

NOTICE OF MOTION

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2018/00310118 and 2018/309329 (Consolidated Proceedings)

TITLE OF PROCEEDINGS

First plaintiff	Komlotex Pty Ltd (ACN 004 390 023) As Trustee For Breda Sinclair Industries Superannuation Fund
Second plaintiff	Fernbrook (Aust) Investments Pty Ltd (ACN 068 190 296)
Defendant	AMP Limited ABN 49079354519

FILING DETAILS

Person seeking orders	Komlotex Pty Ltd and Fernbrook (Aust) Investments Pty Ltd, the plaintiffs
Legal representative	Bennett James Leslie Slade (Maurice Blackburn)
Legal representative reference	3052777
Contact name and telephone	Vavaa Mawuli – (07) 3016 0392
Contact email	VMawuli@mauriceblackburn.com.au

PERSON AFFECTED BY ORDERS SOUGHT

Defendant

HEARING DETAILS

This motion is listed on _____.

Supreme Court of New South Wales
Law Courts Building
184 Phillip Street
Sydney NSW

ORDERS SOUGHT

1. Pursuant to rr 21.2, 21.3 and 21.4 of the *Uniform Civil Procedure Rules 2005* (NSW) (**UCPR**), by 3 April 2020, the defendant is to give discovery of documents described in the Schedule.
2. The parties shall comply with the Maurice Blackburn electronic document exchange protocol served on the defendant on 18 October 2019 for the purposes of exchanging electronic documents used in this proceeding including by way of discovery.
3. Documents falling within categories 5.1 and 11.2 that wholly came into existence after the commencement of this proceeding are not excluded documents within the meaning of r 21.1 of the UCPR.
4. The defendant pays the plaintiffs' costs of this motion, if opposed.
5. Such other orders as the Court deems fit.

SIGNATURE

Signature of legal representative



Name	Vavaa Mawuli
Capacity	Solicitor
Date of signature	31 January 2020

NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales Level 5 Law Courts Building 184 Philip Street Sydney NSW
Postal address	Supreme Court of New South Wales GPO Box 3 Sydney NSW 2001
Telephone	(02) 9230 8111

SCHEDULE

Unless indicated otherwise in this section, terms in this Schedule have the same meanings as in the Amended Commercial List Statement filed 5 August 2019.

Abbreviations

BOLR	Buyer Of Last Resort
BOO	Buy Out Option
FOFA	Future of Financial Advice

Adviser Audit Program means any program for auditing AMP Advisers carried out by any of AMP Limited, AMP Financial Planning Limited, Charter Financial Planning Limited, Hillross Financial Services Limited, Ipac Securities Limited.

AMP Advisers means the financial planners who provided advice in connection with the AMP Retail Advice Business, referred to in sub-paragraphs 16(b) and 17(b) of the Commercial List Response.

Common Topics is defined in paragraph 2.1 of this Schedule.

Custodians is defined in paragraph 9.1 of this Schedule.

Discovery Period means 1 January 2012 to 13 April 2018.

Orphan Clients means customers of the AMP Retail Advice Business without an assigned AMP Adviser, including those customers who were recorded on or formed part of a client register that had been "Ringfenced" or transferred into the Buyer Of Last Resort (BOLR) Pool.

2017 Clayton Utz Report refers to the report titled "AMP BOLR Investigation" prepared by Clayton Utz, dated 16 October 2017.

1. Adviser and BOLR Policies

1.1 Template documents reflecting the terms of the agreements referred to in paragraph 26(a)(i) of the Commercial List Response:

- (a) for each of the AMP Advice Licensees; and
- (b) over the whole or any part of the Discovery Period.

1.2 The various Practice Documents and policies referred to in paragraph 26(a)(vii) of the Commercial List Response (referred to below as the **BOLR Policies**) which governed the rights of an AMP Adviser to have an AMP Advice Licensee buy back its client register rights:

- (a) for each of the AMP Advice Licensees; and
- (b) over the whole or any part of the Discovery Period,

including the various documents referred to in the particulars to paragraph 26(a)(vii) of the Commercial List Response.

2. Boards and Subcommittees

2.1 Agendas, minutes of meetings, board packs or papers, board presentations, reports, and documents prepared for or at workshops, created during the Discovery Period, of the Boards of Directors (including any subcommittees of the Boards), of any of the following entities:

- (a) AMP Limited
- (b) AMP Financial Planning Pty Ltd (AMPFP)
- (c) Charter Financial Planning Limited
- (d) Hillross Financial Services Limited
- (e) Ipac Securities Limited

which refer to, record discussion of, or concern any one or more of:

- (i) the provision (or non-provision) of advice and/or services to Orphan Clients;
- (ii) the payment (or non-payment) of advice and/or service fees by Orphan Clients, or the charging (or non-charging) of advice and/or service fees to Orphan Clients;
- (iii) the charging of advice or service fees to Orphan Clients (including, but not limited to, the charging of fees pursuant to incidences of "90 Day Exception" or "Ringfencing" referred to in sub-paragraphs 26(b)(ii)] and 26(c)(ii) of the Commercial List Response whether or not such incidences are alleged by the Defendant to have been applied "ad hoc" or "from time to time");
- (iv) The ad hoc exception to the BOLR Policies referred to as the 90 Day Exception in sub-paragraph 26(b)(ii) of the Commercial List Response, however that exception was described or identified;
- (v) The practice of Ringfencing, as referred to in subparagraphs 26(c)(i)-(ii) of the Commercial List Response, however that practice was described or identified;
- (vi) the capability of AMP and/or any of the Advice Licensees to provide ongoing advice or services to Orphan Clients;
- (vii) the ability of AMP and/or the Advice Licensees to monitor whether, or determine if:
 - A. Orphan Clients were being or had been charged advice or service fees;
 - B. clients (including but not limited to Orphan Clients) were being or had been provided with the advice or services they were paying for or being charged for; and

- (viii) the adequacy, sufficiency or effectiveness of any systems, processes, programs or methods for determining the matters identified in (vii) above.

The matters referred to in sub-paragraphs (i)-(viii) are referred to as the **Common Topics**.

3. Management Committees

3.1 Terms of reference, agendas, minutes of meetings, meeting packs and papers, presentations to, and reports of any of the following Committees created during the Discovery Period:

- (a) BOLR Exceptions Committee
- (b) FOFA Practice Propositions Project Steering Committee
- (c) FOFA Program Steering Committee
- (d) FOFA Stronger Super Ready Program Steering Committee (previously known as *Future of Financial Advice and Stronger Super Ready Program Steering Committee*)
- (e) Advice Risk and Compliance Committee
- (f) Advice Financial Risk & Capital Committee
- (g) Buyback Oversight Committee
- (h) AMP Advice Breach Committee
- (i) AMP Advice Remediation Committee
- (j) Steering Committee that oversees AMP's Advice Business Review Program as referred to in the Royal Commission witness statement of Anthony (Jack) Regan at paragraph [43] (AMP.6000.0065.0001 at .0012);
- (k) Advice Compliance Review Committee;

referring to, recording discussion of, or concerning any of the Common Topics.

4. Groups/Teams

4.1 Agendas, minutes of meetings, meeting packs or papers, presentations to, documents distributed to team members of, and reports of any of the following groups (including any of their subcommittees or working groups) created during the Discovery Period:

- (a) Group Leadership Team
- (b) Advice and New Zealand Leadership Team
- (c) AMP Licensee Incident Panel

referring to, recording discussion of, or concerning any of the Common Topics.

5. ASIC Investigation

5.1 Documents in the following categories created from the commencement of the Discovery Period to 1 October 2019:

- (a) notes taken at or for the purpose of interviews with ASIC; and/or
- (b) transcripts of interviews conducted by ASIC with employees or former employees of AMP Limited and the AMP Advice Licensees

referring to, recording discussion of, or concerning any of the Common Topics.

5.2 ASIC Breach Reports, including any drafts, concerning any of the Common Topics.

5.3 All documents provided to ASIC during ASIC's investigation into the Common Topics.

6. Clayton Utz

6.1 All drafts of the 2017 Clayton Utz Report.

6.2 All documents "referred to"¹ in the 2017 Clayton Utz Report, including but not limited to documents referred to by document identification number in the 2017 Clayton Utz Report.

6.3 All documents provided to Clayton Utz for the purposes of preparing the 2017 Clayton Utz Report.

6.4 All communications to, from, or copied to a Custodian regarding:

- (a) the content of the 2017 Clayton Utz Report;
- (b) the conduct of the investigations by Clayton Utz in preparing the 2017 Clayton Utz Report; or
- (c) the role of any AMP employee in finalising the content of the 2017 Clayton Utz Report.

7. Deloitte

7.1 The Deloitte "Phase 1 Look-Back Report" dated 24 November 2017 and any other reports prepared by Deloitte either before or after that date concerning or referring to any of the Common Topics.

7.2 All documents provided to Deloitte for the purposes of preparing the reports referred to in paragraph 7.1.

8. Policies and Programs

8.1 Documents created in the period from 2008 to the end of the Discovery Period evidencing the design or content of any policies, business practices or business rules of any of the following entities:

- (a) AMP Limited

¹ In the sense in which that term is used in Rule 21.10 of the *Uniform Civil Procedure Rules 2005* (NSW).

- (b) AMP Financial Planning Limited
- (c) Charter Financial Planning Limited
- (d) Hillross Financial Services Limited
- (e) Ipac Securities Limited

concerning any of the Common Topics.

- 8.2 Documents created during the Discovery Period evidencing the design or content of any Adviser Audit Program, in regard to monitoring:
- (a) whether clients were being charged fees for advice or services which they had not received or would not receive;
 - (b) whether clients were being or had been provided with the advice or services which they had paid for, or for which they were being charged for.
- 8.3 Documents created in the period from 2008 to the end of the Discovery Period evidencing the design or content of any processes, systems or practices of AMP or the AMP Advice Licensees which monitored or were designed to monitor whether:
- (a) Orphan Clients were being or had been charged advice or service fees;
 - (b) clients (including but not limited to Orphan Clients) were being or had been provided with the advice or services which they had paid for, or which they had been or were being charged for;
- 8.4 Documents recording any output, findings or conclusions of the programs or systems referred to in paragraphs 8.2 or 8.3.
- 8.5 Documents recording any review of the systems referred to in paragraph 8.2 or 8.3, including the reviews referred to by Mr Regan at T1080.45-47 of the transcript of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.
- 8.6 Documents recording AMP's policies and procedures in respect of its continuous disclosure obligations, as in force during the Discovery Period, including those designed to inform an assessment of:
- (a) whether a reasonable person would expect information to have a material effect on price;
 - (b) whether information was sufficiently definite to warrant disclosure; and/or
 - (c) whether information was generated for the internal management purposes of AMP.

9. Custodians

- 9.1 For the Discovery Period, all records of communications involving the Custodians:
- (a) Catherine Brenner – AMP Board
 - (b) Sarah Britt – Head of Advice Compliance

- (c) Robert Caprioli – Head of Advice & Banking
- (d) Marilena Cozzolino – Head of Strategic Advice Solutions and Compliance
- (e) Saskia Goedhart – Group Chief Risk Officer
- (f) Michael Guggenheimer – MD of AMPFP; MD of Hillross
- (g) Steven Helmich – Director AMPFP; Chair PPPSC
- (h) Peter Himmelhoch – Director AMPFP; Practice Propositions Project Steering Committee
- (i) Gordon Lefevre – Chief Financial Officer, Member of GLT
- (j) Craig Meller – CEO, Managing Director AMP
- (k) Justin Morgan – Advice – Head of Licensee Value Management;
- (l) Michael Paff – MD AMP, AMPFP, AMP Advice
- (m) Anthony Regan – Group Executive – Advice; MD Hillross; member GLT
- (n) Mike Thornton – Group Chief Risk Officer
- (o) Wendy Thorpe – member GLT
- (p) Ann Turner – Legal Manager for Advice
- (q) Brian Salter – Group General Counsel
- (r) Tom Galletta – Senior Legal Counsel
- (s) Wayne Marsh - Senior Manager Remuneration and Capital
- (t) Larissa Baker Cook – Head of Litigation and Dispute Resolution Counsel
- (u) Claudia Firmansjah – National Manager of Advice Governance

referring to, recording discussion of, or concerning any of the Common Topics.

- 9.2 Documents recording the role, responsibilities, reporting lines, delegated authority and approval limits in respect of any of the Custodians over the Discovery Period.

10. Individual Transactions/Clients

- 10.1 Documents which record the number of customer accounts that 90 Day Exception had been applied to at any point in time during the Discovery Period.
- 10.2 Documents which record the number of customer accounts that Ringfencing had been applied to at any point in time during the Discovery Period.

11. Other

- 11.1 Organisational charts and/or reporting line charts that were dated or created during the Discovery Period for any of the following:

- (a) AMPFP Limited
- (b) Charter Financial Planning Limited
- (c) Hillross Financial Services Limited
- (d) Ipac Securities Limited
- (e) The following departments within AMP Limited:
 - (i) Advice
 - (ii) Advice & Banking
 - (iii) Client Registers
 - (iv) Financial Planning

11.2 From the commencement of the Discovery Period to 1 October 2019, all reports (including instructions and terms of reference), memoranda and papers relating to the remediation of customers charged fees for advice or services they did not receive, together with all books recording the distribution and/or recipients of such reports, memoranda or papers.

12. PricewaterhouseCoopers

12.1 All documents provided to PwC for the purposes of preparing the report referred to in paragraph 36(ii) of the Commercial List Response.

13. General

13.1 Any documents which AMP proposes to rely on or which are detrimental to its case of which the solicitors for AMP are aware without having to undertake any searches or inquiries in addition to the searches and inquiries which AMP is required to undertake or which it has undertaken in relation to the above categories.