

## **AMENDED COMMERCIAL LIST STATEMENT**

(Filed pursuant to an order made by Ward CJ in Eq on 28 June 2019)

### **COURT DETAILS**

Court	Supreme Court
Division	Equity Division
List	Commercial List
Registry	Sydney
Case number	2018/310118 and 2018/309329 (Consolidated Proceedings)

### **TITLE OF PROCEEDINGS**

First plaintiff	<b>KOMLOTEX PTY LTD (ACN 004 390 023) AS TRUSTEE FOR BREDA SINCLAIR INDUSTRIES SUPERANNUATION FUND</b>
Second plaintiff	<b>FERNBROOK (AUST) INVESTMENTS PTY LTD (ACN 068 190 296)</b>
Defendant	<b>AMP LIMITED (ACN 079 354 519)</b>

### **FILING DETAILS**

Filed for	<b>Komlotex Pty Ltd and Fernbrook (Aust) Investments Pty Ltd, Plaintiffs</b>
Legal representative	Andrew Watson (Maurice Blackburn)
Legal representative reference	3052777
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### **A. NATURE OF DISPUTE**

- 1 This is a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) brought by the Plaintiffs on behalf of themselves and other persons, described in paragraph 8 below, who purchased securities in the Defendant (**AMP**) between 10 May 2012 to 13 April 2018 (**Relevant Period**).
- 2 On 16 and 17 April 2018, AMP made several disclosures through its participation in the **Royal Commission** into Misconduct in the Banking, Superannuation and Financial Services Industry. The disclosures related to AMP's misconduct in respect of the charging of ongoing service fees where no ongoing services were provided and in

withholding breaches from the Australian Securities and Investments Commission (**ASIC**) and then misleading ASIC about the nature and extent of the breaches.

- 3 Following these disclosures, AMP's share price declined substantially.
- 4 During the Relevant Period, in contravention of statutory norms, AMP failed to disclose this misconduct and engaged in related misleading or deceptive conduct.
- 5 As a result of AMP's contravening conduct, the price of AMP's securities was, prior to the Royal Commission disclosures, inflated above their true value and/or the price that would otherwise have prevailed in the event that the relevant facts were disclosed or the relevant misleading conduct did not occur. Accordingly, the Plaintiffs and Group Members suffered loss and damage as a result of purchasing AMP securities during the Relevant Period at an inflated price.
- 6 Alternatively, the Plaintiffs and some Group Members suffered loss and damage as a result of their direct reliance on AMP's disclosure failures and/or its misleading representations.

## **B. ISSUES LIKELY TO ARISE**

- 7 The following issues are likely to arise:
  - (a) whether AMP breached its continuous disclosure obligations;
  - (b) whether AMP engaged in misleading or deceptive conduct;
  - (c) whether the contravening conduct caused loss or damage;
  - (d) the amount of such loss or damage.

## C. PLAINTIFFS' CONTENTIONS

(NB. Doc ID references in this Amended Commercial List Statement are to document codes assigned to documents tendered at the Royal Commission which are publicly available on the Royal Commission website.)

### A. PARTIES

#### *The Plaintiffs and Group Members*

8 The Plaintiffs commence this proceeding on their own behalf and on behalf of all persons (**Group Members**) who or which:

- (a) entered into a contract (whether themselves or by an agent or trustee) to acquire an interest in:
  - (i) fully paid ordinary shares in AMP (**AMP Shares**) during the Relevant Period; and/or
  - (ii) American Depository Receipts that represent AMP Shares (**AMP ADRs**) between 7 June 2012 and the end of the Relevant Period,
 (together, **AMP Securities**);
- (b) suffered loss or damage by reason of the conduct of AMP pleaded below;
- (c) were not during any part of the Relevant Period, and are not as at the date of this Amended Commercial List Statement, any of the following:
  - (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of AMP;
  - (ii) an officer or a close associate (as defined by s 9 of the *Corporations Act*) of AMP; or
  - (iii) a Justice or the Chief Justice of the Supreme Court of New South Wales or the High Court of Australia.

9 As at the date of commencement of this proceeding, seven or more Group Members have claims against AMP in respect of, or arising out of, the matters alleged in this Amended Commercial List Statement.

10 The First Plaintiff:

- (a) at all material times, was the trustee of the “Breda Sinclair Industries Superannuation Fund” and sues in its capacity as trustee; and
- (b) acquired an interest in AMP Shares during the Relevant Period.

**Particulars**

The First Plaintiff’s purchase details are set out in Schedule A hereto.

11 The Second Plaintiff:

- (a) at all material times, was the trustee of the “Cleine Superannuation Fund” and the “Cleine Family Trust” and sues in its capacity as trustee; and
- (b) acquired an interest in AMP Shares during the Relevant Period.

**Particulars**

The Second Plaintiff’s purchase details are set out in Schedule B hereto.

*The Defendant*

12 AMP is and at all material times was:

- (a) incorporated pursuant to the Corporations Act and capable of being sued;
- (b) a person within the meaning of s 1041H of the Corporations Act;
- (c) a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
- (d) a person within the meaning of s 18 of the *Australian Consumer Law* set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**), as applicable pursuant to:
  - (i) s 131 of the CCA;
  - (ii) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT);
  - (iii) s 28 of the *Fair Trading Act 1987* (NSW);
  - (iv) s 8 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);
  - (v) s 16 of the *Fair Trading Act 1989* (Qld);
  - (vi) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);

- (vii) s 19 of the *Fair Trading Act 2010* (WA);
  - (viii) s 14 of the *Fair Trading Act 1987* (SA); and/or
  - (ix) s 27 of the *Consumer Affairs and Fair Trading Act* (NT),
- (individually, or together, the **ACL**);
- (e) included in the official list of the financial market operated by the Australian Securities Exchange (**ASX**), and AMP Shares were:
- (i) ED securities for the purpose of s 111AE of the Corporations Act, and quoted ED securities within the meaning of s 111AM of the Corporations Act;
  - (ii) a financial product within the meaning of s 763A(1)(a) and s 764A(1)(a) of the Corporations Act and s 12BAA(1)(a) and s 12BAA(7)(a) of the ASIC Act;
  - (iii) able to be acquired and disposed of by investors and potential investors in AMP Shares on the financial market operated by the ASX;
- (f) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;
- (g) subject to and bound by the **Listing Rules** of the ASX; and
- (h) has and had an arrangement with Deutsche Bank pursuant to which Deutsche Bank issues AMP ADRs (at a ratio of 1 AMP ADR to 4 AMP Shares) which are traded on the OTC market in the United States of America under the ticker "AMLYY".
- 13 At all material times, once AMP was or became aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of AMP Securities, AMP was required to immediately tell the ASX that information unless the exceptions in Listing Rule 3.1A applied (**Continuous Disclosure Obligations**).

### **Particulars**

Rules Section 674(2) of the Corporations Act and rules 3.1 and 3.1A of the Listing Rules.

- 14 At all material times:

- (a) from the start of the Relevant Period until 30 April 2013, AMP was taken to become aware of information once a director or executive officer had, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as a director or executive officer of AMP; and
- (b) from 1 May 2013 to the end of the Relevant Period, AMP was taken to become aware of information once an officer of AMP had, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of AMP.

### **Particulars**

Rule 19.12 of the Listing Rules as in force in each of the above periods.

#### *AMP's Business, Fees and Policies*

- 15 At all material times during the Relevant Period, AMP carried on business as a provider of financial products, including superannuation, insurance and investment products, financial advice, and wealth management.
- 16 At all material times during the Relevant Period, AMP's financial advice and wealth management business provided services to retail customers through a network of wholly-owned subsidiaries (**AMP Retail Advice Business**), including:
  - (a) AMP Financial Planning Pty Limited (**AMPFP**);
  - (b) Charter Financial Planning Limited;
  - (c) **Hillross** Financial Services Limited; and
  - (d) Ipac Securities Limited,
 (together, **AMP Advice Licensees**).
- 17 At all material times during the Relevant Period, the AMP Advice Licensees appointed authorised representatives, for the purposes of Chapter 7 of the Corporations Act, to provide financial advice to customers on their behalf (**AMP Advisers**).
- 18 At all material times during the Relevant Period the AMP Advice Licensees:
  - (a) had approximately 2,645 to 3,191 AMP Advisers; and
  - (b) had approximately 1,332,899 to 1,694,793 customers.
- 19 At all material times during the Relevant Period AMP:

- (a) derived substantial profits from the AMP Retail Advice Business;
- (b) had a strategy to expand and increase its assets under management and the AMP Retail Advice Business which was dependent on its reputation as a trusted and respected company; and
- (c) accordingly, was exposed to a substantial risk of damage to its reputation if it failed to comply with its obligations under the Corporations Act, the ASIC Act and / or the ACL, including the Continuous Disclosure Obligations.

### **Particulars**

- (i) Particulars of (a):
  - (a) AMP 2012 Investor Report, pp 3, 19;
  - (b) AMP 2013 Investor Report, pp 3, 21;
  - (c) AMP 2014 Investor Report, pp 3, 33;
  - (d) AMP 2015 Investor Report, pp 3, 33;
  - (e) AMP 2016 Investor Report, pp 3, 33;
  - (f) AMP 2017 Investor Report, pp 3, 33.
- (ii) Particulars of (b):
  - (a) AMP 2012 Annual Report, ~~p~~ pp 1, 8, 32;
  - (b) AMP 2013 Annual Report, ~~p~~ pp 1, 9-11, 34;
  - (c) AMP 2014 Annual Report, ~~p~~ pp 1, 8-10, 36;
  - (d) AMP 2015 Annual Report, ~~p-18~~ pp 1, 5, 16-19;
  - (e) AMP 2016 Annual Report, ~~p-22~~ pp 1, 5, 19-23;
  - (f) AMP 2017 Annual Report, ~~p-24~~ pp 1, 5-7, 19-22.

### *Regulatory Environment*

- 20 At all material times during the Relevant Period, ~~AMP and/or~~ the AMP Advice Licensees held Australian Financial Services Licenses.
- 21 In the premises of paragraph 20, ~~AMP and/or~~ the AMP Advice Licensees:

- (a) were required:
- (i) to do all things necessary to ensure that the financial services covered by the license were provided efficiently, honestly and fairly;
  - (ii) to comply with financial services laws, including ss 12DI and 12CB of the ASIC Act;
  - (iii) to take reasonable steps to ensure that the AMP Advisers complied with the financial services laws;
  - (iv) to have adequate risk management systems;
  - (v) within 10 business days of becoming aware of a significant breach or likely breach of the requirements set out in paragraphs (i) to (iv) above, to lodge a written report on the matter with ASIC; and

**Particulars**

- (i) Particulars of (i), s 912A(1)(a) of the Corporations Act.
  - (ii) Particulars of (ii), s 912A(1)(c) of the Corporations Act.
  - (iii) Particulars of (iii), s 912A(1)(ca) of the Corporations Act.
  - (iv) Particulars of (iv), s 912A(1)(h) of the Corporations Act.
  - (v) Particulars of (v), s 912D(1B) of the Corporations Act.
- (b) were prohibited:
- (i) from accepting payment for financial services:
    - (1) without intending to supply the financial services; or
    - (2) intending to supply financial services materially different from the financial services in respect of which the payment or other consideration was accepted;
  - (ii) from accepting payment for financial services when there were reasonable grounds for believing that they would not be able to supply the services within the period specified or within a reasonable time;
  - (iii) from engaging in unconscionable conduct;
  - (iv) from giving information, or making a statement, in purported compliance with a requirement made under Part 3 of the ASIC Act, that was false or misleading in a material particular; and



- (v) from lodging or submitting a document to ASIC that to their knowledge was false or misleading in a material particular, or omitted any matter or thing without which the document was to their knowledge misleading in a material respect.

#### **Particulars**

- (i) Particulars of (i), s 12DI(1) of the ASIC Act.
- (ii) Particulars of (ii), s 12DI(3) of the ASIC Act.
- (iii) Particulars of (iii), s 12CB(1) of the ASIC Act.
- (iv) Particulars of (iv), s 64(1) of the ASIC Act.
- (v) Particulars of (v), s 1308(2) and (3) of the Corporations Act.

22 From 1 July 2013, the AMP Retail Advice Business was regulated by the **FOFA Reforms**, being:

- (a) *Corporations Amendment (Future of Financial Advice) Act 2012* (Cth); and
- (b) *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012* (Cth).

## **B. POLICIES FOR ONGOING SERVICE FEES**

### *Ongoing Services and Fees*

23 At all material times during and prior to the Relevant Period, AMP's in-house financial products permitted ongoing service fees (**Ongoing Service Fees**) to be charged to customers in exchange for the provision of ongoing services, including advice, by AMP Advisers (**Ongoing Services**).

24 Ongoing Service Fees were generally:

- (a) calculated as a percentage of the value of the investment product; and
- (b) charged and collected on a fortnightly or monthly basis.

25 The Ongoing Services performed by an AMP Adviser typically included one or more of the following services:

- (a) access to communication with the AMP Adviser through, for example, meetings or phone calls;

- (b) an offer of, or conducting of, a full or partial review of the customer's portfolio at a determined frequency;
- (c) the provision of educational material such as newsletters, invitations to seminars and industry events, information regarding the impacts of the federal budget or legislative changes;
- (d) receipt and review of investment correspondence;
- (e) access to special investment opportunities; or
- (f) assistance liaising with organisations such as Centrelink.

26 AMP had three relevant policies or business practices in respect of the Ongoing Service Fees:

- (a) from no later than 2008 up to and including 15 November 2016, the Buyer of Last Resort policy (**BOLR Policy**), pursuant to which:
  - (i) in prescribed circumstances, AMP Advice Licensees would purchase the customer register of a 'retiring' AMP Adviser; and
  - (ii) customers within registers that had been so purchased would be placed in what is known as the "BOLR Pool", where Ongoing Service Fees would be "switched off" pending re-allocation to a new AMP Adviser;
- (b) from in or about 2008 up to and including 15 November 2016, the **90 Day Exception Policy**, which applied to customers in the BOLR Pool, where:
  - (i) up until January 2014, Ongoing Service Fees were "left on" for a period of up to 90 days; and
  - (ii) from January 2014, Ongoing Service Fees were "left on" if a new AMP Adviser had been identified to purchase the customer register, and that purchase was scheduled to be completed within 90 days; and
- (c) from in or about 2013 up to and including 15 November 2016 (at the earliest), the **Ringfencing Policy**, which applied to customers who otherwise would have been the subject of the BOLR Policy (i.e. where AMP Advice Licensees had purchased the customer register of a retiring AMP Adviser) but who were not placed in the BOLR Pool, but rather "ringfenced" so as to facilitate the sale of the customer register to an AMP Adviser in a particular regional area or of a particular ethnic or linguistic background, and where:
  - (i) up until May 2015, Ongoing Service Fees were "left on"; and

- (ii) from May 2015 up to and including 15 November 2016, Ongoing Service Fees were “left on” if there was joint approval of both the managing director of the AMP Advice Licensee making the purchase, and the head of Licensee Value Management.

#### **Particulars**

- A. Witness Statement of Anthony Regan dated 11 April 2018 (**Regan Statement**) at [144] to [184].
- B. The decision to abandon the 90 Day Exception Policy was made on 15 November 2016.
- C. The decision to abandon the charging of fees to clients who did not have an assigned AMP Adviser was made at the earliest on 15 November 2016.

27 At all times during the Relevant Period, both AMP was and the AMP Advice Licensees were unable to provide and/or did not provide some or all of the Ongoing Services to clients who did not have an assigned AMP Adviser (including clients within the BOLR Pool) (known internally within AMP as “**orphan clients**”).

27A From no later than 2008 up to and including 15 November 2016 (at the earliest) neither AMP nor the AMP Advice Licensees had any, or any adequate, systems in place to:

- (a) monitor whether customers who were charged Ongoing Service Fees by AMP Advice Licensees were provided with the Ongoing Services that AMP Advisers had agreed to provide in return for the Ongoing Service Fees;
- (b) monitor whether any customers who were no longer being provided Ongoing Services by an AMP Adviser ceased to be charged Ongoing Service Fees; or
- (c) enforce full and proper compliance with the 90 Day Exception Policy and/or the Ring-Fencing Policy and/or to monitor whether customers falling outside those policies were nevertheless being charged Ongoing Service Fees without being provided any Ongoing Services.

(together, **No Monitoring Systems Information**).

#### **Particulars**

- (i) Any risk management systems (of either AMP or the AMP Advice Licensees) which were in place were inadequate because:

- (A) they did not monitor (adequately or, alternatively, at all) whether customers who were charged Ongoing Service Fees were being provided with the Ongoing Services that their AMP Adviser (or former AMP Adviser) had agreed to provide in return for the Ongoing Service Fees;
  - (B) they did not monitor (adequately or, alternatively, at all) whether customers who were not being provided with Ongoing Services by any AMP Adviser were charged Ongoing Service Fees;
  - (C) they did not prevent the deficiencies described in subparagraphs (A) and (B) occurring once those deficiencies had been identified;
  - (D) they did not allow the 90 Day Exception Policy or the Ring-Fencing Policy to be properly applied and they did not monitor whether customers falling outside those policies were nevertheless being charged Ongoing Service Fees without being provided any Ongoing Services.
- (ii) The deficiencies referred to in particular (i) meant that AMP and/or the AMP Advice Licensees could not ensure that Ongoing Service Fees were not charged where customers were not provided with any Ongoing Services, including in the event that the 90 Day Exception Policy and/or the Ring-Fencing Policy were changed or removed.
  - (iii) Transcript of the Royal Commission (**Transcript**) at T1070.21-26.
  - (iv) 2017 Clayton Utz Report, [119] (AMP.6000.0010.0440 at .0487)
  - (v) Further particulars may be provided after discovery.

27B Between 1 June 2008 to 30 June 2016 there were five “events” affecting approximately 28,987 customers which involved AMP Advice Licensees continuing to charge customers fees for services that were not provided, in that:

- (a) approximately 14,095 customers were charged Ongoing Service Fees after their AMP Adviser sold their customer register to an AMP Advice Licensee, and in some cases this was because of the 90 Day Exception Policy;
- (b) approximately 10,685 customers were charged Ongoing Service Fees after they were ringfenced following their AMP Adviser’s departure from AMP;
- (c) approximately 3,108 customers were charged Ongoing Service Fees after an AMP Adviser’s authorisation had been terminated;

- (d) approximately 1,617 customers were charged Ongoing Service Fees where the customer had been acquired by one AMP practice from another but the new practice provided no Ongoing Services;
- (e) approximately 27 customers were charged Ongoing Service Fees where an AMP Advice Licensee had acquired the rights associated with a customer register but provided no Ongoing Services.

**Particulars**

Pages 2-4 (column 8) of Schedule A, AMP Submission to Royal Commission dated 13 February 2018. (RCD.0001.0033.0041)

27C Between 1 July 2010 and 31 July 2015, there were 196 “instances” across the AMP Advice Licensees, affecting approximately 196 additional customers where AMP Advisers failed to provide customers with services for which they had paid during the period from 1 July 2010 to 31 July 2015.

**Particulars**

- (i) Transcript at T1018.4-6
- (ii) Letter from AMP to ASIC dated 17 August 2015 (17 August 2015 ASIC Letter). (AMP.0001.0049.0708)
- (iii) Page 2 (column 8) of Schedule A, AMP Submission to Royal Commission dated 13 February 2018. (RCD.0001.0033.0041)

28 The effect of the policies in paragraph 26 and the matters pleaded in paragraphs 27, 27B and 27C was that, by no later than 10 May 2012 and at all times during the Relevant Period until at least 15 November 2016; (a) AMP and/or the AMP Advice Licensees applied and implemented a business practice or policy (**Fees For No Service Policy**), to charge Ongoing Service Fees to certain orphan clients for Ongoing Services they did not and could not receive; and (b) the Fees For No Service Policy had impacted, or had the potential to impact, a significant number of customers of AMP and/or of the AMP Advice Licensees (together, Fees For No Service Policy Information).

29 Neither AMP did not notify nor the AMP Advice Licensees notified ASIC of the existence or application of the 90 Day Exception Policy, or the Ringfencing Policy or the No Monitoring Systems Information:

- (a) in the case of the 90 Day Exception Policy, prior to 17 October 2016; and

- (b) in the case of the Ringfencing Policy, prior to 3 May 2017; and  
 (c) in the case of the No Monitoring Systems Information, prior to 17 April 2018.

### *Consequences*

30 By reason of the matters pleaded in paragraphs 20 to 29, from the commencement of the Relevant Period until at least 15 November 2016, ~~AMP and/or the AMP Advice Licensees:~~

- (a) in contravention of s 912A(1)(a) of the Corporations Act, the AMP Advice Licensees failed to do all things necessary to ensure that the financial services covered by their licence/s were provided efficiently, honestly and fairly, in that the charging of Ongoing Service Fees to clients for Ongoing Services that were not, and could not, be provided was neither honest nor fair;

### **Particulars**

The AMP Advice Licensees failed to:

- (i) ensure that where a customer was charged Ongoing Service Fees by that AMP Advice Licensee, that customer was provided with the Ongoing Services that their former AMP Adviser had agreed to provide in return for the Ongoing Service Fees;
- (ii) ensure that where a customer (or former customer) of an AMP Adviser who was (or was previously) an authorised representative of that AMP Advice Licensee was not being provided with Ongoing Services by that AMP Adviser or the AMP Advice Licensee, they were not charged Ongoing Service Fees;
- (iii) take steps to eliminate or cease applying the 90 Day Exception Policy;
- (iv) take steps to eliminate or cease applying the Ringfencing Policy;
- (v) implement a system which monitored whether the AMP Licensees took the measures described in sub-paragraphs (i) and (ii); and
- (vi) implement a system which corrected any failure to take the measures described in sub-paragraphs (i) and (ii) once any such deficiency was identified.

Further particulars may be provided after discovery.

- (b) in contravention of s 912A(1)(c) of the Corporations Act, ~~failed to comply with financial services laws;~~ the AMP Advice Licensees:
- (i) failed to comply with sections 912A and 912D of the *Corporations Act* (for the reasons given in paragraphs 30(a) above and, 30(d) and (e) immediately below);
  - (ii) failed to comply with sections 12CB of the *ASIC Act* (for the reasons given in paragraph 30(g));
  - (iii) failed to comply with section 12DI of the *ASIC Act* (for the reasons given in paragraph 30(f));
- all of which are financial services laws;
- (c) ~~[Not used] in contravention of s 912A(1)(ca) of the Corporations Act, failed to take reasonable steps to ensure that the AMP Advisers complied with financial services laws;~~
- (d) in contravention of s 912A(1)(h) of the Corporations Act, the AMP Advice Licensees failed to have adequate risk management systems in place to prevent customers being charged Ongoing Service Fees where Ongoing Services were not, and could not, be provided;

#### **Particulars**

The Plaintiffs repeat the matters pleaded and particularised in 27A above in so far as they relate to the AMP Advice Licensees.

- (e) in contravention of s 912D(1B) of the Corporations Act, the AMP Advice Licensees failed to notify ASIC within 10 business days after becoming aware of the breaches, or likely breaches, referred to in (a) to (d) above;

#### **Particulars**

- (i) The breaches, or likely breaches, by the AMP Advice Licensees occurred:
  - (A) each time a customer (or former customer) of an AMP Adviser who was (or was previously) an authorised representative of that AMP Advice Licensee was charged an Ongoing Service Fee

- during a period when that customer did not have an assigned AMP Adviser;
- (B) when the 90 Day Exception Policy was adopted by the AMP Advice Licensee;
- (C) on each day that the 90 Day Exception Policy was in force and applied to at least one customer (or former customer) of an AMP Adviser who was (or was previously) an authorised representative of that AMP Advice Licensee;
- (D) when the Ringfencing Policy was adopted by the AMP Advice Licensee; and
- (E) on each day that the Ringfencing Policy was in force and applied to at least one customer (or former customer) of an AMP Adviser who was (or was previously) an authorised representative of that AMP Advice Licensee;
- (F) at each date that the systems of AMP and the AMP Advice Licensees were deficient in the manner described in paragraph 27A.
- (ii) These breaches extended over a number of years from in or about 2008 up to and including 15 November 2016 (at the earliest).
- (iii) In each case (other than that particularised at (i)(F)), ASIC was not notified within 10 days of the breach occurring. In relation to (i)(F) ASIC was not notified.
- (iv) In respect of AMP's awareness of the breaches (or likely breaches), the Plaintiffs refer to paragraphs 82, 82A and 84, below.
- (v) Further particulars may be provided after discovery.
- (f) in contravention of s 12DI(1) and/or (3) of the ASIC Act, the AMP Advice Licensees charged Ongoing Service Fees in circumstances where, at the time of charging those fees, they did not intend to supply the Ongoing Services for which the fees were charged, or intended to supply financial services that were materially different from the Ongoing Services for which the fees were charged, or had reasonable grounds for believing that they would not be able to supply the Ongoing Services for which the fees were charged (within a reasonable time or at all);



- (g) in contravention of s 12CB of the ASIC Act, AMP and/or the AMP Advice Licensees engaged in unconscionable conduct vis-à-vis the clients to whom the Ongoing Service Fees were charged without the Ongoing Services for which those fees were charged being supplied.

**Particulars**

- (i) While they were customers of an AMP Adviser, customers agreed to pay Ongoing Service Fees to the relevant AMP Advisers in exchange for advice.
- (ii) Charging a customer (in the case of the AMP Advice Licensees) or allowing a customer to be charged (in the case of AMP) for advice in circumstances where both AMP and the AMP Advice Licensees knew they were not going to provide that advice was contrary to basic ethics and morality.
- (iii) It was obvious that there was no lawful basis for AMP or the AMP Advice Licensees to apply the 90 Day Exception Policy.
- (iv) It was obvious that there was no lawful basis for AMP or the AMP Advice Licensees to apply the Ringfencing Policy.
- (v) The Fees For No Service Policy was implemented in the interests of AMP and the AMP Advice Licensees and not in the interests of the customer.
- (vi) As a result of the conduct of AMP and the AMP Advice Licensees, the customer was required to comply with a condition (being the continued payment of Ongoing Service Fees) which was not reasonably necessary for the protection of the legitimate interests of AMP or the AMP Advice Licensees.
- (vii) The affected customers could have obtained identical or equivalent financial services (being no Ongoing Services) without paying Ongoing Service Fees.
- (viii) For the reasons given in (ii)-(v), AMP and the AMP Advice Licensees did not act in good faith.
- (ix) The customers were in a much weaker bargaining position, and in a position of disadvantage, compared to AMP and the AMP Advice Licensees, including because:
  - (A) AMP and the AMP Licensees were substantially larger and with greater resources than the customers;

(B) The customers were not in a position to readily ascertain that they were being charged Ongoing Service Fees for no Ongoing Services.

(x) Further particulars may be provided after discovery.

31 By reason of the matters pleaded in paragraphs 27A-27C, 29 and 30 above (separately or in combination), AMP and/or the AMP Advice Licensees were exposed to a substantial risk of one or more of the following consequences:

- (a) liability to civil penalties or enforcement action by ASIC; and
- (b) civil proceedings for damages or compensation,

and thereby, or alternatively, AMP was exposed to a substantial risk of damage to its reputation and to the profits generated by the AMP Retail Advice Business.

### C. **ASIC BREACH-NOTICES REPORTS AND INVESTIGATION**

32 On or about 27 May 2015, AMP and a number of the AMP Advice Licensees lodged a ~~breach-notice-report~~ (**27 May 2015 Breach-Notice Report**) with ASIC and the Australian Prudential Regulation Authority (**APRA**) in which ~~it~~ they represented that:

- (a) ~~it~~ they had identified a “compliance issue” with several of the AMP Advice Licensees;
- (b) the compliance issue involved the charging of Ongoing Service Fees while customers were in the BOLR Pool;
- (c) the charging of Ongoing Service Fees while customers were in the BOLR Pool was the result of “processes” having “failed” in some instances;
- (d) these issues had been identified around one month prior to the date of the 27 May 2015 ~~Breach-Notice~~ Report; and
- (e) AMPFP and Hillross were notifying ASIC outside the mandatory 10-day reporting window because it had taken some time to identify if there was actually an issue.

#### **Particulars**

Letter from AMP (Michael **Paff**) to ASIC and APRA dated 27 May 2015. (AMP.6000.0001.1469)

33 The statements referred to in the preceding paragraph were false or misleading in a material particular because:

- (a) the failure to “turn off” fees was, at least in part, the result of: ~~deliberate conduct by AMP (Deliberate Conduct); or~~
  - (i) the 90 Day Exception Policy; and/or
  - (ii) the Ringfencing Policy,

which had been applied and implemented since at least the commencement of the Relevant Period (Policy Conduct); and
- (b) ~~[not used] alternatively to sub-paragraph (a), the failure to “turn off” fees was, at least in part, the result of:~~
  - ~~(i) — the 90 Day Exception Policy; and/or~~
  - ~~(ii) — the Ringfencing Policy,~~

~~which had been applied and implemented since at least the commencement of the Relevant Period (Policy Conduct); and~~
- (c) the issue the subject of the 27 May 2015 Breach Notice Report had been identified earlier than one month prior to the date of the notice, including by reason of the matters set out at paragraphs (b)(i) to (ii) above.

#### Particulars

- (i) In relation to (a), ~~transcript of the Royal Commission (Transcript) Transcript~~ Transcript at T1090.15-26.
- (ii) In relation to (b), Transcript at T1090.34-44.
- (iii) In relation to (c), paragraph 26 above and Transcript at T1091.1-9.
- (iv) Further and in the alternative, the Plaintiffs refer to and repeat the particulars of AMP’s awareness at paragraph 82 below.

34 On or about 19 June 2015, AMP and a number of the AMP Advice Licensees represented to ASIC that:

- (a) 29,000 customer files needed to be reviewed because a “process issue” had failed leading to Ongoing Service Fees not being turned off; and

- (b) processes had been put in place to ensure that no new customers would be added to the issue during the remediation period.

**Particulars**

Letter from AMP to ASIC dated 19 June 2015 (**19 June 2015 ASIC Letter**). (AMP.0001.0044.2936)

35 The statements referred to in the preceding paragraph were false or misleading in a material particular because:

- (a) in relation to sub-paragraph 34(a), ~~the Deliberate Conduct and / or the Policy Conduct~~; and
- (b) in relation to sub-paragraph 34(b), AMP and/or the AMP Advice Licensees had continued to apply and implement those policies.

**Particulars**

Transcript at T1091.20-47.

36 On or about 23 June 2015, AMP represented to ASIC that:

- (a) AMP's adviser audit process had recently been reviewed by PricewaterhouseCoopers (**PwC**);
- (b) PwC had not identified any systemic issues regarding the provision of Ongoing Services by AMP Advisers; and
- (c) the Ongoing Service Fees did not relate to personal advice or annual advice reviews.

**Particulars**

Letter from AMP to ASIC dated 23 June 2015 (**23 June 2015 ASIC Letter**). (AMP.1000.0001.0921)

37 The statements referred to in sub-paragraphs 36(b) and (c) were false or misleading in a material particular because:

- (a) in relation to sub-paragraph 36(b), PwC did not say that there were no systemic issues regarding the provision of Ongoing Services, but in fact:
  - (i) indicated that potential systemic issues would not be identified without conducting a root cause analysis of all incidents and breaches; and

- (ii) recommended that a root cause analysis of all incidents and breaches be conducted to determine whether they are indicative of systemic issues; and
- (b) in relation to sub-paragraph 36(c), Ongoing Service Fees did relate to personal advice services.

**Particulars**

- (i) In relation to (a), the PwC report titled “AMP financial advice review” dated March 2015 (**PwC Report**) at pages iv and 38 (AMP.6000.0003.8310 at .8319 and .8353) and Transcript at T1108.16-24.
- (ii) In relation to (b), Transcript at T1110.6-22.

- 38 On or about 17 August 2015, AMP and a number of the AMP Advice Licensees represented to ASIC that requests were made to product issuers by the AMP Advice Licensees to have the Ongoing Service Fees “turned off” but the fees continued to be charged after the servicing arrangement had concluded as a result of “errors” on the part of the AMP Advice Licensees and product issuers.

**Particulars**

~~Letter from AMP to ASIC dated 17 August 2015 (**17 August 2015 ASIC Letter**)~~ 17 August 2015 ASIC Letter. (AMP.0001.0049.0708)

- 39 The statement referred to in the preceding paragraph was false or misleading in a material particular because Ongoing Service Fees continued to be charged once the service arrangement had concluded by reason of ~~the Deliberate Conduct and / or the Policy Conduct.~~

**Particulars**

Transcript at T1096.16-26.

- 40 On or about 31 August 2015, AMP and a number of the AMP Advice Licensees represented to ASIC that, since January 2014, the fee arrangements had been changed so that Ongoing Service Fees were immediately cancelled once the AMP Advice Licensee purchased the account from the AMP Adviser and the customer was placed into the BOLR Pool.

**Particulars**

Letter from AMP to ASIC dated 31 August 2015 (**31 August 2015  
ASIC Letter**). (AMP.1000.0001.8157)

- 41 The statement referred to in the preceding paragraph was false or misleading in a material particular because Ongoing Service Fees were not immediately cancelled once the AMP Advice Licensee purchased the account from the AMP Adviser.

**Particulars**

Transcript at T1092.42-T1093.7.

- 42 On or about 9 September 2015, AMP represented to ASIC that the issues the subject of the 27 May 2015 Breach NoticeReport related to “an administrative error in not turning off the fees on terminated arrangements”.

**Particulars**

Email from AMP to ASIC dated 9 September 2015.  
(AMP.6000.0010.0440 at .0501)

- 43 The statement referred to in the preceding paragraph was false or misleading in a material particular because Ongoing Service Fees were not not “turned off” because of administrative errors but rather by reason, at least in part, of the ~~Deliberate Conduct and / or the Policy Conduct~~.

**Particulars**

Transcript at T1117.26-39.

- 44 On or about 17 September 2015, AMP represented to ASIC that:
- (a) template letters (styled “Customer letter template A” and “Customer letter template B”) were sent to customers whose AMP Adviser had ceased to be an authorised representative of an AMP Advice Licensee and who had required the AMP Advice Licensee to purchase the AMP Adviser’s customer register as part of an AMP Advice Licensee “buyback arrangement” where there was an Ongoing Service Fee arrangement in place between the customer and the AMP Adviser;
  - (b) the template letters sent to such customers represented that the Ongoing Service Fees would be removed because AMP was no longer able to provide the services in respect of which the fees were charged; and

- (c) the “normal process” was for Ongoing Service Fees to be “turned off” once the AMP Advice Licensee purchased the customer book.

**Particulars**

~~Powerpoint slides~~ Document titled “Ongoing service fee remediation” for the purposes of a meeting with ASIC (AMP.0001.0017.3286 at pp .3288, .3290, .3291, .3292).

- 45 The statements referred to in the preceding paragraph were false or misleading in a material particular because:

- (a) in relation to sub-paragraphs (a) and (b), such letters had not been sent to all such customers and Ongoing Service Fees had not been turned off in relation to all such customers; and
- (b) in relation to sub-paragraph (c), the normal process was not for Ongoing Service Fees to be “turned off” once the AMP Advice Licensee purchased the customer book, including by reason of the Policy Conduct.

**Particulars**

- (i) In relation to (a), Transcript at T1096.43-T1097.14 and paragraphs 26 and ~~28~~ 27 above.
- (ii) In relation to (b), Transcript at T1097.20-26 and the matters set out at paragraph 26 above.

- 46 On or about ~~15~~ 1 October 2015, AMP and a number of the AMP Advice Licensees represented to ASIC that:

- (a) Ongoing Service Fees were not “turned off” by reason of administrative processes that failed; and
- (b) when customers were placed in the BOLR Pool, instructions were issued to the AMP product issuer to terminate Ongoing Service Fees.

**Particulars**

Undated response to ASIC’s Notice of Direction under s 912C(1) of the Corporations Act ~~referring to a response deadline of 15,~~ sent on or about 1 October 2015 (15 October 2015 ASIC Letter). (AMP.1000.0001.4754)

47 The statements referred to in the preceding paragraph were false or misleading in a material particular because:

- (a) in relation to sub-paragraph (a), the failure to “turn off” the Ongoing Service Fees was not because of administrative failures, but rather, at least in part, by reason of the Policy Conduct; and
- (b) in relation to sub-paragraph (b), instructions to terminate Ongoing Service Fees were in some cases not issued to the AMP product issuer by reason of the Policy Conduct.

**Particulars**

- (i) In relation to (a), Transcript at T1098.1-15 and T1103.24-37.
- (ii) In relation to (b), Transcript at T1103.42-T1105.15.
- (iii) In relation to (a) and (b), see paragraph 26 above.

47A On or about 26 November 2015, AMP and a number of the AMP Advice Licensees made the following statements to ASIC:

- (a) “In aggregate, as best we have been able to establish, affected customers were sent letters. The AMP Advice licensee back office seeks confirmation from the licensee's Practice Manager and then retains this confirmation for each exiting adviser exercising the licensee buyback facility”; and
- (b) “There may be circumstances where customer contact details were wrong or had changed and the selling adviser was not aware, therefore letters may not have been received by some of the affected customers.”

**Particulars**

Letter from AMP to ASIC dated 26 November 2015 (26 November 2015 ASIC Letter). (AMP.1000.0001.4844 at .4845)

47B The statements referred to in the preceding paragraph were misleading in a material particular because: (a) they conveyed a representation to any reasonable recipient of the letter that AMP and the AMP Advice Licensees were able to, and had in fact established with reasonable certainty that most customers who had been charged fees for no service had received a letter notifying them that services could no longer be provided and that ongoing servicing arrangements had been terminated; and (b) in fact, AMP and AMP Advice Licensees could not be satisfied that documentation for BOLR



transactions, including customer files, could be located and had no visibility into whether or not letters were in fact sent to customers.

**Particulars**

- (i) Transcript at T1118.17-20
- (ii) 2017 Clayton Utz Report, [193], [199]-[201]. (AMP.6000.0010.0440 at .0511-.0513)

48 On or about 14 December 2015, AMP and a number of the AMP Advice Licensees represented to ASIC that:

- (a) an administration error identified in approximately 24% of cases meant that Ongoing Service Fees were not “switched off”;
- (b) the AMP Advice Licensees had contacted customers by letter, issued by the AMP Adviser, and advised that the customer was to notify the customer’s external provider to “turn off” the Ongoing Service Fees; and
- (c) where the customer did not provide notification in accordance with (b), the AMP Advice Licensees would continue to receive fees due to inadequate processes for checking.

**Particulars**

Response to ASIC’s Notice of Direction under s 912C(1) of the Corporations Act (**14 December 2015 ASIC Letter**). (AMP.1000.0001.4781)

49 The statements referred to in the preceding paragraph were false or misleading in a material particular because:

- (a) in relation to sub-paragraphs (a) and (c), Ongoing Service Fees continued to be charged by reason of ~~the Deliberate Conduct and / or the Policy Conduct~~; and
- (b) in relation to sub-paragraph (b), letters had not been sent to all customers.

**Particulars**

- (i) In relation to (a), Transcript at T1119.5-20 and T1120.13-20, and the matters set out in paragraph 26 above.
- (ii) In relation to (b), Transcript at T1119.34-T1120.11.

50 On or about 23 November 2016, AMP and a number of the AMP Advice Licensees represented to ASIC that Ongoing Service Fees continued to be charged after January 2014 by reason of an exception to the “normal” policy, such that Ongoing Service Fees

were charged where an on-sale to another AMP Adviser was scheduled to occur within 90 days or less of the customer being placed in the BOLR Pool.

**Particulars**

Letter from AMP to ASIC dated 23 November 2016 (**23 November 2016 ASIC Letter**). (AMP.6000.0010.0015)

- 51 The statement referred to in the preceding paragraph was false or misleading in a material particular because the statement did not disclose that AMP also applied the Ringfencing Policy.

**Particulars**

Transcript at T1125.8-20.

- 52 On or about 3 May 2017, AMP represented to ASIC that AMP only became aware of other instances in which orphan clients were charged Ongoing Service Fees where no Ongoing Services were provided because they were not placed in the BOLR Pool (referring to the application of the Ringfencing Policy) after its review into the 90 Day Exception Policy.

**Particulars**

Letter from AMP to ASIC dated 3 May 2017 (**3 May 2017 Breach Report**). (AMP.6000.0001.1894)

- 53 The statement referred to in the preceding paragraph was false or misleading in a material particular because AMP had been aware of the Ringfencing Policy from at least November 2016, and indeed from no later than July 2011.

**Particulars**

- (a) Transcript at T1123.21-37 and T1126.15-45.
- (b) Matters pleaded and particularised in paragraph 82 below.

- 54 On or about ~~47~~16 October 2017, AMP provided ASIC with a copy of:
- (a) a report prepared by Clayton Utz dated 16 October 2017 in relation to, among other things, the 90 Day Exception Policy, the Ringfencing Policy and misrepresentations to ASIC about those policies or business practices (**2017 Clayton Utz Report**) (AMP.6000.0010.0440); and

- (b) the letter of instruction dated 5 June 2017 from AMP to Clayton Utz engaging it to undertake an external and independent investigation into the matters raised in sub-paragraph (a) and to produce a report setting out its findings and advice (**Clayton Utz Letter of Instruction**) (AMP.6000.0033.0001).

#### Particulars

- (i) The 2017 Clayton Utz Report and the Clayton Utz Letter of Instruction were initially provided to ASIC by AMP during a meeting between Catherine **Brenner**, Craig **Meller**, Brian **Salter** and Regan of AMP and Greg **Medcraft** and Peter **Kell** of ASIC that occurred on ~~4~~16 October 2017 (**16 October 2017 ASIC Meeting**).
- (ii) Soft copies of the 2017 Clayton Utz Report and the Clayton Utz Letter of Instruction were subsequently provided to ASIC in an email from Ms Baker Cook of AMP to Ms Zhang of ASIC on 17 October 2017.

55 At the time of providing the 2017 Clayton Utz Report and the Clayton Utz Letter of Instruction to ASIC, AMP represented to ASIC that:

- (a) Clayton Utz had conducted an external and independent investigation into the matters the subject of the 2017 Clayton Utz Report;
- (b) the 2017 Clayton Utz Report was the product of an external and independent investigation conducted by Clayton Utz; and
- (c) the findings expressed in the 2017 Clayton Utz Report were the product of an external and independent investigation by Clayton Utz and had not been influenced or altered by AMP.

#### Particulars

- (i) The representations were both express and implied.
- (ii) In so far as they were express the representations were conveyed:
- (A) in writing in an email from AMP (Salter) to ASIC (Medcraft, Kell) and copied to Brenner dated 4 October 2017 (**4 October 2017 ASIC Email**) (AMP.6000.0054.6503);
- (B) orally by one or more of AMP's representatives to ASIC representatives during the ~~4~~16 October 2017 ASIC Meeting; and

(C) in writing in the Clayton Utz Letter of Instruction (AMP.6000.0033.0001).

(iii) In each case, the representation that the 2017 Clayton Utz Report "had not been influenced or altered by AMP" was conveyed expressly by the references to the report being "independent" and by the failure of AMP to qualify that statement;

(iv) In so far as they were implied the representations were conveyed by the provision of the Clayton Utz Letter of Instruction by AMP to ASIC during the 17~~16~~ October 2017 ASIC Meeting and by subsequent emails on 17 October 2017 (ASIC.0018.0001.3383) without correcting or qualifying the statement in that document to the effect that Clayton Utz was to conduct "an external and independent investigation".

56 Each of the representations referred to in the preceding paragraph was ~~were~~ false or misleading in a material particular because:

- (a) Clayton Utz provided to AMP 25 drafts of the 2017 Clayton Utz Report and AMP provided comments on those drafts;
- (b) employees and officers of AMP and Clayton Utz participated in telephone calls about the contents of the drafts of the 2017 Clayton Utz Report (other than as part of the investigation process);
- (c) employees and officers of AMP marked-up or suggested substantive amendments to the drafts of the 2017 Clayton Utz Report, which Clayton Utz adopted; and
- (d) by reason of the matters set out in (a) to (c), the 2017 Clayton Utz Report and the findings expressed in it were not the product of an entirely external and independent investigation.

### **Particulars**

Transcript at T1171-T1196.

57 By reason of the matters at:

- (a) paragraphs 32 and 33, on or around 27 May 2015;
- (b) paragraphs 34 and 35, on or around 19 June 2015;
- (c) paragraphs 36 and 37, on or around 23 June 2015;
- (d) paragraphs 38 and 39, on or around 17 August 2015;

- (e) paragraphs 40 and 41, on or around 31 August 2015;
- (f) paragraphs 42 and 43, on or around 9 September 2015;
- (g) paragraphs 44 and 45, on or around 17 September 2015;
- (h) paragraphs 46 and 47, on or around ~~15~~ 1 October 2015;
- (hh) paragraphs 47A and 47B, on or around 26 November 2015;
- (i) paragraphs 0 and 49, on or around 14 December 2015;
- (j) paragraphs 50 and 51, on or around 23 November 2016;
- (k) paragraphs 52 and 53, on or around 3 May 2017; and
- (l) paragraphs 53(a), 55 and 56, on or around 16-17 October 2017,

AMP made misleading statements to ASIC in relation to the charging of Ongoing Service Fees.

58 By reason of the matters pleaded in paragraphs 32 to 57 above, AMP had contravened, or alternatively was exposed to a substantial risk of having contravened:

- (a) s 64(1) of the ASIC Act; and/or
- (b) s 1308(2) and s 1308(3) of the Corporations Act.

59 By reason of the matters pleaded in paragraph 58, if and when the matters alleged in paragraphs 32 to 56 above (separately or in combination) came to light, AMP was exposed to a substantial risk of:

- (a) enforcement action by ASIC; and/or
- (b) damage to its reputation and to the profits generated by the AMP Retail Advice Business.

#### **D. RECEIPT OF LEGAL ADVICE**

60 Prior to and during the Relevant Period, AMP received legal advice from internal AMP lawyers that the Fees For No Service Policy was contrary to law.

#### **Particulars**

- (i) Mr Galletta provided such legal advice in August 2010 and February 2013 (2017 Clayton Utz Report at [71]) (AMP.6000.0010.0440 at .0470).

- (ii) Mr Guggenhiemer and Mr Helmich received such advice in January 2011 that the Fees For No Service Policy involved a breach of the law that required an ASIC breach notification (2017 Clayton Utz Report at [75]) (AMP.6000.0010.0440 at .0472).
- (iii) Ms Turner provided such legal advice in May and June 2013 (2017 Clayton Utz Report at [73]) (AMP.6000.0010.0440 at .0471).
- (iv) Ms Basile provided such legal advice in June 2013 (2017 Clayton Utz Report at [74]) (AMP.6000.0010.0440 at .0472).
- (v) Ms Turner provided further legal advice to that effect in May 2015 (2017 Clayton Utz Report at [81]-[82]) (AMP.6000.0010.0440 at .0473).
- (vi) Ms Turner provided further legal advice to that effect in June 2015 (2017 Clayton Utz Report at [88]-[89]) (AMP.6000.0010.0440 at .0477).
- (vii) Further particulars may be provided following discovery.

61 AMP ignored the legal advice referred to in paragraph 60 and continued to apply the Fees For No Service Policy (and the information in paragraphs 60 and 61 is referred to as the **Receipt of Legal Advice Information**).

**Particulars**

See 2017 Clayton Utz Report at [90] and ~~[96]~~ [95] (AMP.6000.0010.0440 at .0479 and .0482).

**E. ROYAL COMMISSION DISCLOSURES**

62 On 16 and 17 April 2018, during the course of the Royal Commission hearings, AMP publicly disclosed:

- (a) the matters pleaded in paragraphs 26 to ~~28~~ 27 above;

**Particulars**

Regan Statement at [130]ff and Transcript at T1061ff.

- (b) the matters pleaded in paragraph ~~60~~ 27A above;

**Particulars**

~~2017 Clayton Utz Report at [68]ff (being Tab 3 of Exhibit 'AGR-1' to the Regan Statement) and Transcript at T1071.37-T1073.45. Transcript at T1070.21-26~~

- (c) ~~that there were 196 events across the AMP Advice Licensees where AMP Advisers failed to provide customers with services for which they had paid during the period from 1 June 2008 to 30 June 2016 the matters pleaded in paragraph 60-61 above;~~

**Particulars**

~~Transcript at T1018.4-6-2017 Clayton Utz Report at [68]ff  
(AMP.6000.0010.0440 at .0477) and Transcript at T1071.37-T1073.45.~~

- (d) ~~[not used] that there were six events which involved AMP Advice Licensees continuing to charge customers fees for services that were not provided during the period from 1 July 2008 to 30 June 2015, where:~~
- ~~(i) — approximately 14,000 customers were charged Ongoing Service Fees after their AMP Adviser sold their customer register to an AMP Advice Licensee, and in some cases this was because of the 90 Day Exception Policy;~~
  - ~~(ii) — approximately 10,685 customers were charged Ongoing Service Fees after they were ringfenced following their AMP Adviser's departure from AMP;~~
  - ~~(iii) — approximately 3,108 customers were charged Ongoing Service Fees after an AMP Adviser's authorisation had been terminated;~~
  - ~~(iv) — approximately 1,167 customers were charged Ongoing Service Fees where the customer had been acquired by one AMP practice from another;~~
  - ~~(v) — approximately 27 customers were charged Ongoing Service Fees where an AMP Advice Licensee had acquired the rights associated with a customer register but provided no Ongoing Services; and~~
  - ~~(vi) — there was possible misconduct in relation to AMP's reporting to ASIC of its charging of fees for no service.~~

**Particulars**

~~Transcript at T1018.7-44.~~

- 63 Further and in the alternative, over the course of 16 and 17 April 2018, during the course of the Royal Commission hearings, AMP admitted the allegations made at paragraph 57 above in relation to the misleading of ASIC.

**Particulars**

Transcript at T1090.10-26, T1090.34-47, T1091.1-9, T1091.20-36, T1091.41-47, T1092.44-T1093.4, T1096.16-26, T1096.45-T1097.11, T1097.15-26, T1098.1-9, T1105.4-12, T1108.18-21, T1109.16-19, T1110.10-22, T1117.27-39, T1118.11-22, T1119.5-20, T1120.9-38, T1126.25-T1127.8

- 64 Following these disclosures, AMP's share price declined substantially.

**Particulars**

- (i) On 16 April 2018, the opening price of AMP Shares was \$4.79, and increased to an intra-day high of \$4.80. At the close of trade on 16 April 2018 the closing price of AMP Shares was \$4.76. The total traded volume was 11,343,941 shares.
- (ii) On 17 April 2018, AMP Shares opened at \$4.74 and closed at \$4.55, on a traded volume of 20,183,843 shares.
- (iii) The decline in share price between close of trade on 16 April 2018 and close of trade on 17 April 2018 was 5.01%.
- (iv) On 18 April 2018, AMP Shares opened at \$4.53 and closed at \$4.45, on a traded volume of 19,488,293 shares.
- (v) The decline in share price between close of trade on 17 April 2018 and close of trade on 18 April 2018 was 2.1%.
- (vi) Between 18 April 2018 and 23 April 2018 the price of AMP Shares further declined to a closing price on 23 April 2018 of \$4.17.
- (vii) During the periods set out below there were further substantial declines in the price of AMP Shares which were due, in part, to the matters pleaded above, and specifically, by the revelation of the true extent and impact of the damage to AMP's business caused by the reputational damage resulting from the matters disclosed in Regan's testimony before the Royal Commission:



- (A) between 24 and 30 October 2018 the price of AMP Shares declined from a closing price on 24 October 2018 of \$3.31 to a closing price on 30 October 2018 of \$2.31;
- (B) between 18 January and 4 February 2019 the price of AMP Shares declined from a closing price on 18 January 2019 of \$2.66 to a closing price on 4 February 2019 of \$2.21;
- (C) between 13 and 18 February 2019 the price of AMP Shares declined from a closing price on 13 February 2019 of \$2.44 to a closing price on 18 February 2019 of \$2.15; and
- (D) between 19 and 28 March 2019 the price of AMP Shares declined from a closing price on 19 March 2019 of \$2.28 to a closing price on 28 March 2019 of \$2.09.

## F. AMP'S KNOWLEDGE

### *Group Leadership Team*

65 At all material times during the Relevant Period:

- (a) AMP's reporting structure included the "GLT; AMP Group Leadership Team" (**Group Leadership Team**);
- (b) the Group Leadership Team:
  - (i) reportedly directly to the Chief Executive Officer and Managing Director of AMP;
  - (ii) was ultimately responsible for implementing the policies and strategies set by the AMP Board and for running the general operations and financial business of the AMP Group.

### *AMP's Directors, Officers and Employees*

66 Brenner was:

- (a) from June 2010 to the end of the Relevant Period, a director of AMP;
- (b) from 24 June 2016 to the end of the Relevant Period, Chairman of AMP; and
- (c) by reason of the above, at all times in the Relevant Period:
  - (i) up to 1 May 2013, a director of AMP; and

- (ii) at and from 1 May 2013, an officer of AMP,  
within the meaning of ASX Listing Rule 19.12.

67 Ms Sarah **Britt** was:

- (a) from April 2013 to January 2017, Senior Legal Counsel, Litigation & Dispute Resolution at AMP;
- (b) from February 2017 to the end of the Relevant Period, Head of Advice Compliance at AMP; and
- (c) by reason of the matters identified in (b), from February 2017 to the end of the Relevant Period an officer of AMP within the meaning of ASX Listing Rule 19.12.

#### **Particulars**

It is to be inferred from the nature and seniority of the role referred to in (b) that Britt was a person:

- (A) who made or participated in making decisions which affected a substantial part of the business of AMP; and/or
- (B) who had the capacity to affect significantly AMP's financial standing.

68 Mr Robert **Caprioli** was:

- (a) from on or around August 2011 to 31 December 2013, "Director, Banking and Wealth Management Products" for AMP;
- (b) from 1 January 2014 to 31 December 2016:
  - (i) Group Executive, Advice and Banking;
  - (ii) a member of the Group Leadership Team; and
  - (iii) responsible for AMP's advice, banking and corporate superannuation business portfolios;
- (c) at all material times from no later than 1 January 2014 to 31 December 2016, within the "inner core" of executives or senior employees of AMP who figured centrally in the BOLR decision making;

#### **Particulars**

2017 Clayton Utz Report (~~AMP.6000.0010.0440~~), para 13(b).  
(AMP.6000.0010.0440 at .0445)

- (d) by reason of the matters identified in (a), (b) and (c), at all times in the Relevant Period until 31 December 2016, an officer of AMP within the meaning of ASX Listing Rule 19.12;
- (e) further and in the alternative, by reason of the matters identified in (b) and (c), at all times in the Relevant Period from no later than 1 January 2014 until 31 December 2016, an officer of AMP within the meaning of ASX Listing Rule 19.12.

#### **Particulars**

- (i) The Plaintiffs repeat paragraph 65.
- (ii) Further and in the alternative, by reason of the matters identified in (a), (b) and/or (c) it is to be inferred that Caprioli was a person:
  - (A) who made or participated in making decisions which affected a substantial part of the business of AMP; and/or
  - (B) who had the capacity to affect significantly AMP's financial standing.

69 Ms Marilena **Cozzolino** was:

- (a) as at 17 October 2016 and 23 November 2016, Head of Strategic Advice Solutions and Compliance;
- (b) at least at those times, an officer of AMP within the meaning of ASX Listing Rule 19.12.

#### **Particulars**

It is to be inferred from the nature and seniority of the role referred to in (a) that Cozzolino was a person:

- (A) who made or participated in making decisions which affected a substantial part of the business of AMP; and/or
- (B) who had the capacity to affect significantly AMP's financial standing.

70 Ms Saskia **Goedhart** was:

- (a) from July 2015 to 9 February 2018, Group Chief Risk Officer of AMP;
- (b) from 1 July 2017 to 9 February 2018, a member of the Group Leadership Team;

- (c) by reason of the matters identified in (a), from July 2015 to 9 February 2018, an officer of AMP within the meaning of ASX Listing Rule 19.12;
- (d) further and in the alternative, by reason of the matters identified in (b), from 1 July 2017 to 9 February 2018, an officer of AMP within the meaning of ASX Listing Rule 19.12.

#### **Particulars**

- (i) As to (a) and (c), it is to be inferred from the nature and seniority of Goedhart's role as Group Chief Risk Officer of AMP that she was a person:
  - (A) who made or participated in making decisions which affected a substantial part of the business of AMP; and/or
  - (B) who had the capacity to affect significantly AMP's financial standing.
- (ii) As to (b) and (d), the Plaintiffs repeat paragraph 65.

71 Mr Michael **Guggenheimer** was:

- (a) from 16 May 2006 to 31 March 2017, Managing Director of AMPFP (a wholly owned subsidiary of AMP Financial Services Limited (**AMPFS**), which was a wholly owned subsidiary of AMP), and responsible for its operations and conduct;
- (b) during the Relevant Period, a director of 23 AMP subsidiaries, including a number of AMP Advice Licensees;
- (c) by reason of (b), a senior member of the AMP Retail Advice Business;
- (d) from 20 January 2014 to 31 March 2017, Managing Director of Hillross (a wholly owned subsidiary of AMP) and responsible for its operations and conduct;
- (e) from about 28 April 2017 to the end of the Relevant Period, Executive Director, Advice and responsible for the operations and conduct of the AMP Advice Licensees;
- (f) at all material times from no later than 1 January 2014 to 31 December 2016, within the "inner core" of executives or senior employees of AMP who figured centrally in the BOLR decision making;

### Particulars

2017 Clayton Utz Report (~~AMP.6000.0010.0440~~), para 13(b) (AMP.6000.0010.0440 at .0445).

- (g) by reason of (a), (b) and/or (c) above (alone or in combination), at all times in the Relevant Period:
- (i) up to 1 May 2013, an executive officer of AMP within the meaning of ASX Listing Rule 19.12; and
  - (ii) from 1 May 2013 to 1 January 2014, an officer of AMP within the meaning of ASX Listing Rule 19.12;
- (h) further and in the alternative, by reason of (a), (b), (c), (d), (e) and/or (f) above (alone or in combination), at all times in the Relevant Period at and from 1 January 2014, an officer of AMP within the meaning of ASX Listing Rule 19.12.

### Particulars

It is to be inferred from the matters identified in (a), (b) and/or (c) (alone or in combination) or, further and in the alternative, from the matters identified in (a), (b), (c), (d), (e) and/or (f) (alone or in combination) that Guggenheimer was a person:

- (A) who made or participated in making decisions which affected a substantial part of the business of AMP; and/or
- (B) who had the capacity to affect significantly AMP's financial standing.

72 Mr Steven **Helmich** was:

- (a) from 7 December 1995 to 4 September 2015, a director of AMPFP;
- (b) from 2000 to 20 January 2014:
  - (i) Director, Advice & Services of AMP; and
  - (ii) responsible for the operations and conduct of the AMP Advice Licensees;
- (c) from no later than 20 January 2014 to 5 September 2015:
  - (i) Executive Director, Financial Planning of AMP; and

- (ii) responsible for the operations and conduct of the AMP Advice Licensees; and
- (d) by reason of (a), (b) and/or (c) (alone or in combination), at all times in the Relevant Period:
  - (i) up to 1 May 2013, an executive officer; and
  - (ii) at and from 1 May 2013 until 5 September 2015, an officer, of AMP within the meaning of ASX Listing Rule 19.12.

#### **Particulars**

It is to be inferred from the matters identified in (a), (b) and/or (c) (alone or in combination) that Helmich was a person:

- (A) who made or participated in making decisions which affected a substantial part of the business of AMP; and/or
- (B) who had the capacity to affect significantly AMP's financial standing.

73 Mr Peter **Himmelhoch** was:

- (a) from November 2010 to present, Director FOFA and Advice Integration for AMP; and
- (b) by reason of (a), at all times in the Relevant Period:
  - (i) up to 1 May 2013, a director and/or executive officer; and
  - (ii) from 1 May 2013, an officer, of AMP within the meaning of ASX Listing Rule 19.12.

#### **Particulars**

It is to be inferred from the nature and seniority of the role referred to in (a) that Himmelhoch was a person:

- (A) who made or participated in making decisions which affected a substantial part of the business of AMP; and/or
- (B) who had the capacity to affect significantly AMP's financial standing.

74 Mr Gordon **Lefevre** was:

- (a) from 28 January 2014 to the end of the Relevant Period:
- (i) Chief Financial Officer of AMP;
  - (ii) a member of the Group Leadership Team; and
  - (iii) a “current nominate executive” of AMP; and

**Particulars of (a)(iii)**

AMP 2014 Annual Report, p 15.

- (b) at all material times from 28 January 2014 to the end of the Relevant Period, an officer of AMP within the meaning of ASX Listing Rule 19.12.

**Particulars**

- (i) The Plaintiffs repeat paragraph 65.
- (ii) Further and in the alternative, it is to be inferred from the nature and seniority of Lefevre’s role and his executive title that he was a person:
  - (A) who made or participated in making decisions which affected a substantial part of the business of AMP; and/or
  - (B) who had the capacity to affect significantly AMP’s financial standing.

75 Meller:

- (a) was from on or around 1 October 2007 to 31 December 2013, the Managing Director of AMPFS, a wholly owned subsidiary of AMP;
- (b) was from at least 1 July 2011 to 1 January 2014, a named executive of AMP;

**Particulars**

- (i) AMP 2012 Annual Report, p 123.
- (ii) AMP 2013 Annual Report, p 130.
- (c) from 1 January 2014 to 20 April 2018;
  - (i) was Chief Executive Officer and Managing Director of AMP;
  - (ii) as such, was primarily responsible for decisions affecting the whole or a substantial part of the business of AMP; and
  - (iii) reported to the board of AMP; and

- (d) was, by reason of the matters identified in (a) and/or (b):
- (i) at all times in the Relevant Period until 1 May 2013, an executive officer of AMP within the meaning of ASX Listing Rule 19.12; and
  - (ii) at all times in the Relevant Period after 1 May 2013 to 1 January 2014, an officer of AMP within the meaning of ASX Listing Rule 19.12;
- (e) further and in the alternative, was by reason of the matters identified in (c), at all times in the Relevant Period after 1 January 2014, an officer of AMP within the meaning of ASX Listing Rule 19.12.

#### **Particulars**

As to (d), it is to be inferred from the matters identified in (a) and/or (b) that, from the commencement of the Relevant Period to 1 January 2014, Meller was a person:

- (A) who made or participated in making decisions which affected a substantial part of the business of AMP; and/or
- (B) who had the capacity to affect significantly AMP's financial standing.

76 Mr Justin **Morgan** was:

- (a) from 4 March 2013 to 11 December 2017, Head of Licensee Value Management for AMP; and
  - (b) by reason of (a), at all times in the Relevant Period:
    - (i) from 4 March 2013 to 1 May 2013, an executive officer; and
    - (ii) from 1 May 2013 to 11 December 2017, an officer,
- of AMP within the meaning of ASX Listing Rule 19.12.

#### **Particulars**

It is to be inferred from the nature and seniority of the role referred to in (a) that Morgan was a person:

- (A) who made or participated in making decisions which affected a substantial part of the business of AMP; and/or
- (B) who had the capacity to affect significantly AMP's financial standing.



77 Paff was:

- (a) from December 2014 to about 31 March 2017, Director, Channel Services for AMP;
- (b) at all material times from no later than 1 January 2014 to 31 December 2016, within the “inner core” of executives or senior employees of AMP who figured centrally in the BOLR decision making;

**Particulars**

2017 Clayton Utz Report (~~AMP.6000.0010.0440~~), para 13(b)  
(AMP.6000.0010.0440 at .0445).

- (c) from about 31 March 2017 to the end of the Relevant Period, Managing Director AMPFP & AMP Advice;
- (d) a director of 14 AMP subsidiaries during the Relevant Period, including a number of AMP Advice Licensees;
- (e) by reason of (a), (b) and/or (d), at all times in the Relevant Period from at least 1 January 2014 (or alternatively, December 2014), an officer of AMP within the meaning of ASX Listing Rule 19.12;
- (f) alternatively, by reason of (c), alone or in combination with any of (a), (b) or (d), at all times in the Relevant Period from 31 March 2017, an officer of AMP within the meaning of ASX Listing Rule 19.12.

**Particulars**

It is to be inferred from the matters referred to in (e) or (f) that Paff was a person:

- (A) who made or participated in making decisions which affected a substantial part of the business of AMP; and/or
- (B) who had the capacity to affect significantly AMP’s financial standing.

78 Regan was:

- (a) from August 2007 to 31 December 2016, Managing Director, New Zealand for AMP;
- (b) from 1 January 2017 to the end of the Relevant Period:
  - (i) Group Executive, Advice and New Zealand;

- (ii) a member of the Group Leadership Team; and
- (iii) responsible for the operations and conduct of the AMP Advice Licensees;
- (c) during the Relevant Period, a director of 15 AMP subsidiaries including AMP Advice Licensees;
- (d) by reason of the matters identified in (a), (b) and (c), at all times in the Relevant Period:
  - (i) until 1 May 2013, an executive officer of AMP within the meaning of ASX Listing Rule 19.12; and
  - (ii) from 1 May 2013, an officer of AMP within the meaning of ASX Listing Rule 19.12;
- (e) alternatively, by reason of the matters identified in (b), at all times in the Relevant Period from 1 January 2017, an officer of AMP within the meaning of ASX Listing Rule 19.12.

#### **Particulars**

- (i) It is to be inferred from the nature and seniority of the roles referred to in (a) and (c) that Regan was a person:
  - (A) who made or participated in making decisions which affected a substantial part of the business of AMP; and/or
  - (B) who had the capacity to affect significantly AMP's financial standing.
- (ii) As to the significance of Regan's membership of the Group Leadership Team after 1 January 2017, the Plaintiffs repeat paragraph 65.

79 Mr Mike **Thornton** was:

- (a) from April 2011 to August 2013, Director, Group Risk Management of AMP;
- (b) from August 2013 to August 2015, Group Chief Risk Officer of AMP;
- (c) by reason of (a), at all times in the Relevant Period up to 1 May 2013, an executive officer of AMP within the meaning of ASX Listing Rule 19.12; and
- (d) by reason of (a) and (b), at and from 1 May 2013 to August 2015 an officer of AMP within the meaning of ASX Listing Rule 19.12.

### Particulars

It is to be inferred from the nature and seniority of the roles referred to in (a) and/or (b) that Thornton was a person:

- (i) who made or participated in making decisions which affected a substantial part of the business of AMP; and/or
- (ii) who had the capacity to affect significantly AMP's financial standing.

80 Ms Wendy **Thorpe** was:

- (a) from August 2011 to 31 December 2013, Director, Operations AMP Financial Services;
- (b) from 1 January 2014 to 31 December 2016:
  - (i) Group Executive, Operations;
  - (ii) a member of the Group Leadership Team and a "nominated executive" of AMP; and
  - (iii) Director of the AMP Melbourne Office;
- (c) from February 2017 to the present, a non-executive director of AMP;
- (d) by reason of (a):
  - (i) at all times in the Relevant Period up to 1 May 2013, an executive officer of AMP; and
  - (ii) at all times in the Relevant Period from 1 May 2013 to 31 December 2013, an officer of AMP,

within the meaning of ASX Listing Rule 19.12; and
- (e) further and in the alternative, by reason of (b) and (c), at all times in the Relevant Period from 1 January 2014, an officer of AMP within the meaning of ASX Listing Rule 19.12.

### Particulars

- (i) It is to be inferred from the nature and seniority of the role referred to in (a) that between August 2011 and 31 December 2013, Thorpe was a person:
  - (A) who made or participated in making decisions which affected a substantial part of the business of AMP; and/or

(B) who had the capacity to affect significantly AMP's financial standing.

(ii) As to the significance of Thorpe's membership of the Group Leadership Team after 1 January 2014, the Plaintiffs repeat paragraph 65.

**80A Ms Ann Turner was:**

- (a) employed by AMP between November 2004 and December 2016;
- (b) from May 2015 (at the latest) to 10 December 2016, Head of Advice Legal at AMP; and
- (c) by reason of the above, from May 2015 (at the latest) to 10 December 2016 an officer of AMP within the meaning of ASX Listing Rule 19.12.

**Particulars**

It is to be inferred from the nature and seniority of the role referred to in (b) that Turner was a person who participated in making decisions which affected a substantial part of the business of AMP.

**81 Salter was:**

- (a) from 1 July 2008 to the end of the Relevant Period, Group General Counsel and Company Secretary of AMP;
- (b) from 2014 a member of the Group Leadership Team and a "nominated executive of AMP; and
- (c) by reason of the matters identified in (a) and (b):
  - (i) at all times in the Relevant Period up to 1 May 2013, an executive officer of AMP within the meaning of ASX Listing Rule 19.12; and
  - (ii) at all times in the Relevant Period from 1 May 2013, an officer of AMP within the meaning of ASX Listing Rule 19.12.

**Particulars**

- (A) As Company Secretary, Salter is deemed to be an officer by s 9 of the Corporations Act.
- (B) As to (b), the Plaintiffs repeat paragraph 65.

*AMP's Knowledge – Fees For No Service Policy Information*

82 By no later than:

- (a) 10 May 2012;
- (b) (alternatively) 30 April 2013;
- (c) (alternatively) 6 May 2013;
- (d) (alternatively) 21 May 2013;
- (e) (alternatively) 24 May 2013;
- (f) (alternatively) 5 June 2013;
- (g) (alternatively) 17 April 2014;
- (h) (alternatively) 20 May 2015;
- (i) (alternatively) 27 May 2015;
- (j) (alternatively) 12 June 2015;
- (k) (alternatively) 12 November 2015;
- (l) (alternatively) 17 October 2016;
- (m) (alternatively) 23 November 2016;
- (n) (alternatively) 3 May 2017;
- (o) (alternatively) 25 August 2017;
- (p) (alternatively) 16 October 2017,

AMP was aware, within the meaning of ASX Listing Rule 19.12, of the Fees For No Service Policy Information (as defined in paragraph ~~28~~27 above).

**Particulars**

- (i) At all times during the Relevant Period Guggenheimer:
  - (A) knew of the 90 Day Exception Policy and the Ringfencing Policy as: (i) from no later than 10 May 2012 he had primary responsibility for the oversight of the BOLR Pool and approved numerous applications to apply those policies (including, as early as July 2011, the Ringfencing Policy); and (ii) in an email to Deborah Sneddon and others dated 14 January 2011 he referred to the removal of fees from BOLR clients as being a “business

rule” rather than an Australian Financial Services Licence requirement (AMP.0001.0094.4475); and

(B) knew or ought to have known, by reason of his position and responsibilities referred to in the previous particular, that AMP ~~was and the AMP Advice Licensees were~~ unable to provide Ongoing Services to those persons to whom the 90 Day Exception Policy and/or the Ringfencing Policy applied; and

(C) knew or ought to have known, by reason of his position and responsibilities referred to in particular (A), the No Monitoring Systems Information.

(ii) At all times during the Relevant Period Guggenheimer was an officer of AMP whose awareness is to be attributed to it.

(iii) Further and in the alternative, it is to be inferred from the documents and circumstances referred to below that one or more of the AMP officers identified in paragraphs 66 to 0 above (whose awareness is to be attributed to AMP), knew of the Fees For No Service Policy Information or ought reasonably to have come into possession of that information in the course of their duties:

(Pre-10 May 2012)

(A) Breach report pursuant to s 912D of the Corporations Act from AMPEP to ASIC in the form of a letter signed by Himmelhoch dated 15 January 2009 (AMP.9000.0001.1460). This document recorded that Ongoing Service Fees were being “left on” for some customers in the BOLR Pool when no Ongoing Services were being provided and that this was in breach of condition 2 of AMPFP’s licence and s 912A(1)(a) of the Corporations Act.

(B) Email from Guggenheimer to Deborah Sneddon and others dated 14 January 2011 in which Guggenheimer ~~characterises failures to remove~~ referred to the removal of fees from BOLR clients as being a “business rule” rather than an Australian Financial Services Licence requirement (AMP.0001.0094.4475).

(30 April 2013/6 May 2013)

- (C) Memorandum titled “Practice Proposition and Product & Platforms update” dated 30 April 2013 (**30 April 2013 Memorandum**) by Himmelhoch. This was included in the papers for the meeting of the Future of Financial Advice and Stronger Super Ready Program Steering Committee (**FOFA Committee**) held on 6 May 2013 (AMP.0001.0092.7314 at .7326). Meller was the Chair of the FOFA Committee and chaired the 6 May 2013 meeting and Caprioli was an attendee at the meeting (at .7314). This document recorded that Ongoing Service Fees were being charged to clients in the BOLR Pool and that options to remedy this situation were to “dial all fees back to the base level or establish a servicing arrangement with the client”.
- (D) Himmelhoch knew that orphan clients were being charged Ongoing Service Fees due to the 90 Day Exception Policy and the Ringfencing Policy from no later than mid 2013.

(21 May 2013)

- (E) Paper dated 21 May 2013 titled “FOFA Practice Proposition Stream Orphan Contracts – Policy and Process Changes & Recommendations” (ASIC.0019.0001.0075). Guggenheimer and Thorpe (amongst others) appear on the distribution list of this document (at .0076). The document: (1) referred to “orphan clients” who are “currently paying for a non-existent service” (at .0084–.0087); and (2) recommended the use of the 90 Day Exception Policy in relation to certain orphan clients (at .0088).

(24 May 2013)

- (F) Memorandum titled “AFDS Update” dated 20 May 2013 which was included in the papers for the meeting of the FOFA Committee held on 24 May 2013 (AMP.6000.0011.7910 at .7944). Helmich attended and chaired the meeting and Himmelhoch was listed as an attendee at the meeting (at .7910). The memorandum provided data (at .7949) as to the number and dollar value of fees charged to “orphan” clients and noted that Ongoing Service Fees needed to be removed or services

attributable to those fees provided in order “to ensure compliance with FOFA’s FDS regime” (at .7949-.7950).

(5 June 2013)

- (G) Memorandum titled “FOFA Practice Proposition Update” by Himmelhoch dated ~~53~~ June 2013 addressed to Helmich and others. This document formed part of the papers for the FOFA Committee meeting of 5 June 2013 (AMP.6000.0011.8670 at .8674) and noted: (i) a proposed action to deliberately turn on commissions for certain orphan clients (at .8682); and (ii) that an agreement had been reached at the previous steering committee meeting to turn off Ongoing Service Fees for orphan clients in registers over 6 months old (at .8675). The minutes of the meeting also noted an investigation in to which “BOLR/BOO” customers were still being charged Ongoing Service Fees (at .8673).

(17 April 2014)

- (H) AMP internal audit report titled “FINAL Internal Audit Report Advice & Banking Register Valuation Processes (AMPFP) (Limited Scope)” dated 17 April 2014 (**2014 Audit Report**) (AMP.6000.0006.4372). Caprioli, Lefevre, Helmich, Guggenheimer, Thornton and Meller appear on the distribution list of this document (at .4390) which notes (inter alia) that:
- (1) AMPFP is not able to provide BOLR clients with “additional services” negotiated with their former planner (at .4375);
  - (2) exceptions to the BOLR Policy were not being approved in accordance with the “AMP Delegations of Authority” (at .4376);
  - (3) audit sampling had highlighted a common trend of “ring-fencing registers in...BOLR transactions” and that “ring-fencing rules and processes [should] be formalised to ensure that the intent of BOLR is not undermined” (at .4377);



- (4) exceptions to the BOLR Policy are a frequent occurrence (at .4381); and
- (5) failure to monitor and investigate the appropriateness of BOLR Policy exceptions may result in potential non-compliance with regulatory requirements (at .4381).

(20 May 2015)

- (I) Email with subject "Ongoing Advice Fees" sent on 20 May 2015 by Morgan to, among others, Caprioli, Paff and Guggenheimer (AMP.0001.0016.7288) (**20 May 2015 Email**). That document (inter alia):
  - (1) noted legal advice to the effect that the failure to turn off Ongoing Service Fees for orphan clients constituted a reportable breach across multiple licenses (at .7288);
  - (2) explicitly referred to the 90 Day Exception Policy and Ringfencing Policy (at .7289); and
  - (3) stated that a working group had been convened to remove all Ongoing Service Fees from the BOLR Pool (at .7289).

(27 May 2015)

- (J) The 27 May 2015 Breach Report identified the charging of Ongoing Service Fees while customers were in the BOLR Pool due to process failures.
- (K) By reason of the 27 May 2015 Breach Report (AMP.6000.0001.1469), each of Meller, Brenner, Salter and/or Regan ought reasonably have become aware of the Fees For No Service Policy Information in the course of their duties because each of them ought to have satisfied themselves of the accuracy and adequacy of the report in light of AMP's statutory duties as pleaded in sub-paragraphs 21(b)(iv) and 21(b)(v) above.

(12 June 2015)

- (L) Email exchange with subject "Flexo - approval sought" (PMA.001.005.4909) sent on 12 June 2015 between Morgan and Guggenheimer among others (**12 June 2015 Email**) in which it

was acknowledged that ring-fencing clients constituted a breach of AMP's license conditions and Guggenheimer approved an application to ring-fence certain clients despite this advice.

(12 November 2015)

- (M) AMP internal audit report titled "Internal Audit Report Advice & Banking and Operations AMP Financial Planning – Buyer of Last Resort (BOLR)" and dated 12 November 2015 (AMP.6000.0006.4421) (**2015 Audit Report**). Caprioli, Thorpe, Meller, Lefevre, Guggenheimer and Goedhart (amongst others) each appear on the distribution list of this document (at .4439) which noted (inter alia) that policies with Ongoing Service Fees must have those fees "dialled down" on transfer of the policies to the AMP BOLR Pool as AMP is unable to service the policies for which Ongoing Service Fees are charged to orphan clients (at .4425).

(17 October 2016)

- (N) Letter from AMPFEP (Cozzolino) to ASIC (Isabelle Border) dated ~~16~~17 October 2016 (AMP.6000.0010.0013) which described to ASIC, for the first time, the 90 Day Exception Policy.
- (O) Each of Meller, Brenner, Salter and/or Regan ought reasonably have become aware of the contents of this letter in the course of their duties having regard to AMP's statutory duties as pleaded in sub-paragraphs 21(b)(iv) and 21(b)(v) above.

(23 November 2016)

- (P) Letter from AMPFEP (Cozzolino) to ASIC (Isabelle Border) dated 23 November 2016 (AMP.6000.0010.0015) which:
- (1) described the 90 Day Exception Policy;
  - (2) stated that the 90 Day Exception Policy "continued to apply beyond January 2014" (as had been stated in AMP's previous correspondence to ASIC); and
  - (3) stated that a direction had been sent to relevant teams in AMP in November 2016 advising them to cease the 90 Day Exception Policy immediately.

(Q) Each of Meller, Brenner, Salter and/or Regan ought reasonably have become aware of the contents of this letter in the course of their duties prior to it being sent to ASIC.

(3 May 2017)

(R) The 3 May 2017 Breach Report (AMP.6000.0001.1894) referred to the 90 Day Exception Policy and referred to the operation of the Ringfencing Policy.

(S) Each of Meller, Brenner, Salter and/or Regan ought reasonably have become aware of the contents of the 3 May 2017 Breach Report in the course of their duties prior to it being sent to ASIC.

(25 August 2017)

(T) 2017 Clayton Utz Report (AMP.6000.0010.0440), which confirmed the Fees For No Service Policy Information.

(U) The first draft of this document was provided to AMP on 25 August 2017.

(16 October 2017)

(V) The 2017 Clayton Utz Report was provided to the board of AMP in final form on 16 October 2017.

(iv) Further and in the alternative:

(A) one or more officers of AMP were aware of the Fees For No Service Policy Information or ought to have become aware of that information in the course of carrying out the 90 Day Exception Policy and the Ringfencing Policy by no later than the commencement of the Relevant Period;

(B) one or more officers of AMP were aware of the No Monitoring Systems Information or ought to have become aware of that information in the course of carrying out the 90 Day Exception Policy and the Ringfencing Policy by no later than the commencement of the Relevant Period;

(C) on and from 16 October 2016, one or more officers of AMP ought to have become aware of the Fees For No Service Policy

Information from the internal legal advices referred to in paragraphs 68-100 of the 2017 Clayton Utz Report;

(D) on and from 16 October 2016, one or more officers of AMP ought to have become aware of the No Monitoring Systems Information from paragraph 118 of the 2017 Clayton Utz Report.

(v) Further and better particulars may be provided upon the completion of discovery.

AMP's Knowledge – No Monitoring Systems Information

82A By no later than:

- (a) 10 May 2012;
- (b) (alternatively) 17 April 2014;
- (c) (alternatively) 20 May 2015;
- (d) (alternatively) 12 November 2015;
- (e) (alternatively) 25 August 2017;
- (f) (alternatively) 16 October 2017.

AMP was aware, within the meaning of ASX Listing Rule 19.12, of the No Monitoring Systems Information (as defined in paragraph 27A above)

**Particulars**

- (i) At all times during the Relevant Period Guggenheimer:
  - (A) knew of the 90 Day Exception Policy and the Ringfencing Policy as: (i) from no later than 10 May 2012 he had primary responsibility for the oversight of the BOLR Pool and approved numerous applications to apply those policies (including, as early as July 2011, the Ringfencing Policy); and (ii) in an email to Deborah Sneddon and others dated 14 January 2011 he referred to removal of fees from BOLR clients as being a “business rule” rather than an Australian Financial Services Licence requirement (AMP.0001.0094.4475); and
  - (B) knew or ought to have known, by reason of his position and responsibilities referred to in particular (A), the No Monitoring Systems Information.

- (ii) At all times during the Relevant Period Guggenheimer was an officer of AMP whose awareness is to be attributed to it.
- (iii) Further and in the alternative, it is to be inferred from the documents and circumstances referred to below that one or more of the AMP officers identified in paragraphs 66 to 0 above (whose awareness is to be attributed to AMP), knew of the No Monitoring Systems Information or ought reasonably to have come into possession of that information in the course of their duties:

(17 April 2014)

(A) 2014 Audit Report (AMP.6000.0006.4372). Caprioli, Lefevre, Helmich, Guggenheimer, Thornton and Meller appear on the distribution list of this document (at .4390) which noted (inter alia) that:

- (1) management had designed an Ongoing Service Fee report to assist in identifying and managing orphan or BOLR policies that continue to pay fees, but that this had yet to be implemented (.4380).

(20 May 2015)

(B) 20 May 2015 email from Morgan to Caprioli, Turner, Paff and Guggenheimer (amongst others) (AMP.0001.0016.7288). That document (inter alia):

- (1) referred to AMP's process for removing ongoing fees and noted that its cumbersome manual and multiple accountabilities across both Advice and AMP Life resulted in ongoing fees not being removed (.7288-7289);
- (2) noted that requiring customers to notify AMP in writing to turn off fees may not be efficient from a customer perspective (.7289);
- (3) noted that placing the onus on the customer to notify external providers to remove fees is not effective if AMP is not adequately monitoring external commission payments (.7289).

(12 November 2015)

- (C) 2015 Audit Report (AMP.6000.0006.4421). Caprioli, Thorpe, Meller, Morgan, Lefevre, Guggenheimer and Goedhart (amongst others) each appear on the distribution list of this document (at .4439) which noted (inter alia) that:
- (1) the process to “dial down” Ongoing Service Fees had failed and there were limitations over the effectiveness of controls (at .4425);
  - (2) management reporting in respect of ongoing fee arrangements in the BOLR pool had only recently been implemented and the Project Team had concerns about the completeness and accuracy of that reporting (at .4425);
  - (3) A reconciliation to detect policies in the BOLR pool still paying the full fee had not been completed (at .4425).

(25 August 2017)

- (D) 2017 Clayton Utz Report (AMP.6000.0010.0440), which referred to the No Monitoring Systems Information (at [119]).
- (E) The first draft of this document was provided to AMP on 25 August 2017.

(16 October 2017)

- (F) The 2017 Clayton Utz Report was provided to the board of AMP in final form on 16 October 2017.

*AMP’s Knowledge – Misleading ASIC Information*

- 83 AMP was aware, within the meaning of ASX Listing Rule 19.12 of the matters in:
- (a) paragraphs 32 and 33 (**27 May 2015 Misleading ASIC Information**), from 27 May 2015;
  - (b) paragraphs 34 and 35 (**19 June 2015 Misleading ASIC Information**), from 19 June 2015;

- (c) paragraphs 36 and 37 (**23 June 2015 Misleading ASIC Information**), from 23 June 2015;
- (d) paragraphs 38 and 39 (**17 August 2015 Misleading ASIC Information**), from 17 August 2015;
- (e) paragraphs 40 and 41 (**31 August 2015 Misleading ASIC Information**), from 31 August 2015 ;
- (f) paragraphs 42 and 43 (**9 September 2015 Misleading ASIC Information**), from 9 September 2015;
- (g) paragraphs 44 and 45 (**17 September 2015 Misleading ASIC Information**), from 17 September 2015;
- (h) paragraphs 46 and 47 (**15-1 October 2015 Misleading ASIC Information**), from ~~15~~ 1 October 2015;
- (hh) paragraphs 47A and 47B (**26 November 2015 Misleading ASIC Information**), from 26 November 2015;
- (i) paragraphs 0 and 49 (**14 December 2015 Misleading ASIC Information**), from 14 December 2015;
- (j) paragraphs 50 and 51 (**23 November 2016 Misleading ASIC Information**), from 23 November 2016;
- (k) paragraphs 52 and 53 (**3 May 2017 Misleading ASIC Information**), from 3 May 2017;
- (l) paragraphs 53(a), 55 and 56 (**17 October 2017 Misleading ASIC Information**), from 17 October 2017.

(The matters referred to in subparagraphs (a) to (l), separately or in combination, will be referred to as the **Misleading ASIC Information**).

#### **Particulars**

##### Subparagraphs 83(a), 83(b) and 83(e):

- (i) Paff:
  - (A) signed the 27 May 2015 Breach ~~Notice~~Report, the 19 June 2015 ASIC Letter, and the 31 August 2015 ASIC Letter and was aware of the contents of those documents within the meaning of ASX Listing Rule 19.12 from the dates they bear;

- (B) at the time of signing those documents knew of, or ought to have come into possession of, the Fees For No Service Policy Information in the course of his duties by reason of:
- (1) his role as Director, Channel Services;
  - (2) further and in the alternative, his receipt of the 20 May 2015 Email; and
  - (3) further and in the alternative, the fact that he signed the documents identified in particular (i)(A);
- (C) by reason of the matters identified in particular (B), knew or ought to have known that the representations to ASIC made in the communications referred to in particular (i)(A) above to the effect that the charging of Ongoing Service Fees to orphan clients was due to process errors, did not relate to personal advice and was a recent discovery, were false or misleading in one or more material particulars.

Subparagraphs 83(c) and 83(d):

- (ii) Caprioli:
- (A) signed the 23 June 2015 ASIC Letter and 17 August 2015 ASIC Letter and was aware of the contents of those letters within the meaning of ASX Listing Rule 19.12 from the dates they bear;
  - (B) at the time of signing the 23 June 2015 ASIC Letter knew, or ought to have known, by reason of the fact that he signed the 23 June 2015 ASIC Letter, of the contents of the PwC Report, and of the fact that the Ongoing Service Fees did relate to personal advice and annual advice reviews;
  - (C) by reason of the matters identified in particular (ii)(B), knew or ought to have known that the representations to ASIC referred to in the letters referred to in particular (ii)(A) to the effect that:
    - (1) PwC had not identified any systemic issues regarding the provision of Ongoing Services; and
    - (2) Ongoing Service Fees did not relate to personal advice and annual advice, were false or misleading in one or more material particulars;



- (D) at the time of signing the 17 August 2015 ASIC Letter knew of, or ought to have come into possession of, the Fees For No Service Policy Information in the course of his duties by reason of:
- (1) his role as Group Executive, Advice and Banking, his membership of the Group Leadership Team and his responsibility for the operations and conduct of the AMP Advice Licensees;
  - (2) further and in the alternative, his attendance at the 6 May 2013 FOFA Committee Meeting and his receipt of the 30 April 2013 Memorandum, his receipt of the 2014 Audit Report and/or his receipt of the 2015 Audit Report;
  - (3) further and in the alternative, the fact that he signed the 17 August 2015 ASIC Letter;
- (E) by reason of the matters identified in particular (ii)(D), knew or ought to have known that the representations to ASIC referred to in paragraph 38 (made in the 17 August 2015 ASIC Letter) to the effect that the charging of Ongoing Service Fees was due to process errors was false or misleading in one or more material particulars.

Subparagraphs 83(h) and 83(i):

(iii) Morgan:

- (A) signed the ~~15~~ 1 October 2015 ASIC Letter, the 26 November 2015 ASIC Letter and the 14 December 2015 ASIC Letter and was aware of the contents of those letters within the meaning of ASX Listing Rule 19.12 from the dates they bear;
- (B) knew of, or ought to have come into possession of, the Fees For No Service Policy Information in the course of his duties by reason of:
  - (1) his role as Head of Licensee Value Management;
  - (2) his responsibility for and investigation into Ongoing Service Fees in the BOLR Pool from in or about May 2015;

- (3) his authorship of the 20 May 2015 Email and/or the 12 June 2015 Email; and/or
  - (4) further and in the alternative, the fact that he signed the letters identified in particular (iii)(A); and
- (C) by reason of the matters identified in particular (iii)(B), knew or ought to have known that the representations to ASIC referred to in paragraphs 46, 48(a) and 48(c) above (made in the letters identified in particular (iii)(A)) to the effect that the charging of fees for no service was due to administrative errors and had ceased were false or misleading in one or more material particulars.

Subparagraph 83(j):

- (iv) Cozzilino:
- (A) signed the 23 November 2016 ASIC Letter and was aware of its contents within the meaning of ASX Listing Rule 19.12;
  - (B) knew of, or ought to have come into possession of, information as to the existence of the Ringfencing Policy in the course of her duties by reason of:
    - (1) her role as Head of Strategic Advice Solutions; and
    - (2) the fact that she signed the 23 November 2016 ASIC Letter;
  - (C) by reason of the matters referred to in particular (iv)(B) knew or ought to have known that the 23 November 2016 ASIC Letter was false or misleading in a material particular because it did not disclose the existence of the Ringfencing Policy.

Subparagraph 83(k):

- (v) Britt:
- (A) signed the 3 May 2017 Breach Report and was aware of its contents within the meaning of ASX Listing Rule 19.12 from the date of the letter;
  - (B) knew of, or ought to have come into possession of information to the effect that AMP had been aware of the Ringfencing Policy

since at least November 2016 in the course of her duties by reason of:

- (1) her role as Head of Advice Compliance; and
- (2) the fact that she signed the 3 May 2017 Breach Report.

Subparagraph 83(l) (Clayton Utz independence representations):

(vi) Brenner:

- (A) signed the Clayton Utz Letter of Instruction and was aware of its contents within the meaning of ASX Listing Rule 19.12 from the date it bears;
- (B) received the 4 October 2017 ASIC Email and attended the 17 October 2017 ASIC Meeting and knew or ought to have known that the representation to the effect that the 2017 Clayton Utz Report was the product of an external and independent investigation had been repeated on those dates;
- (C) knew or ought to have known that the 2017 Clayton Utz Report was not the product of an external and independent investigation as she provided comments on substantive aspects of the drafts of the report to Clayton Utz, including:
  - (1) during a telephone call with Mr Mavrakis of Clayton Utz (**Mavrakis**) on 4 October 2017;
  - (2) in an email from Salter to Mavrakis dated 11 October 2017;
- (D) further and in the alternative, knew or ought to have known that the 2017 Clayton Utz Report was not the product of an external and independent investigation as the board of AMP approved final changes to a draft of the 2017 Clayton Utz Report on or about 16 October 2017 and she was a member of the board.

(vii) Meller:

- (A) was aware of the contents of the Clayton Utz Letter of Instruction within the meaning of ASX Listing Rule 19.12 as this was information which he ought reasonably have come into

possession of in his role as Chief Executive Officer and Managing Director of AMP;

- (B) further and in the alternative, was present at the ~~47~~ 16 October 2017 ASIC Meeting during which one or more AMP representatives conveyed to ASIC that the 2017 Clayton Utz Report was the product of an external and independent investigation by Clayton Utz;
- (C) knew or ought to have known that the 2017 Clayton Utz Report was not the product of an external and independent investigation as he participated in a telephone call with Clayton Utz on 21 September 2017 during which the contents of the report were discussed and changes to the draft were suggested by Meller amongst other AMP personnel, including the removal of Meller's name from page 6 of a draft of the report (AMP.6000.0052.0924 at .0932);
- (D) further and in the alternative, knew or ought to have known that the 2017 Clayton Utz Report was not the product of an external and independent investigation as the board of AMP approved final changes to a draft of the 2017 Clayton Utz Report on or about 16 October 2017 and he was a member of the board.

(viii) Salter:

- (A) was aware of the contents of the 2017 Clayton Utz Letter of Instruction within the meaning of ASX Listing Rule 19.12 as this was information which he ought reasonably have come into possession of in his role as General Counsel of AMP;
- (B) further and in the alternative, authored the 4 October 2017 ASIC Email and attended the ~~47~~ 16 October 2017 ASIC Meeting during which AMP conveyed to ASIC that the 2017 Clayton Utz Report was the product of an external and independent investigation by Clayton Utz;
- (C) knew or ought to have known that the 2017 Clayton Utz Report was not the product of an external and independent investigation because:

- (1) he made or directed Clayton Utz to make numerous substantive changes to drafts of the report;
  - (2) knew or ought to have known in his role as General Counsel of AMP that the board of AMP approved final changes to a draft of the 2017 Clayton Utz Report on or about 16 October 2017.
- (ix) Regan:
- (A) was aware of the contents of the Clayton Utz Letter of Instruction within the meaning of ASX Listing Rule 19.12 as this was information which he ought reasonably have come into possession of in his role as Group Executive, Advice and New Zealand;
  - (B) further and in the alternative, attended the ~~47~~ 16 October 2017 ASIC Meeting during which AMP conveyed to ASIC that the 2017 Clayton Utz Report was the product of an external and independent investigation by Clayton Utz;
  - (C) knew or ought to have known that the 2017 Clayton Utz Report was not the product of an external and independent investigation because he knew that AMP had provided numerous substantive comments on drafts of the report and that the board of AMP settled the final changes to the report.
- (x) Further or in the alternative, one or more officers of AMP were, by 17 October 2017, aware within the meaning of ASX Listing Rule 19.12 that the 2017 Clayton Utz Report was not the product of an external and independent investigation as this was information that they ought reasonably to have come into possession of during the course of their duties.

Subparagraphs 83(a) to 83(l):

- (xi) Further and in the alternative, the Misleading ASIC Information (other than the 17 October 2017 Misleading ASIC Information) was described in the 2017 Clayton Utz Report, the first of multiple drafts of which was provided to AMP on 25 August 2017, such that Meller, Brenner, Salter

and Regan were aware of the Misleading ASIC Information (other than the 17 October 2017 Misleading ASIC Information) from that date.

- (xii) Further and in the alternative, for reasons including those pleaded and particularised in relation to paragraph 82 above, in the course of their duties as officers of AMP, one or more such officers knew or ought reasonably to have come into possession of: (i) the information conveyed to ASIC in each of the communications to it referred to in paragraphs 32 to 56 above; and (ii) information confirming the materially misleading aspects of those communications as described in those paragraphs.
- (xiii) Further particulars may be provided after discovery.

*AMP's Knowledge – Receipt of Legal Advice Information*

84 At all material times, AMP was aware, within the meaning of ASX Listing Rule 19.12, of the Receipt of Legal Advice Information.

**Particulars**

- (i) Guggenheimer and Helmich were aware, or alternatively ought to have been aware, since at least January 2011 (2017 Clayton Utz Report at [75]) (AMP.6000.0010.0440 at .0472).
- (ii) Morgan and Paff were aware since at least May 2015 (2017 Clayton Utz Report at [81]-[82]) (AMP.6000.0010.0440 at .0473).
- (iii) Caprioli was aware since May 2015 (2017 Clayton Utz Report at [83]-[85]) (AMP.6000.0010.0440 at .0475).
- (iv) Turner was aware since May 2013 (at the latest) (2017 Clayton Utz Report at [73], [81]-[82], [88]-[89]) (AMP.6000.0010.0440 at .0471 - .0478).

## **G. AMP'S STATEMENTS AND REPRESENTATIONS TO THE MARKET**

### *2012 Compliance Statements*

85 On 29 March 2012, AMP published on the ASX its 2011 Annual Report which contained the statements set out in Schedule C.I to this Amended Commercial List Statement (separately and together, the **2012 Compliance Statements**).

86 AMP did not, at any time prior to 16 April 2018, correct or qualify the 2012 Compliance Statements.

### *2013 Compliance Statements*

87 On 27 March 2013, AMP published on the ASX its 2012 Annual Report which contained the statements set out in Schedule C.II to this Amended Commercial List Statement (separately and together, the **2013 Compliance Statements**).

88 AMP did not, at any time prior to 16 April 2018, correct or qualify the 2013 Compliance Statements.

### *2014 Compliance Statements*

89 On 27 March 2014, AMP published on the ASX its 2013 Annual Report which contained the statements set out in Schedule C.III to this Amended Commercial List Statement (separately and together, the **2014 Compliance Statements**).

90 AMP did not, at any time prior to 16 April 2018, correct or qualify the 2014 Compliance Statements.

### *2015 Compliance Statements*

91 On 26 March 2015, AMP published on the ASX its 2014 Annual Report which contained the statements set out in Schedule C.IV to this Amended Commercial List Statement (separately and together, the **2015 Compliance Statements**).

92 AMP did not, at any time prior to 16 April 2018, correct or qualify the 2015 Compliance Statements.

### *2016 Compliance Statements*

- 93 On 22 March 2016, AMP published on the ASX its 2015 Annual Report which contained the statements set out in Schedule C.V to this Amended Commercial List Statement (separately and together, the **2016 Compliance Statements**).
- 94 AMP did not, at any time prior to 16 April 2018, correct or qualify the 2016 Compliance Statements.

### *2017 Compliance Statements*

- 95 On 20 March 2017, AMP published on the ASX its 2016 Annual Report which contained the statements set out in Schedule C.VI to this Amended Commercial List Statement (separately and together, the **2017 Compliance Statements**).
- 96 AMP did not, at any time prior to 16 April 2018, correct or qualify the 2017 Compliance Statements.

### *2018 Compliance Statements*

- 97 On 20 March 2018, AMP published on the ASX its 2017 Annual Report which contained the statements set out in Schedule C.VII to this Amended Commercial List Statement (separately and together, the **2018 Compliance Statements**).
- 98 AMP did not, at any time prior to 16 April 2018, correct or qualify the 2018 Compliance Statements.

### *AMP's Compliance Representations*

- 99 Throughout the Relevant Period, AMP continuously represented to the investors and potential investors in AMP Securities that:
- (a) AMP had in place systems and procedures to ensure appropriate monitoring, management and reporting of compliance by AMP and the Advice Licensees with all relevant regulatory and legal requirements; and
  - (b) AMP had established and implemented appropriate changes to its systems and procedures in order to ensure compliance by AMP and the Advice Licensees with the FOFA Reforms,
- (Regulatory Compliance Representations).**



### Particulars

- (i) The Regulatory Compliance Representations are partly express and partly implied.
- (ii) To the extent they are express the Regulatory Compliance Representations were conveyed by:
  1. the 2012 Compliance Statements identified in (a), (b), (c), (d), (e) and (f) of Schedule C.I;
  2. the 2013 Compliance Statements identified in (a), (b), (d) and (e) of Schedule C.II;
  3. the 2014 Compliance Statements identified in (a), (b), (c), (d), (f) and (g) of Schedule C.III;
  4. the 2015 Compliance Statements identified in (a), (b), (c), (e) and (f) of Schedule C.IV;
  5. the 2016 Compliance Statements identified in (b), (d), (e), (f), (g), (h) and (i) of Schedule C.V;
  6. the 2017 Compliance Statements identified in (b), (c), (d), (e), (f), (g) and (h) of Schedule C.VI;
  7. the 2018 Compliance Statements identified in (b), (c), (d), (e), (f), (g) and (h) of Schedule C.VII,

(separately and together the **Regulatory Compliance Statements**).
- (iii) To the extent they are implied, they are to be implied from the matters set out in (ii) above and from AMP's failure to correct or qualify any of those statements during the Relevant Period.

100 Throughout the Relevant Period, AMP continuously represented to the investors and potential investors in AMP Securities that it was committed to conducting itself ethically and had a strong ethical culture (**Ethical Conduct Representations**).

### Particulars

- (i) The Ethical Conduct Representations are partly express and partly implied.

- (ii) To the extent they are express the Ethical Conduct Representations were conveyed by:
1. the 2012 Compliance Statements identified in (a), (b), (d), (e) and (f) of Schedule C.I;
  2. the 2013 Compliance Statement identified in (b) of Schedule C.II;
  3. the 2014 Compliance Statements identified in (c) and (d) of Schedule C.III;
  4. the 2015 Compliance Statements identified in (b) and (c) of Schedule C.IV;
  5. the 2016 Compliance Statements identified in (a), (b), (f) and (g) of Schedule C.V;
  6. the 2017 Compliance Statements identified in (e), (g) and (h) of Schedule C.VI;
  7. the 2018 Compliance Statements identified in (c), (d) and (f) of Schedule C.VII,
- (separately and together, the **Ethical Conduct Statements**).
- (iii) To the extent they are implied, they are to be implied from the matters set out in (ii) above and from AMP's failure to correct or qualify any of those statements during the Relevant Period.

101 Throughout the Relevant Period, AMP continuously represented to the investors and potential investors in AMP Securities that it was in compliance with its Continuous Disclosure Obligations (**Continuous Disclosure Representations**).

#### **Particulars**

- (i) The Continuous Disclosure Representations are partly express and partly implied.
- (ii) To the extent they are express the Continuous Disclosure Representations were conveyed by:
1. the 2012 Compliance Statement identified in (g) of Schedule C.I;

2. the 2013 Compliance Statement identified in (c) of Schedule C.II;
3. the 2014 Compliance Statement identified in (e) of Schedule C.III;
4. the 2015 Compliance Statement identified in (d) of Schedule C.IV;
5. the 2016 Compliance Statements identified in (c) and (g) of Schedule C.V;
6. the 2017 Compliance Statements identified in (a) and (f) of Schedule C.VI;
7. the 2018 Compliance Statements identified in (a) and (e) of Schedule C.VII,

(separately and together, the **Continuous Disclosure Statements**).

- (iii) To the extent they are implied, they are to be implied from the matters set out in (ii) above and from AMP's failure to correct or qualify any of those statements during the Relevant Period.

102 Each of the Compliance Representations, the Ethical Conduct Representations and the Continuous Disclosure Representations was a continuing representation throughout the Relevant Period.

#### **Particulars**

The Compliance Representations, the Ethical Conduct Representations and the Continuous Disclosure Representations were by their nature continuing until corrected or qualified.

## H. CONTRAVENTIONS

### *Continuous Disclosure Contraventions*

#### *Fees For No Service Policy Information Contravention*

103 On and from 10 May 2012, the Fees For No Service Policy Information was information that a reasonable person would expect to have a material effect on the price or value of AMP Securities within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

#### **Particulars**

(a) The Plaintiffs repeat the matters pleaded at paragraphs 19, 20, 21, 30 and 31 above, and say further that each of the persons referred to in the particulars to paragraph 82 above as being aware of the Fees For No Service Policy Information (within the meaning of ASX Listing Rule 19.12) was also aware, at the same time, that the charging of Ongoing Service Fees to any clients for Ongoing Services they did not and could not receive was:

- (i) contrary to law; and/or
- (ii) immoral and dishonest; and/or
- (iii) unconscionable, according to law,

and therefore exposed AMP and/or the AMP Advice Licensees to a substantial risk of one or more of the consequences set out in paragraph 31 above.

(b) Further particulars may be provided on the service of expert evidence.

104 By reason of the matters pleaded in paragraphs 82 and 103, and the Continuous Disclosure Obligations, on and from 10 May 2012, 30 April 2013, 6 May 2013, 21 May 2013, 24 May 2013, 5 June 2013, 17 April 2014, 20 May 2015, 27 May 2015, 12 June 2015, 12 November 2015, 17 October 2016, 23 November 2016, 3 May 2017, 25 August 2017 or 16 October 2017, AMP became immediately obliged to tell the ASX the Fees For No Service Policy Information.

105 AMP did not, at any time during the Relevant Period, tell the ASX the Fees For No Service Policy Information and investors and potential investors in AMP Securities did

not become aware of any of that information until it was progressively disclosed at the Royal Commission from a period commencing shortly after 2.00 pm on 16 April 2018 and continuing until shortly after the commencement of trading on the ASX on 17 April 2018.

- 106 By reason of the matters pleaded in paragraphs 82 and 103 to 105, AMP contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act (**Fees For No Service Policy Information Contravention**).
- 107 The Fees For No Service Policy Information Contravention was a continuing contravention which continued on and from 10 May 2012, 30 April 2013, 6 May 2013, 21 May 2013, 24 May 2013, 5 June 2013, 17 April 2014, 20 May 2015, 27 May 2015, 12 June 2015, 12 November 2015, 17 October 2016, 23 November 2016, 3 May 2017, 25 August 2017 or 16 October 2017 to when the Fees For No Service Policy Information was disclosed on and shortly after 16 April 2018.

No Monitoring Systems Information Contravention

107A On and from 10 May 2012, the No Monitoring Systems Information was information (either alone or in combination with the Fees For No Service Policy Information) that a reasonable person would expect to have a material effect on the price or value of AMP Securities within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

**Particulars**

- (i) The Plaintiffs repeat the matters pleaded at paragraphs 19, 20, 21, 27A and 31 above.
- (ii) The No Monitoring Systems Information was information that would have informed a reasonable person that the charging of Ongoing Service Fees for no Ongoing Services would not easily be rectified, and therefore that AMP would find it difficult to rectify the position promptly.
- (iii) Further particulars may be provided on the service of expert evidence.

107B By reason of the matters pleaded in paragraphs 82A and 107A, and the Continuous Disclosure Obligations, on and from 10 May 2012, 17 April 2014, 20 May 2015, 12

November 2015 , 25 August 2017 or 16 October 2017, AMP became immediately obliged to tell the ASX the No Monitoring Systems Information.

107C AMP did not, at any time during the Relevant Period, tell the ASX the No Monitoring Systems Information and investors and potential investors in AMP Securities did not become aware of any of that information until it was progressively disclosed at the Royal Commission from a period commencing shortly after 2.00 pm on 16 April 2018 and continuing until shortly after the commencement of trading on the ASX on 17 April 2018.

107D By reason of the matters pleaded in paragraphs 82A and 107A-107C, AMP contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act (**No Monitoring Systems Information Contravention**).

107E The No Monitoring Systems Information Contravention was a continuing contravention which continued on and from 10 May 2012, 17 April 2014, 20 May 2015, 12 November 2015, 25 August 2017 or 16 October 2017 to when the No Monitoring Systems Information Contravention was disclosed on and shortly after 2.00 pm on 16 April 2018.

#### *Misleading ASIC Information Contraventions*

108 The:

- (a) 27 May 2015 Misleading ASIC Information;
- (b) 19 June 2015 Misleading ASIC Information;
- (c) 23 June 2015 Misleading ASIC Information;
- (d) 17 August 2015 Misleading ASIC Information;
- (e) 31 August 2015 Misleading ASIC Information;
- (f) 9 September 2015 Misleading ASIC Information;
- (g) 17 September 2015 Misleading ASIC Information;
- (h) ~~45~~ 1 October 2015 Misleading ASIC Information;
- (hh) 26 November 2015 Misleading ASIC Information;
- (i) 14 December 2015 Misleading ASIC Information;

- (j) 23 November 2016 Misleading ASIC Information;
- (k) 3 May 2017 Misleading ASIC Information; and
- (l) 17 October 2017 Misleading ASIC Information,

was, separately or in combination, information that a reasonable person would expect to have a material effect on the price or value of AMP Securities within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

#### **Particulars**

- (i) The Plaintiffs repeat the matters pleaded at paragraphs 58 and 59 above.
- (ii) Further particulars may be provided on the service of expert evidence.

109 By reason of the matters pleaded and particularised in paragraphs 83 and 108 above, and the Continuous Disclosure Obligations, on and from:

- (a) 27 May 2015;
- (b) (further and alternatively) 19 June 2015;
- (c) (further and alternatively) 23 June 2015;
- (d) (further and alternatively) 17 August 2015;
- (e) (further and alternatively) 31 August 2015;
- (f) (further and alternatively) 9 September 2015;
- (g) (further and alternatively) 17 September 2015;
- (h) (further and alternatively) ~~15~~ 1 October 2015;
- (hh) (further and alternatively) 26 November 2015;
- (i) (further and alternatively) 14 December 2015;
- (j) (further and alternatively) 23 November 2016;
- (k) (further and alternatively) 3 May 2017; or
- (l) (further and alternatively) 17 October 2017,

AMP became immediately obliged to tell the ASX the Misleading ASIC Information that existed on each of those dates.

- 110 AMP did not, at any time during the Relevant Period, tell the ASX any of the Misleading ASIC Information and investors and potential investors in AMP Securities did not become aware of any of that information until it was progressively disclosed at the Royal Commission from a period commencing shortly prior to the close of trading on 16 April 2018 and continuing until shortly prior to the close of trading on the ASX on 17 April 2018.
- 111 By reason of the matters pleaded in paragraphs 83 and 108 to 110, AMP contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act on and from each of the dates referred to in paragraph 109 above (**Misleading ASIC Information Contraventions**).
- 112 The Misleading ASIC Information Contraventions were continuing contraventions which continued on and from the date on which each breach occurred until shortly after 16 April 2018.

*Receipt of Legal Advice Information Contravention*

- 113 On and from 10 May 2012, the Receipt of Legal Advice Information was information that a reasonable person would expect to have a material effect on the price or value of AMP Securities within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act.

**Particulars**

If and when it came to light that AMP had continued to implement the Fees For No Service Policy in the face of legal advice to the contrary, AMP was exposed to a substantial risk of: (a) enforcement action by ASIC; and/or (b) damage to its reputation and the profits generated by the AMP Retail Advice Business.

- 114 By reason of the matters pleaded and particularised in paragraphs 84 and 113 above, and the Continuous Disclosure Obligations, on and from 10 May 2012 AMP became immediately obliged to tell the ASX the Receipt of Legal Advice Information.
- 115 AMP did not, at any time during the Relevant Period, tell the ASX the Receipt of Legal Advice Information and investors and potential investors in AMP Securities did not become aware of that information until it was progressively disclosed at the Royal



Commission from a period commencing shortly after 2.00 pm on 16 April 2018 and continuing on 17 April 2018.

116 By reason of the matters pleaded in paragraphs 84 and 113 to 115, AMP contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act (**Receipt of Legal Advice Information Contravention**).

117 The Receipt of Legal Advice Information Contravention was a continuing contravention which continued on and from 10 May 2012 to when the Receipt of Legal Advice Information was disclosed on and shortly after 2:00pm on 16 April 2018.

*Misleading or Deceptive Conduct*

118 The conduct of AMP pleaded in paragraphs 85 to 102 above was conduct:

- (a) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;
- (b) in relation to a financial product or financial services within the meaning of s 1041H(1) and s 1041H(2) of the Corporations Act; and
- (c) in trade or commerce, within the meaning of s 18(1) of the ACL.

119 By reason of the matters pleaded in paragraphs 20 to 31 (inclusive), on and from 10 May 2012, by making, and failing to correct or qualify:

- (a) the Regulatory Compliance Representations;
- (b) further and in the alternative, the Regulatory Compliance Statements;
- (c) further and in the alternative, the Ethical Conduct Representations;
- (d) further and in the alternative, the Ethical Conduct Statements;
- (e) further and in the alternative, the Continuous Disclosure Representations; and/or
- (f) further and in the alternative, the Continuous Disclosure Statements,

AMP engaged in conduct that was misleading or deceptive, or likely to mislead or deceive (**Misleading Conduct Contraventions**).

120 By reason of the matters pleaded in paragraphs 118 and 119, throughout the Relevant Period AMP contravened:

- (a) s 12DA(1) of the ASIC Act;

- (b) s 1041H(1) of the Corporations Act; and
- (c) s 18(1) of the ACL.

## I. CONTRAVENING CONDUCT CAUSED LOSS

- 121 During the Relevant Period, the market of investors and potential investors in AMP Securities was a market:
- (a) which was regulated by, amongst other things, the Listing Rules and s 674(2) and s 1041H of the Corporations Act; and
  - (b) in which the traded price was impacted by material information concerning AMP that was published by it on the ASX or that otherwise became publicly available.
- 122 During the Relevant Period the Fees For No Service Policy Information Contravention, the Misleading ASIC Information Contraventions, the Receipt of Legal Advice Information Contravention and the Misleading Conduct Contraventions (individually or together the **Contraventions**), alone or in combination caused the traded price of AMP Securities to be higher than the traded price that would have prevailed absent the Contraventions.
- 123 In the alternative to paragraphs 121 and 122, the Plaintiffs and some Group Members would not have purchased AMP Securities if some or all of the Contraventions that had occurred at the time of their purchase had not occurred.

### Particulars

The Plaintiffs and some Group Members would not have acquired AMP Securities at the price and volume shown in Schedules A and B had the Fees For No Service Policy Information Contravention, the Misleading ASIC Information Contraventions and the Receipt of Legal Advice Information Contravention not occurred, and relied directly on the Regulatory Compliance Representations, the Ethical Conduct Representations and the Continuous Disclosure Representations and the fact that they were not corrected or qualified prior to the Plaintiffs acquiring AMP Securities.

- 124 By reason of the matters pleaded in paragraphs 121 to 123 the Plaintiffs and Group Members have suffered loss or damage because of and resulting from the Contraventions (or any of them).

### Particulars

The loss suffered by the Plaintiffs will be calculated by reference to:

- (i) the difference between the price at which they acquired their AMP securities during the Relevant Period and the true value of those securities; or
- (ii) the difference between the prices at which they acquired their AMP securities and the market prices that would have prevailed at each of the times that they acquired those interests in the event that the relevant facts were disclosed or the relevant misleading conduct did not occur; or
- (iii) alternatively, on the days during the Relevant Period where the traded price of AMP securities fell as a result of the disclosure of information which had not previously been disclosed because of the Contraventions, the quantum of that fall; or
- (iv) alternatively, on the days after the Relevant Period when the traded price of AMP securities fell as a result of the disclosure of information which had not previously been disclosed because of the Contraventions, the quantum of that fall.

~~(i)~~(v) Further particulars of the Plaintiffs' loss or damage will be provided after service of expert opinion evidence.

~~(ii)~~(vi) Particulars of the loss or damage suffered by Group Members will be calculated in accordance with particulars (i) to (iv) above but are not particularised in this Amended Commercial List Statement. Particulars of group member losses are not presently known to the Plaintiffs and will not be known until instructions are obtained from Group Members, which instructions will be obtained after the opt out process, the determination of the Plaintiffs' claims and common issues at an initial trial, and if and when it becomes necessary for the individual claims of Group Members to be determined.

## D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

- 125 There are no questions appropriate for referral to a referee.

**E. A STATEMENT AS TO WHETHER THE PARTIES HAVE ATTEMPTED MEDIATION;  
WHETHER THE PARTY IS WILLING TO PROCEED TO MEDIATION AT AN  
APPROPRIATE TIME**

126 The parties have not attempted mediation, but the Plaintiffs are willing to proceed to mediation at an appropriate time.

**SIGNATURE OF LEGAL REPRESENTATIVE**

Signature



Capacity

Solicitor on record

Date of signature

5 August 2019

This Amended Commercial List Statement was prepared by Guy Donnellan, Anais d'Arville and Maurice Blackburn and settled by Cameron Moore SC.

**SCHEDULE A – FIRST PLAINTIFF’S TRADES**

<b>Date of Transaction</b>	<b>Transaction</b>	<b>No of AMP Shares Bought / (Sold)</b>	<b>Average Price per AMP Share</b>	<b>Amount Paid / (Received) (excluding brokerage) (\$)</b>
28-May-13	Buy	1,000	\$5.25	\$5,250
29-Jul-15	Sell	(1,000)	\$6.50	(\$6,500)
12-Jan-16	Buy	1,000	\$5.35	\$5,350
4-Feb-16	Buy	1,000	\$5.27	\$5,270
9-Feb-16	Buy	500	\$5.18	\$2,590
12-May-16	Buy	1,500	\$5.53	\$8,295
19-Aug-16	Buy	1,000	\$5.42	\$5,420
12-Sep-16	Buy	1,000	\$5.25	\$5,250

**SCHEDULE B – SECOND PLAINTIFF’S TRADES*****Cleine Superannuation Fund***

<b>Date of Transaction</b>	<b>Transaction</b>	<b>No of AMP Shares Bought / (Sold)</b>	<b>Average Price per AMP Share</b>	<b>Amount Paid / (Received) (excluding brokerage) (\$)</b>
20-May-16	Buy	50,000	\$5.51	\$275,000
30-May-16	Sell	(50,000)	\$5.65	(\$282,500)
1-Jun-16	Buy	138,074	\$5.57	\$769,072
1-Jul-16	Buy	7,700	\$5.17	\$39,809
15-Jul-16	Sell	(145,774)	\$5.64	(\$822,165)
18-Aug-16	Buy	91,140	\$5.48	\$499,446
24-Aug-16	Buy	88,860	\$5.44	\$483,398
4-Jan-17	Sell	(180,000)	\$5.20	(\$936,000)
13-Jan-17	Buy	181,300	\$5.15	\$933,695
18-Jan-17	Buy	155,109	\$5.11	\$792,607
3-Feb-17	Buy	191	\$5.08	\$970
16-Feb-17	Buy	13,400	\$5.23	\$70,080
2-Mar-17	Sell	(350,000)	\$5.05	(\$1,767,500)
13-Mar-17	Buy	161,438	\$4.95	\$799,118
23-Mar-17	Buy	8,097	\$4.91	\$39,756
28-Mar-17	Sell	(169,535)	\$5.05	(\$856,152)
7-Feb-18	Buy	137,000	\$5.10	\$698,700
6-Mar-18	Sell	(137,000)	\$5.35	(\$733,046)
13-Mar-18	Buy	140,000	\$5.33	\$745,881
14-Mar-18	Buy	60,000	\$5.29	\$317,400
27-Mar-18	Buy	131,000	\$5.14	\$673,286
29-Mar-18	Buy	4,423	\$4.99	\$22,049
19-Apr-18	Sell	(335,423)	\$4.38	(\$1,469,164)

***Cleine Family Trust***

<b>Date of Transaction</b>	<b>Transaction</b>	<b>No of AMP Shares Bought / (Sold)</b>	<b>Average Price per AMP Share</b>	<b>Amount Paid / (Received) (excluding brokerage) (\$)</b>
29-Mar-18	Buy	24,021	\$4.99	\$119,862
19-Apr-18	Sell	(24,021)	\$4.38	(\$105,241)

## SCHEDULE C – AMP’S COMPLIANCE STATEMENTS

### I 2012 Compliance Statements (2011 AMP Annual Report)

- (a) *“AMP has a set of values that recognise the group’s responsibilities to all its stakeholders, including shareholders, customers, employees, planners, business partners and the community.*

*The AMP Limited Board places great importance on the highest standards of governance and periodically reviews its governance practices to address AMP’s obligations as a responsible corporate citizen.*

*In accordance with the ASX Corporate Governance Principles and Recommendations (ASX Recommendations), AMP has posted copies of its governance practices (including copies of relevant policies and terms of reference) in the corporate governance section of its website: [www.amp.com.au](http://www.amp.com.au). The AMP Limited Board believes that AMP’s governance practices were consistent with all of the ASX Recommendations during 2011.” (p 31)*

- (b) *“The AMP Limited Board has adopted a Code of Conduct outlining the standards of personal and corporate behaviour required of all directors, officers and employees of the AMP group. This Code reinforces an already strong ethical culture for the benefit of all stakeholders.” (p 32)*

- (c) *“...The risk management framework enables the business to identify and assess risks and controls, respond promptly and appropriately and continue to monitor risks and issues as they evolve. Risk and compliance information is reported quarterly to the Audit Committee, or more regularly if required.*

*AMP’s risk management structures and procedures are continually being enhanced or updated. In addition, the internal audit function provides independent and objective assurance to the board that risks are being managed effectively across the group.” (p 34)*

- (d) *“Compliance is a key element of risk management. The board has overall responsibility for the establishment of processes to manage compliance with the laws, regulations, contracts, industry codes, internal standards and policies applicable to AMP’s operations and for monitoring and reviewing their effectiveness.” (p 34)*

- (e) *“AMP was founded on a promise, “to be a sure friend in uncertain times”.*

*This promise will be kept by delivering on AMP’s responsibilities in a balanced way, to all stakeholders – that is, shareholders, customers, employees, planners, business partners and the community in general.” (p 35)*



- (f) *“AMP believes there is a clear link between an organisation’s environmental and social impacts, ethical practices, the quality of its corporate governance and its long-term business success.” (p 35)*
- (g) *“The guiding principle of [AMP’s Market Disclosure Policy] is that AMP must immediately notify the market via an announcement to the ASX of any information concerning AMP that a reasonable person would expect to have a ‘material’ effect on the price or value of AMP securities. The policy permits exceptions to immediate notification in accordance with the ASX Listing Rules.” (p 36)*

## **II 2013 Compliance Statements (2012 AMP Annual Report)**

- (a) *“[R]esponding to regulatory change will also be a high priority. We began work early on these regulatory changes, and implemented key elements two years ago, so that strategically we are well placed... While 2013 will be a period of significant change in our industry, we are well positioned for the future.” (p 1)*
- (b) *“The AMP Limited Board has adopted a code of conduct, which was reviewed and updated in 2012. The code outlines the standards of behaviour expected of all directors, officers, employees, contractors and consultants of the AMP group. The code reinforces an already strong ethical culture for the benefit of AMP’s shareholders, customers and clients, business partners and advisers, employees and the community.” (p 32)*
- (c) *“AMP is committed to ensuring that all shareholders and the market are provided with timely and balanced disclosure of all material matters concerning AMP... The guiding principle of [AMP’s market disclosure policy] is that AMP must immediately notify the market via an announcement to the ASX of any information concerning AMP that a reasonable person would expect to have a ‘material’ effect on the price or value of AMP securities. The policy permits exceptions to immediate notification in accordance with the ASX Listing Rules.” (p 34)*
- (d) *“The Audit Committee is supported by the risk management structures which exist throughout the organisation, including the Group Asset and Liability Committee, the Group Risk and Compliance Committee and business unit risk committees. The Audit Committee relies on the work of the Audit Committees of key operating subsidiaries on risk and compliance matters relating to those subsidiaries. The enterprise risk management framework enables the business to identify and assess risks and controls, respond promptly and appropriately and continue to monitor risks and issues as they evolve. Risk and compliance information is reported quarterly to the Audit Committee, or more regularly if required.” (p 35)*

- (e) *“Management has reported to the board that AMP’s material business risks have been managed effectively for the year ended 31 December 2012. The board has assessed and accepted that report.” (p 35)*

### **III 2014 Compliance Statements (2013 AMP Annual Report)**

- (a) *“Wealth Management’s key priorities are to ... implement a comprehensive customer and product strategy which accounts for the new regulatory environment” (p 11)*
- (b) *“The Australian finance industry is in a period of significant regulatory change in relation to superannuation, the provision of financial advice, banking, capital requirements, US tax and privacy legislation. While most of the reforms are nearing completion, the interpretation, and the practical implementation of regulation, coupled with the failure to fund, manage and implement the required changes, could adversely impact AMP’s business model, or result in a failure to achieve business and or strategic objectives. AMP actively engages with the government, regulators and industry bodies and has dedicated resources and change programs to meet the new requirements.” (p 12)*
- (c) *“Failure to comply with regulatory and legislative requirements could result in breaches, fines, regulatory action or reputational impacts. AMP has established frameworks and dedicated risk and compliance teams that work closely with the business to ensure compliance with regulatory and legal obligations. The provision of financial advice to customers is one of the current focus areas and AMP is working closely with regulators and external advisers to review processes and controls to ensure all financial advice provided by AMP advisers is compliant with the relevant regulations and in the best interest of the customer.” (p 12)*
- (d) *“The AMP Limited Board has adopted a code of conduct, which was reviewed and updated in 2012. The code outlines the standards of behaviour expected of all directors, officers, employees, contractors and consultants of the AMP group. The code reinforces an already strong ethical culture for the benefit of AMP’s shareholders, customers and clients, business partners and advisers, employees and the community.” (p 34)*
- (e) *“AMP is committed to ensuring that all shareholders and the market are provided with timely and balanced disclosure of all material matters concerning AMP.” (p 36)*
- (f) *“The Audit Committee is supported by the risk management structures which exist throughout the organisation, including the Group Asset and Liability Committee and the Group Risk and Compliance Committee. The Audit Committee relies on the work of the Audit Committees of key operating subsidiaries on risk and compliance matters relating*

*to those subsidiaries. The enterprise risk management framework enables the business to identify and assess risks and controls, respond promptly and appropriately and continue to monitor risks and issues as they evolve. Risk and compliance information is reported quarterly to the Audit Committee, or more regularly if required.” (p 37)*

- (g) *“Management has reported to the board that AMP’s material business risks have been managed effectively for the year ended 31 December 2013. The board has assessed and accepted that report.” (p 37)*

#### **IV 2015 Compliance Statements (2014 AMP Annual Report)**

- (a) *“[T]he Australian finance industry is in a period of significant regulatory change in relation to superannuation, the provision of financial advice, banking, capital requirements and foreign tax legislation. The interpretation and the practical implementation of regulation, coupled with the failure to manage and implement the required changes, could adversely impact AMP’s business model, or result in a failure to achieve business and/or strategic objectives. AMP actively engages with the government, regulators and industry bodies, and has dedicated resources and change programs underway to meet the new requirements.” (p 11)*
- (b) *“[F]ailure to comply with regulatory and legislative requirements could result in breaches, fines, regulatory action or reputational impacts. AMP has established frameworks and dedicated risk and compliance teams who work closely with the business to ensure compliance with regulatory and legal obligations. The provision of financial advice to customers is one of the current focus areas and AMP is working closely with regulators and external advisers to review processes and controls to ensure all financial advice provided by AMP advisers is compliant with the relevant regulations and in the best interests of the customer.” (p 12)*
- (c) *“The AMP Limited Board has adopted a code of conduct, which outlines the standards of behaviour expected of all directors, officers, employees, contractors and consultants of AMP. The code reinforces an already strong ethical culture for the benefit of AMP’s shareholders, customers and clients, business partners and advisers, employees and the community.” (p 36)*
- (d) *“AMP is committed to ensuring that all shareholders and the market are provided with timely and balanced disclosure of all material matters concerning AMP.” (p 38)*

- (e) *“The Audit Committee and Risk Committee are supported by the risk management structures which exist throughout the organisation, including the Group Asset and Liability Committee and the Group Risk and Compliance Committee. The committees also rely on the work of the committees of the key operating subsidiaries on risk and compliance matters relating to those subsidiaries. The enterprise risk management framework enables the business to identify and assess risks and controls, respond promptly and appropriately and continue to monitor risks and issues as they evolve.”*  
(p 39)
- (f) *“Management has reported to the board that AMP’s material business risks have been managed effectively for the year ended 31 December 2014. The board has assessed and accepted that report.”* (p 39)

## **V 2016 Compliance Statements (2015 AMP Annual Report)**

- (a) *“The industry in which we operate is being tested like never before. Customers not only want quality products that offer value for money but they want and expect exceptional customer service. And we believe they deserve nothing less. That’s why we’re putting our customers at the heart of everything we do.”* (p 1)
- (b) *“Two years ago, we put in place a strategy to transform our business – to place our customers at the centre of everything we do. The consistent execution of this strategy over the past two years has created a strong platform for future growth and in 2016 our focus will be on realising the value from the investments we’ve made so far.”* (p 5)
- (c) *“We take our continuous disclosure obligations seriously. All material price sensitive information that requires disclosure is made available through the Australian Securities Exchange (ASX) and New Zealand Stock Exchange (NZX).”* (p 14)
- (d) *“Every day we monitor and manage risks to deliver sustainable growth, protect our business and our stakeholders’ interests, and meet our legal and regulatory obligations. To meet our strategic objectives and deliver sustainable growth, we need to take considered risks. Our risk management framework enables us to identify, understand and manage these risks effectively. This enables us to grow our business whilst also meeting the expectations of key stakeholders and safeguarding our customers, our reputation and our capital.”* (p 15)
- (e) *“The board has overall responsibility for the risk management framework including approval of AMP’s strategic plan, risk management strategy and risk appetite. It also*

*monitors the policies and practices necessary for the business to operate within the agreed appetite and comply with applicable laws and regulations. The board provides clear boundaries for acceptable risk taking and monitors the business to ensure all risks are contained.” (p 16)*

- (f) *“We want to create a better tomorrow for our customers, employees, business partners, communities and shareholders. Everything we do, every decision we make has an impact, not only on the long-term success of our business but also on the lives of our customers. We are committed to acting with professionalism, honesty and integrity so all our stakeholders know they can trust us to do the right thing.” (p 16)*
- (g) *“Throughout 2015, we complied with the third edition of the ASX Corporate Governance Principles and Recommendations and we continually review our governance practices to ensure we not only meet but exceed the expectations of the regulators and all our stakeholders.” (p 16)*
- (h) *“[T]he Australian financial services industry is in a period of significant regulatory change in relation to superannuation, the provision of financial advice, banking, capital requirements, and foreign tax legislation. The interpretation and the practical implementation of regulation, coupled with the failure to manage and implement the required changes, could adversely impact AMP’s business model, or result in a failure to achieve business and/or strategic objectives. AMP actively engages with the government, regulators and industry bodies, and has dedicated resources and change programs underway to ensure compliance with the new requirements.” (p 20)*
- (i) *“[F]ailure to comply with regulatory and legislative requirements could result in breaches, fines, regulatory action or reputational impacts. AMP has established frameworks and dedicated legal, risk and compliance teams who work closely with the business to meet its regulatory and legal obligations. The provision of financial advice to customers is one of the current focus areas and AMP is working closely with regulators and external advisers to review processes and controls to ensure all financial advice provided by AMP advisers is compliant with the relevant regulations and in the best interests of the customer.” (p 20)*

## **VI 2017 Compliance Statements (2016 AMP Annual Report)**

- (a) *“We take our continuous disclosure obligations seriously. All material price sensitive information that requires disclosure is made available through the Australian Securities Exchange (ASX) and New Zealand Stock Exchange (NZX).” (p 16)*

- (b) *“The board is ultimately responsible for the Enterprise Risk Management (ERM) framework and oversight of its operation by AMP’s management. In particular, the board is responsible for setting AMP’s risk appetite, the strategic plan and risk management strategy. It also monitors policies and business practices to ensure that strategic objectives are achieved within AMP’s risk appetite and to comply with applicable laws and regulations. The Risk Committee and board review the ERM framework at least annually, including for 2016, to satisfy themselves that it continues to be sound.”* (p 18)
- (c) *“The board and Risk Committee have been provided with assurance that all of AMP’s material business risks have been effectively managed for the year ended 31 December 2016.”* (p 18)
- (d) *“Every day AMP monitors and manages risks to deliver sustainable growth, protect our business and our stakeholders’ interests, and meet our legal and regulatory obligations. Risk is inherent in our business and industry. As such, we take measured risks to achieve AMP’s vision of helping people own tomorrow and deliver sustainable value to our shareholders. Effective risk management supports informed decision-making and aids in capitalising on business opportunities to ensure that strategic objectives are achieved. The board and management value effective risk management as fundamental to AMP’s long-term sustainability and reputation. In addition, the board and management believe that effective risk management requires a risk-aware culture amongst all employees, which in turn promotes risk-informed decision-making.”* (p 18)
- (e) *“AMP wants to create a better tomorrow for our customers, employees, business partners, communities and shareholders. Everything we do, every decision we make, has an impact, not only on the long-term success of our business but also on the lives of our customers. We are committed to acting with professionalism, honesty and integrity so all our stakeholders know they can trust us to do the right thing.”* (p 19)
- (f) *“Throughout 2016, we complied with the third edition of the ASX Corporate Governance Principles and Recommendations, and we continually review our governance practices to ensure that we not only meet but exceed the expectations of the regulators and all our stakeholders.”* (p 19)
- (g) *“The financial services industry is going through a period of significant change. These changes, combined with increased attention from the media and public, have placed additional pressures on governments to make changes to existing regulations. We*

*recognise that failure to effectively anticipate and respond to regulatory changes could adversely impact AMP's reputation and ability to achieve its strategic objectives. We manage this risk by having dedicated resources to implement required change programs and actively engage with government, regulators and industry bodies to effectively monitor and anticipate regulatory changes. We also place significant focus on our risk culture to ensure we are keeping our legal, regulatory and social responsibilities front of mind in our daily activities.” (p 23)*

- (h) *“AMP is committed to establishing a culture of help that reflects our values of professionalism, honesty and integrity. We see conduct risk as the risk of inappropriate, unethical or unlawful behaviour on the part of our employees. Our code of conduct outlines the minimum standards for behaviours, decision making and our expectations for how we treat our employees, customers, business partners and shareholders. We are committed to doing the right thing and our code of conduct supports driving a strong risk-aware culture. We recognise that culture drives the right behavior and conduct within AMP and influences outcomes and the achievement of strategic objectives. AMP's approach to managing conduct risk is to educate and support staff to recognise the risk implications of their decisions, and empower our employees to speak out against instances of bad conduct.” (p 24)*

## **VII 2018 Compliance Statements (2017 AMP Annual Report)**

- (a) *“We take our continuous disclosure obligations seriously. All material price sensitive information that requires disclosure is made available through the Australian Securities Exchange (ASX) and New Zealand Stock Exchange (NZX).” (p 16)*
- (b) *“AMP values effective risk management as fundamental to its long-term sustainability and reputation. The board and management believe that effective risk management requires a sound risk culture that drives the right behaviours and supports AMP's values of integrity, help and performance. We are committed to helping our customers and improving risk culture to keep pace with evolving regulatory, customer and community expectations. In 2017, AMP continued to implement initiatives designed to effectively integrate risk awareness into employee decision-making. For example, we further embedded the use of our risk appetite statement in the evaluation of our strategic initiatives and in enhanced periodic reporting to the board.” (p 16)*
- (c) *“Every day AMP monitors and manages risks to deliver sustainable growth, protect our business and our stakeholders' interests, and meet our legal and regulatory*

*obligations. Risk is inherent in our business and industry. As such, we take measured risks to achieve AMP's vision of 'helping people own tomorrow' and deliver sustainable value to our shareholders. Effective risk management supports informed decision-making and aids in capitalising on business opportunities to support achievement of strategic objectives. The board and management consider effective risk management to be fundamental to AMP's long-term sustainability and reputation. In addition, the board and management believe that effective risk management requires a risk-aware culture amongst all employees, which in turn promotes risk-informed decision-making."* (p 18)

- (d) *"AMP believes that by acting ethically and responsibly we will be best positioned to create a better tomorrow for our customers, employees, business partners, communities and shareholders. We are committed to acting with professionalism, honesty and integrity so all our stakeholders know they can trust us to do the right thing."* (p 19)
- (e) *"Throughout 2017, we complied with the recommendations set by the ASX Corporate Governance Council in the third edition of its Corporate Governance Principles and Recommendations ..."* (p 19)
- (f) *"Key risks... The conduct of financial institutions is an area of significant focus. There is a risk that business practices and management, staff or business partner behaviours may not deliver the outcomes desired by AMP or meet the expectations of regulators and customers. An actual or perceived shortcoming in conduct by AMP or its business partners may undermine our reputation and draw increased attention from regulators."* (p 23)
- (g) *"AMP has established internal policies, frameworks and procedures to seek to ensure our domestic and international regulatory obligations are met in each jurisdiction. Processes are also in place to manage the implications of regulatory change on our business performance."* (p 23)
- (h) *"The Australian financial services industry is currently responding to a Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, established on 14 December 2017. The outcomes of this Royal Commission for AMP and the industry are uncertain at this time. AMP has welcomed the opportunity to contribute to the Royal Commission and supports its intent to provide certainty to the financial system and help restore the community's trust and confidence in the industry."* (p 24)