes, plus some advisers in our CommSec area. Yes, probably just over 1,000.

Mr THISTLETHWAITE: And the Australian Banking Association have by a media release indicated that they'd seek to have FOFA amended so that it applies to grandfathered payments. Is that something that your bank supports and you'd like to see the parliament do?

Mr Comyn : Yes, it is something we support. As I mentioned earlier, we have already announced for our financial planners that we—maybe by way of context: in 2013 we stopped paying the commissions through to our own financial planners. We this week announced that we would rebate those grandfathered commissions directly through to the customers. As you would be aware, there are some contractual difficulties with other licensee or adviser groups, but we're certainly supportive of an industry-wide reform where grandfathered commissions across all advisers are removed or go through a phased approach of removal.

Mr THISTLETHWAITE: Thank you.

Mr FALINSKI: Can I go back to something you said earlier, which is that there are certain segments of the market that you will not get into because there is a situation where risk doesn't equal the profit that you can make from those segments. Is that a fair assessment or a fair characterisation of what you said?

Mr Comyn : Yes, our intolerance for risk and losses but also, particularly, what sort of pricing may be required to cover that risk. That can relate to a credit risk perspective but also to an operational risk as it relates to, say, fraud or broader reputational risk.

Mr FALINSKI: So reputational risk does factor into that?

Mr Comyn : Absolutely.

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Mr FALINSKI: At the moment, with the royal commission going on, there's obvious reputational damage being done to the banking system broadly, not just the CBA. How much impact is that having in terms of how much capital you're willing to dedicate to areas that are under more scrutiny than others?

Mr Comyn : Well, certainly we would evaluate—and would continue to do so—all parts of our business and operation and the products and services that we provide. I'd say that's certainly an ongoing process for us. And clearly in the context of what we think is going to be important, going forward, we want to make sure that we're only operating in parts of the market where we feel very comfortable with, overall, the risks that may emanate from that, including reputational risk.

Mr FALINSKI: Is one of the reasons that you've decided to separate out financial planning and wealth management from the central bank the reputational risk that had posed?

Mr Comyn : As I said in my opening comments, the rationale from our perspective was far more strategic. We wanted to make sure that we were focusing our efforts inside the Commonwealth Bank on being a simpler and better bank, and we recognise that there is substantial work to be done there. We also think that, with the wealth management business and the advice industry, notwithstanding the challenges that are faced across all parts of that industry, it's very important that those needs are provided for. We believe that those businesses will benefit from a separate business with a dedicated and focused management to ensure that the necessary reforms are undertaken. I would say, though: until the day that those businesses are no longer part of the Commonwealth Bank Group we retain absolute accountability, and that's of course why we're accelerating those reforms. In the process of a demerger, what effectively happens is that we provide a proportionate amount of ownership to CBA shareholders, so our owners will also be the owners of those businesses. And of course it's of the utmost importance to us that we do everything practical over the intervening period, prior to that demerger, to ensure that they're in the best possible condition as we approach that demerger.

Mr FALINSKI: But can you see why some people would conclude that your bank specifically is exiting certain parts of the market due to reputational risk and the impact that might have in terms of capital being denied to those particular sectors?

Mr Comyn : Certainly the reputational damage in some of those businesses has been extensive; I don't think there's any dispute. As I said, the rationale is about focus, and generally, as it relates to the wealth management business, it tends to be less about the extension of capital; obviously, it's more about advice and the platforms business. We are at this stage planning to retain a financial advice service for customers. We think it's important to be able to provide safe, accessible, affordable and probably quite basic advice to all Australians. We think that's an important need. So the rationale is not around capital allocation per se.

Mr FALINSKI: Let me try a different angle. In your core banking activities, which activities do you think are most exposed to reputational risk?

Mr Comyn : I think the reality is that any activity of the Commonwealth Bank will draw, as it should, severe reputational damage if we fall short. We are quite rightfully held to a very high standard. We occupy a privileged position in the community and the economy, with a very long and extensive history. I don't know that I'd necessarily distinguish our core banking business, which is clearly our focus in Australia and New Zealand; across all of the segments of our business, I think it's very important that we're able to operate services of the highest quality for all of our customers.

Mr FALINSKI: I'm sure you're aware of behavioural economics et cetera and that people make irrational decisions reliably. One of the things people look for is heuristics and shortcuts to make decisions. Some of the regulations that this parliament has imposed upon financial institutions, especially around CLERP 9, responsible lending et cetera, have resulted in reams of paper being produced for otherwise pretty simple products. In your experience has this created a situation where new customers get confused about the features and pricing of the products they are buying? Are they sometimes assuring themselves that they are buying quality products on the basis of the

material that they are being provided, which may just be due to the fact that we've required you to under regulation?

Mr Cohen : There is no doubt the laws as they stand today require a considerable amount of documentation.

Mr FALINSKI: How much of that documentation do you think gets read by consumers?

Mr Cohen : We know for a fact that a lot of documentation does not get read. It's fair to say that the industry experience and the experience of regulators is that the move towards disclosing everything as a way of avoiding harm has not worked particularly well.

Mr FALINSKI: It has potentially created more harm than good?

Mr Cohen : I don't know if I could say it has created more harm; however, I don't think it has achieved the original intention, which was to inform people in an easily accessible way.

Mr FALINSKI: There may have been unintended consequences?

Mr Cohen : A rethink is required and is happening to a degree. One issue we are able to take advantage of is technological change. Hopefully the days of 40-page product disclosure statements and other guides—

Mr FALINSKI: From what I have seen that would be mercifully brief!

Mr Cohen : Yes, but even still our experience, to be honest, is that providing documentation results in people reading two to three pages at max. As an industry and a community we need to think about how people access important information easier and quicker without running the risk of confusing people with reams of paper.

Mr KEOGH: In April-May 2009 Bankwest started a wish list of loans with deteriorating credit health. In September 2009 Bankwest committed to reducing its commercial property exposures—that is, the total amount and proportion of its loan book in that area. In December 2009 the bank's executive risk committee introduced an exposure cap for commercial property lending in order to reduce Bankwest's commercial property exposure, which it proceeded to do. That was all prudent banking practice, yes?

Mr Cohen : Correct.

Mr KEOGH: Mr Cohen told the royal commission that in respect of a lot of these loans the bank would:

… work with the customer to end the relationship in a normal way, such as when a loan matures, when it reaches expiry or through repayment by refinancing for example.

That was also usual practice?

Mr Cohen : Yes.

Mr KEOGH: You went on to say:

… if none of those were available then through enforcing as a last resort.

Enforcing means where there was a default on the loan; is that right?

Mr Cohen : That's correct.

Mr KEOGH: That's also part of usual practice?

Mr Cohen : Where an alternative can't be arranged with the customer then sometimes the only alternative is to, for example, sell the security.

Mr KEOGH: This continued as an outworking of what became Project Magellan through 2010?

Mr Cohen : Project Magellan, yes, was a review of the business banking book.

Mr KEOGH: Specifically it reviewed accounts and loans supporting investments in respect of hotels and pubs, some commercial property development businesses, aged care and retirement villages.

Mr Cohen : Amongst others.

Mr KEOGH: Your auditors stated that Bankwest had applied a prudent approach in calculating its loan provisions through that project as well; is that right?

Mr Cohen : That's correct.

Mr KEOGH: It should be noted that Commonwealth Bank chose not to renew some loans that had expired, even where the borrower had not defaulted in the performance of that expired loan. Is that correct?

Mr Cohen : That's a very general statement. In essence there were circumstances where a borrower during the period of the loan had continued to meet interest payments but had failed to repay the loan on expiry.

Mr KEOGH: But there was no renewal to facilitate that either? No replacement loan was made available?

Mr Cohen : In a number of cases Bankwest decided that it would not renew the loan; that's correct.

Mr KEOGH: In almost all cases where Bankwest sought to enforce—that is, default a borrower and then seek to recover the debt, both the bank and the borrower suffered a loss.

Mr Cohen : That's correct.

Mr KEOGH: And that was all part of a prudent banking approach to dealing with the issues of too many loans in that area and a declining credit health?

Mr Cohen : As the royal commission interim report made very clear, it was an appropriate approach. It was a prudent approach, given the circumstances, yes.

Mr KEOGH: What was the driver or benefit in trying to deal with Bankwest's overexposure in these deteriorating credit health loans?

Mr Cohen : The driver?

Mr KEOGH: The driver and the benefit to the bank of taking that approach.

Mr Cohen : It is crucial for a bank to ensure that it is carrying the appropriate amount of capital in respect of the loans that it has on its books at that time. In order to determine what is the appropriate amount of capital—bear in mind capital is what protects depositors' money—it's very important to have a very clear understanding of the status of each loan on the books. Project Magellan was an exercise to review the status of each loan to fully understand the health of the loan. Through understanding the health of the loan, we could then make a proper calculation of the provision that we should hold for that loan, depending on its health. The importance of the provision calculation was twofold. The first was to ensure that we held an appropriate amount of capital in order to protect customers of the bank, generally, and the second was to ensure that the financial statements of both Bankwest and Commonwealth Bank were accurate.

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Mr KEOGH: My question goes further though. It goes back to the process that started in April and May 2009 where there was an identified watch list of loans and a process to, as you were quoted in the interim report, deal with those loans that had a deteriorating credit health.

Mr Cohen : That's right. It's part of the overall process.

Mr KEOGH: You've explained the Project Magellan aspect, but, in terms of dealing with those loans, what was the benefit to the bank of dealing with loans in that way, including enforcement?

Mr Cohen : Because it's important for a bank, as we've seen from overseas experiences, not to miscategorise loans as performing when they are not performing.

Mr KEOGH: Yes.

Mr Cohen : That can be extremely misleading for investors and for customers.

Mr KEOGH: My question goes to what you said about working to end the relationship, whether in the normal way or through enforcement as you agreed that both bank and customer would suffer a loss—

Mr Cohen : Yes.

Mr KEOGH: in circumstances where it was enforcement. What was the benefit of going down that process?

Mr Cohen : It's unfortunately the case that sometimes, if a loan is allowed to continue to exist after it has defaulted, the loss can become worse for both the customer and the bank, so there is a judgement decision that is required at some point after it has defaulted as to whether to take enforcement action and, if so, when.

Mr KEOGH: So the benefit is a loss mitigation for the bank and potentially for the customer?

Mr Cohen : And for the customer, that's correct.

Mr KEOGH: Given that there is that benefit, how do you explain these statements. The first is:

... there is absolutely no commercial advantage and therefore no incentive whatsoever for Bankwest or the Commonwealth Bank to put borrowers in default.

And this statement:

There was no benefit either to Bankwest or to CBA in defaulting customers or causing losses to customers.

Mr Cohen : Yes. They're correct.

Mr KEOGH: They're quite definitive statements that there's no benefit, but you've just told me that there's a benefit of loss mitigation in taking that approach.

Mr Cohen : Those statements that you've just quoted are talking about putting a customer into default. In other words, they're about finding a reason that a customer has defaulted. There is absolutely no benefit to the bank in that.

Mr KEOGH: I didn't say finding a reason. The quote was 'to put borrowers in default'.

Mr Cohen : Yes. What I'm saying to you is that the issue of seeking to put a customer in default is not to the advantage of the bank, because it leads invariably to losses.

Mr KEOGH: I have one final question. ASIC recently produced a report, Report 594: review of selected

financial services groups' compliance with the breach reporting obligation. I presume you're both pretty familiar with this report. It's been pretty well covered.

Mr Comyn : Yes.

Mr Cohen : Yes.

Mr KEOGH: On page 8 of that report there is the table 'Key findings of the breach reporting review'. Finding 4 is 'delayed remediation for consumer loss'. In that report, it says:

We identified historical documents from two of these major financial groups that referred to remediation for consumers as a 'distraction'.

Was the Commonwealth one of those banks?

Mr Comyn : No, I do not believe we were.

CHAIR: I think it's been pretty consistent throughout the hearing today that the need for customers to be heard and aggrieved parties to be heard, and the need for rebuilding of trust is critical to the future, not just of the Commonwealth Bank but of all of the banks that are presenting here. One of the measures that this government has taken to try and start that process is introducing the Australian Financial Complaints Authority. How do you see that authority in its role in helping and assisting those who have complaints against banks?

Mr Comyn : As you said, I hope that there will be many benefits for customers. Some of those will accrue from having a single, one-stop shop for customers across the industry to go to with a larger threshold and a broader remit. I've had the opportunity to meet with both the incoming CEO of AFCA and the chair. We plan to meet with them on a regular basis to make sure that we're providing and working as constructively as we can. Ultimately, customers will judge the effectiveness of any complaints handling tribunal both on the quality of the decisions, for which I have no doubt will be of a very high quality, and the speed of resolution. That is one of the more troubling aspects. Notwithstanding the enormous complexity, at times our bank, and I'm sure others, has acted far too slowly to resolve issues.

CHAIR: Do you think the authority will be able to address those issues, or at least be part of addressing those issues, around timeliness?

Mr Comyn : Yes, I do. We, obviously, have a role to play there as well. Often in a dispute resolution process the complaints handling tribunal relies on information being provided by the institutions on a timely and efficient basis.

CHAIR: Do you think it will help to address some of the imbalance that exists, that has been raised by some committee members where they feel that the legal power and the weight of legal resources available to banks generally, including the CBA, disproportionally harm people trying to do the right thing or defend their own interests? Will that be part of resolving that imbalance?

Mr Comyn : Yes, I do.

CHAIR: One of the issues that's been raised consistently throughout the hearing is around accountability and the extent to which anyone has been held accountable for the conduct that's been revealed in the royal commission. Has anyone actually been terminated within the CBA as a consequence of conduct that's been raised throughout the royal commission?

Mr Comyn : Yes.

CHAIR: Do you have numbers on that?

Mr Comyn : One of the cases I spoke about earlier—I'm not suggesting this is exhaustive—was from 2015 and there were two specific advisers that were terminated. As I said, one dissolved their

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partnership before they could be terminated. There have been approximately 41 people terminated for misconduct this year. Another nine have resigned whilst undergoing an investigation, which looked likely to result in their termination from misconduct. I couldn't say that all of those cases were specific to the royal commission, but as you would appreciate, and as is required, there's a real focus on ensuring that there are adequate consequences across the organisation where we fail to act in our customers' interests.

CHAIR: Are you expecting further terminations as a consequence of the royal commission?

Mr Comyn : It's hard to speculate but—

CHAIR: Of course. Are there at least outstanding issues, which haven't been resolved, which may lead to termination?

Mr Comyn : There are some matters which are going through a thorough review process. Ultimately, there'll be a determination on whether there are any further appropriate consequences.

CHAIR: Of course, people are deserved due process. Are there many outstanding issues?

Mr Comyn : I could think of a few.

CHAIR: A few?

Mr Comyn : But not—

CHAIR: A few but not exhaustive, is that what we should be—

Mr Comyn : Some of the cases that were shown in the royal commission were historical. That's not to say that that there haven't been other instances outside of that and on an ongoing basis that we need to ensure we're setting the right example and, ultimately, informing the culture that we want to create. One of those is making sure that there are very clear consequences for those who don't act appropriately towards our customers and in line with our values.

CHAIR: In the final minutes we've got left, I want to turn to the broader economy. The reality is: as to CBA plus all the other banks, one of the critical reasons we need them to operate and to respond to consumer need is that they play such an important role in the economy overall, particularly for those people who want to get their first foothold in the property market. Are you concerned about the direction of house prices, as a bank, because of your exposure to lending practice for retail mortgages?

Mr Cohen : I'm not concerned per se at this particular point. Obviously I note the softening in the market, which is varied across different parts of the country, and certainly in places like New South Wales and Victoria we have seen some softening. That, in and of itself, is not a bad thing, given the acceleration in house prices. One of our roles is to facilitate economic growth. We also play an important role in financial stability. So I do think that the slowing of credit growth and actually a deceleration in house prices is, long term, a good thing for financial stability. One of the reasons we think it's, all things considered, a good outcome at this point in time is the strength of the underlying economy in Australia. We are seeing falling unemployment, growth above GDP and low inflation. So, if Australia ever needed to have a slight deceleration in its housing market, it's a good time to do that against the very solid economic backdrop.

CHAIR: We are obviously sitting in an environment where the prices are, at least, as you say, softening, but we don't quite know the trajectory that's going to go on. Certainly, there have been a lot of reports in the past couple of weeks around a slowdown in the residential market overall. What do you think would be a consequence on the market if there were to be changes to negative gearing policy?

Mr Cohen : Well, of course it would depend on the final implementation of that policy, and of course that would need to pass through both houses. It's very hard, always, to connect deliberate causation

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between any individual factors. There have been a variety of factors that have led to a slowing of credit growth, particularly investment growth. The vast majority of those have been deliberate and actions taken by the Council of Financial Regulators and, particularly, APRA. So we have seen, of course, a slowing of the housing market, which, hopefully, is making it more accessible for more Australians and will continue to do so. Of course, changes to tax policy can have second- and third-order impacts, and I recognise the difficult task for policymakers to arrive at the right policy which balances the needs of a variety of stakeholders.

CHAIR: It's not just a variety of stakeholders. Obviously, we're keen to make sure that people get into the property market and those who have at least don't face negative equity, but, in addition to that, to make sure there is available property for renters. Do you see any challenges in that space if there are changes in policy?

Mr Cohen : I think those sorts of factors clearly need to be very carefully considered, and, as you rightly noted, housing conditions and house prices have changed certainly quite substantially from where we were, say, 18 months ago, when house prices were accelerating; housing affordability was probably one of the biggest issues in the country. I'm sure that people will be cognisant of the broader economic impacts in designing a policy which is fair for all Australians and is in the long-term interests of the country.

CHAIR: Do you think that the Australian banking sector—and, by extension, the CBA—owes the Australian people an apology after what has been revealed in the royal commission?

Mr Cohen : Yes, I do.

CHAIR: Thank you very much, and thank you very much for your attendance here today. The committee secretariat will be in touch with you in relation to any matters arising out of today's hearing. You will be sent a copy of the transcript of your evidence to which you can make corrections of grammar or fact. As Hansard may wish to check some details concerning your evidence, would you please check with Hansard reporters to see if there are any questions before you leave. I'm mindful of the fact that you've not just spent three hours here today but you'd probably spent a fair bit of time preparing, so we appreciate that. A number of members have also put questions on notice throughout the hearing, so we will still of course expect you to provide answers to the secretariat. Thank you very much.

Mr Cohen : Thank you, Chair.

Mr Comyn : Thank you.

CHAIR: We're suspending now until 1.15. Everybody gets to take an hour for a break.

Proceedings suspended from 12 : 14 to 13:15

Websites For More Information: CBA Bank - Big Bank Bosses Face Parliamentary Grilling (ABC News Article)
http://www.abc.net.au/news/2018-10-11/big-bank-bosses-face-parliamentary-grilling/10364290

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