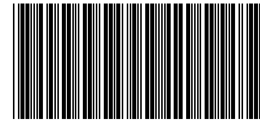
Filed: 20 July 2018 6:07 PM



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Commercial List Response

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2018/00145792

TITLE OF PROCEEDINGS

First Plaintiff	Marion Antoinette Wigmans
First Defendant	AMP LIMITED ABN 49079354519

FILING DETAILS

Filed for	AMP LIMITED, Defendant 1
Legal representative	JASON LAWRENCE BETTS
Legal representative reference	
Telephone	02 9225 5000

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Commercial List Response (AMP Commercial List Response 20.07.18.pdf)

[attach.]

Filed: 20/07/2018 18:07 PM

COMMERCIAL LIST RESPONSE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity Division
List	Commercial List
Registry	Sydney
Case number	2018/00145792

TITLE OF PROCEEDINGS

Plaintiff	Marion Antionette Wigmans
Defendant	AMP Limited (ABN 49 079 354 519)

FILING DETAILS

Filed for	AMP Limited, the Defendant
Filed in relation to	Plaintiff's Summons
Legal representative	Herbert Smith Freehills
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PRELIMINARY MATTERS

1. Headings are used in this Commercial List Response (**Response**) for convenience only. They do not form part of the response to the Commercial List Statement filed on 9 May 2018 (the **CLS**).

2. Unless the context requires otherwise, the defendant adopts the defined terms used in the CLS, but does not admit any factual assertions contained in, or in any way implied by, any defined term used in the CLS and repeated in this Response.

3. In this Response, the defendant uses "**AMP**" to refer to AMP Limited (ABN 49079354519).

A THE NATURE OF THE DISPUTE

4. This is a representative proceeding brought by the Plaintiff on behalf of herself and other persons who allegedly acquired an interest in shares of AMP, between 10 May 2012 and 15 April 2018.

5. During the Relevant Period, where an AMP Financial Adviser intended to cease to be an Authorised Representative of an Advice Licensee, the adviser could request that the licensee purchase or buy-back the adviser's register rights in respect of the adviser's customers, after providing a notice period. Where an Advice Licensee purchased those

rights, they were typically placed in a "BOLR Pool" pending those rights being allocated to a new AMP Financial Adviser. The BOLR Policy for each of the Advice Licensees required an adjustment to any ongoing service fees, such that the customer would not pay ongoing service fees for the time they were placed in the BOLR Pool.

6. In the Relevant Period, in a limited number of cases an undocumented exception to the BOLR Policy was applied such that the AMPFP and Hillross continued to charge some customers fees under ongoing service arrangements provided that certain conditions were met. This exception was known as the "90 Day Exception".

7. In addition to the 90 Day Exception, in some cases where client register rights were purchased by an Advice Licensee, those rights were quarantined outside the BOLR Pool. This was known as "Ring-fencing".

8. In the period between 2012 and 2017, AMP's Advice Business serviced between 1.3 million and 1.7 million customers in each of those years. The 90 Day Exception was applied 39 times, affecting approximately 2,188 customer accounts. The affected customers were charged approximately $376,000 in respect of ongoing service fees which they did not receive. All of those customers have been remediated. Ring-fencing occurred in respect of approximately 1,209 customers, who were charged ongoing service fees of approximately $145,000 for services which they did not receive. Almost all of those customers have been remediated.

9. In the period from 16 April 2015, ASIC has been conducting an investigation in respect of AMP in respect of the charging of fees for no service. During that investigation, ASIC has issued numerous notices for the production of documents from AMP. In the course of that investigation, AMP made seven misrepresentations to ASIC (on twelve occasions) between 27 May 2015 and 3 May 2017. Those misrepresentations did not in fact mislead ASIC having regard to the nature and size of ASIC's investigation and other information that ASIC had available to it.

10. In June 2017, AMP appointed Clayton Utz to conduct an investigation and to produce a report for the Board of AMP in relation to the 90 Day Exception, Ring-fencing and the misrepresentations made to ASIC. ASIC was aware that Clayton Utz had been retained by AMP in relation to ASIC's fees for no service investigation. Further, the letter of engagement between AMP and Clayton Utz contemplated day-to-day interactions between Clayton Utz and specified AMP representatives, as well as direct escalation to the Chairman of the Board if need be. That letter of engagement was provided by AMP to ASIC at the same time as the report prepared by Clayton Utz. In those circumstances, ASIC was aware of the nature of the report that had been prepared by Clayton Utz.

11. In this proceeding, the Plaintiff alleges that AMP contravened its continuous disclosure obligations under the ASX Listing Rules by its alleged failure to disclose information in respect of the alleged 90 Day Exception, Ring-fencing, misrepresentations made to ASIC and its alleged involvement in the drafting of the Clayton Utz Report. AMP disputes that it did so.

12. The Plaintiff further alleges that AMP engaged in misleading or deceptive conduct by reason of certain statements it made to the ASX. AMP denies those allegations. In particular, AMP denies that it made the representations as pleaded and says that in any event the statements that the Plaintiff relies upon as founding these representations were statements of opinion for which AMP had reasonable grounds at the time they were made. Further, none of the matters on which the Plaintiff relies as falsifying those representations (assuming them to have been made) in fact do so. AMP also denies that the 90 Day Exception and Ring-fencing amounted to unconscionable conduct.

B ISSUES LIKELY TO ARISE

13. AMP agrees with the issues likely to arise as summarised in the CLS and says that the following issues will also arise:

    (a) whether the 90 Day Exception Information, the Ring-fencing Information, the Misleading ASIC Information and/or the Clayton Utz Report Information (as those matters are defined in the CLS and to the extent they are proven) was information that a reasonable person would expect to have a material effect on the price or value of the AMP Shares;

    (b) whether the information fell within the exception to ASX Listing Rule 3.1 contained in ASX Listing Rule 3.1A because:

        (i) the information comprised information that was insufficiently definite to warrant disclosure, and/or was generated for the internal management purposes of AMP;

        (ii) the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and

        (iii) a reasonable person would not have expected AMP to disclose the information;

    (c) whether each of the alleged misleading or deceptive representations were statements of opinion of AMP of which it had reasonable grounds.

C DEFENDANT'S RESPONSES TO CONTENTIONS

I PARTIES AND RELEVANT PERSONS

(A) The Plaintiff and Group Members

1. In answer to the allegations in paragraph 1 of the CLS, AMP:

   (a) admits that the Plaintiff has purported to commence this proceeding as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW);

   (b) does not admit the allegations in subparagraph 1.1;

   (c) denies that any person has suffered loss or damage as alleged in subparagraph 1.2; and

   (d) otherwise denies the allegations in paragraph 1.

2. AMP denies the allegations in paragraph 2 of the CLS.

3. AMP does not admit the allegations in paragraph 3 of the CLS.

4. AMP does not admit the allegations in paragraph 4 of the CLS.

5. AMP does not plead to paragraph 5 of the CLS, which contains no allegations against it.

(B) The Defendant

6. In answer to the allegations in paragraph 6 of the CLS, AMP:

   (a) says that AMP, together with its subsidiaries, carries on a financial services business;

   (b) says that AMP and its subsidiaries variously provide financial advice, superannuation services, insurance, banking and investment management advice; and

   (c) otherwise denies the allegations in paragraph 6.

7. In answer to the allegations in paragraph 7 of the CLS, AMP:

   (a) admits the allegations in subparagraphs 7.1, 7.2, 7.3 and 7.5;

   (b) says that the Plaintiff has not sufficiently identified the conduct that is pleaded in subparagraphs 7.4 and 7.6; and

(c) otherwise does not admit the allegations in paragraph 7.

8. In answer to the allegations in paragraph 8 of the CLS, AMP:

(a) admits the allegations in subparagraphs 8.1 to 8.2;

(b) in answer to the allegations in subparagraph 8.3:

(i) relies on the terms of ASX Listing Rule 3.1 for its full terms and effect;

(ii) admits that ASX Listing Rule 3.1 imposes an obligation to the effect alleged in subparagraph 8.3;

(iii) says that ASX Listing Rule 3.1A provides that ASX Listing Rule 3.1 does not apply to information where:

(A) any of the following matters are satisfied:

(1) it would be a breach of the law to disclose the information;

(2) the information concerns an incomplete proposal or negotiation;

(3) the information comprises matters of supposition or is insufficiently definite to warrant disclosure;

(4) the information is generated for the internal management purposes of the entity; or

(5) the information is a trade secret;

(B) the information is confidential and the ASX has not formed the view that the information has ceased to be confidential; and

(C) a reasonable person would not expect the information to be disclosed; and

(iv) otherwise does not admit the allegations in subparagraph 8.3;

(c) in answer to the allegations in subparagraph 8.4:

(i) relies on the terms of ASX Listing Rule 19.12 for its full terms and effect;

(ii) admits that the ASX Listing Rules define “aware” to the effect alleged in subparagraph 8.4; and

(iii) otherwise does not admit the allegations in subparagraph 8.4; and

(d) in answer to the allegations in subparagraph 8.5:

(i) repeats subparagraphs 8(a) to 8(c) above; and

(ii) otherwise does not admit the allegations in subparagraph 8.5.

(C) AMP's Advice Business

9. In answer to the allegations in paragraph 9 of the CLS, AMP:

(a) says that, during the Relevant Period, there was a group of financial planners which provided advice in connection with the financial advice business carried on by AMP and its subsidiaries (**AMP's Advice Business**);

(b) says that during the Relevant Period, AMP had certain wholly owned subsidiaries which held Australian Financial Services Licences (**Advice Licensees**);

(c) says that during the Relevant Period, the Advice Licensees included:

(i) AMP Financial Planning Pty Ltd (**AMPFP**);

(ii) Charter Financial Planning Limited (**Charter**); and

(iii) Hillross Financial Services Limited (**Hillross**);

(d) says that the group of financial planners referred to in subparagraph (a) above comprised approximately 2,800 financial planners:

(i) the large majority of which (approximately 90%) were self-employed operating as sole traders, corporate entities or trusts, and were authorised representatives (**Authorised Representatives**) appointed by Advice Licensees; and

(ii) the remainder of whom were financial planners employed by an AMP service entity and were generally authorised representatives of the company known as ipac Securities Limited (**ipac**) (which from around 21 November 2016 has been branded as AMP Advice);

(e) says that the group of financial planners referred to in subparagraph 9(d) above operated throughout Australia and the majority of those financial planners operated from premises not owned by, and through businesses not owned by, AMP; and

(f) otherwise denies the allegations in paragraph 9.

Particulars

In the Relevant Period, the approximate number of AMP Financial Advisers who were appointed as Authorised Representatives or were employed financial planners of the Advice Licensees are set out in the table below:

As at	AMPFP	Hillross	Charter	ipac
31/12/2017	1454	317	715	159
31/12/2016	1543	337	791	153
31/12/2015	1662	363	988	162
31/12/2014	1727	384	922	158
31/12/2013	1706	367	934	176
31/12/2012	1680	320	779	N/A

10. In answer to the allegations in paragraph 10 of the CLS, AMP:

    (a) repeats paragraph 9 above; and

    (b) otherwise denies the allegations in paragraph 10.

11. AMP admits the allegations in paragraph 11 of the CLS.

(D) Relevant AMP personnel

12. In answer to the allegations in paragraph 12 of the CLS, AMP:

    (a) admits the allegations in subparagraphs 12.1 to 12.3; and

    (b) denies the allegations in subparagraph 12.4.

13. AMP admits the allegations in paragraph 13 of the CLS.

14. in answer to the allegations in paragraph 14 of the CLS, AMP:

    (a) admits the allegations in subparagraph 14.1;

(b) in answer to the allegations in subparagraph 14.2:

(i) says that from 1 January 2014 to November 2016, Caprioli was Group Executive, Advice and Banking and in that role he was responsible for AMP's advice, banking and corporate superannuation business portfolios; and

(ii) otherwise denies the allegations in subparagraph 14.2;

(c) in answer to the allegations in subparagraph 14.3:

(i) says that from 1 January 2014 to around November 2016, Caprioli was a member of the AMP Group Leadership Team (**GLT**); and

(ii) otherwise denies the allegations in subparagraph 14.3;

(d) in answer to the allegations in subparagraph 14.4:

(i) says that during the Relevant Period Caprioli was a director of the subsidiaries of AMP identified in **Schedule 1** to this Response; and

(ii) otherwise denies the allegations in subparagraph 14.4;

(e) in answer to the allegations in subparagraph 14.5:

(i) says that the FOFA Steering Committee was a committee that was established around July 2011 and was responsible for, inter alia, supervising a program of work overseen by several committees to ensure AMP's Advice Licensees complied with the FOFA reforms to the Corporations Act (including compliance with the fee disclosure statement regime) which were to be implemented in the period 1 July 2013 to 1 July 2014;

Particulars

Witness Statement of Anthony George Regan dated 11 April 2018 at paragraphs 227-228.

(ii) admits that Caprioli was a member of the FOFA Steering Committee from July 2011 to December 2013;

(f) does not admit the allegations in subparagraph 14.6; and

(g) admits that Caprioli was an officer of AMP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12 from 1 January 2014 to around November 2016, and otherwise denies the allegations in subparagraph 14.7.

15. In answer to the allegations in paragraph 15 of the CLS, AMP:

(a) in answer to the allegations in subparagraph 15.1:

(i) admits that Guggenheimer was Managing Director of AMPFP from 2010 to 27 April 2017;

(ii) says that Guggenheimer was Executive Director for Advice from 28 April 2017; and

(iii) otherwise does not admit the allegations in subparagraph 15.1;

(b) admits the allegations in subparagraph 15.2;

(c) in answer to the allegations in subparagraph 15.3:

(i) says that during the Relevant Period, Guggenheimer was a director of the subsidiaries of AMP referred to in **Schedule 1** to this Response; and

(ii) otherwise denies the allegations in subparagraph 15.3;

(d) does not admit the allegations in subparagraph 15.4; and

(e) denies the allegations in subparagraph 15.5.

16. In answer to the allegations in paragraph 16 of the CLS, AMP:

(a) in answer to the allegations in subparagraph 16.1:

(i) says that Himmelhoch was Chief Operating Officer of Financial Planning, Advice & Services Operations from October 2007 to November 2010; and

(ii) otherwise denies the allegations in subparagraph 16.1;

(b) admits the allegations in subparagraph 16.2;

(c) admits the allegations in subparagraph 16.3;

(d) in answer to the allegations in subparagraph 16.4:

(i) says that the Practice Proposition Stream Steering Committee (**PPP Steering Committee**) was a committee which reported to the FOFA

Program Steering Committee and was established to, inter alia, assist the FOFA Steering Committee in developing specific proposals associated with the FOFA reforms;

(ii) says that Himmelhoch was a member of the PPP Steering Committee from December 2012 to December 2013; and

(iii) otherwise denies the allegations in subparagraph 16.4; and

(e) denies the allegations in subparagraph 16.5.

17. In answer to the allegations in paragraph 17 of the CLS, AMP:

(a) admits the allegations in subparagraph 17.1;

(b) admits the allegations in subparagraph 17.2;

(c) admits the allegations in subparagraph 17.3 and says that Meller was Managing Director of AMP Financial Services from 15 October 2007 to 1 January 2014;

(d) in answer to the allegations in subparagraph 17.4:

(i) says that during the Relevant Period, Meller was a director of the subsidiaries of AMP identified in **Schedule 1** to this Response; and

(ii) otherwise denies the allegations in subparagraph 17.4;

(e) admits the allegations in subparagraph 17.5 and says that Meller was the Chair of the FOFA Steering Committee from at least July 2012 to December 2013;

(f) in answer to the allegations in subparagraph 17.6:

(i) says that Meller was the Chief Executive Officer (**CEO**) of AMP from 1 January 2014 to 20 April 2018; and

(ii) otherwise denies the allegations in subparagraph 17.6; and

(g) admits the allegations in subparagraph 17.7.

18. In answer to the allegations in paragraph 18 of the CLS, AMP:

(a) in answer to the allegations in subparagraph 18.1:

(i) says that Morgan was the Head of Licensee Value Management within Advice Business from 4 March 2013 to 11 December 2017; and

(ii) otherwise denies the allegations in subparagraph 18.1; and

(b) denies the allegations in subparagraph 18.2.

19. In answer to the allegations in paragraph 19 of the CLS, AMP:

(a) admits the allegations in subparagraph 19.1 and says that Paff has been Managing Director, AMPFP & AMP Advice from 26 May 2017;

(b) admits the allegations in subparagraph 19.2;

(c) in answer to the allegations in subparagraph 19.3:

(i) says that during the Relevant Period, Paff was a director of the subsidiaries of AMP identified in **Schedule 1** to this Response; and

(ii) otherwise denies the allegations in subparagraph 19.3;

(d) does not admit the allegations in subparagraph 19.4; and

(e) denies the allegations in subparagraph 19.5.

20. In answer to the allegations in paragraph 20 of the CLS, AMP:

(a) admits the allegations in subparagraphs 20.1 to 20.4;

(b) in answer to the allegations in subparagraph 20.5:

(i) says that during the Relevant Period, Regan was a director of the subsidiaries of AMP identified in **Schedule 1** to this Response; and

(ii) otherwise denies the allegations in subparagraph 20.5; and

(c) in answer to the allegations in subparagraph 20.6:

(i) says that Regan was a member of the GLT from 1 January 2017; and

(ii) otherwise denies the allegation in subparagraph 20.6.

21. In answer to the allegations in paragraph 21 of the CLS, AMP:

(a) admits the allegations in subparagraph 21.1 and says that Salter was the General Counsel for AMP from 1 July 2008 to 30 April 2018;

(b) admits the allegations in subparagraph 21.2;

(c) in answer to the allegations in subparagraph 21.3:

(i) says that Salter was a member of the GLT from 1 January 2014 (when the GLT was formed) to 30 April 2018; and

(ii) otherwise denies the allegations in subparagraph 21.3; and

(d) admits the allegations in subparagraph 21.4.

22. In answer to the allegations in paragraph 22 of the CLS, AMP:

(a) admits the allegations in subparagraphs 22.1 and 22.2, but says that Ann Turner ceased employment with AMP on 10 December 2016; and

(b) otherwise denies the allegations in subparagraph 22.3.

23. In answer to the allegations in paragraph 23 of the CLS, AMP:

(a) admits the allegations in subparagraphs 23.1 and 23.2, and refers to subparagraph 14(c)(i) above;

(b) says that the GLT was subject to the oversight of the Board and the CEO; and

(c) otherwise denies the allegations in paragraph 23.

II ONGOING SERVICE FEES AND THE "BUYER OF LAST RESORT" POLICY

24. In answer to the allegations in paragraph 24 of the CLS, AMP:

(a) says that during the Relevant Period:

(i) AMP Financial Advisers who were Authorised Representatives of AMP Advice Licensees from time to time negotiated ongoing fee arrangements directly with their customers; and

(ii) AMP Financial Advisers who were employed advisers also from time to time negotiated ongoing fee arrangements with their customers, but entered into such arrangements on behalf of the Advice Licensee by whom they were employed or with which they were affiliated;

(b) says that during the Relevant Period the practice was for the terms of the ongoing fee arrangements referred to in subparagraph 24(a) above to be set out in documents known as Ongoing Fee Agreements (**OFAs**), Statements of Advice (**SOAs**), and following the introduction of the FOFA reforms from at least 1 July 2013, Fee Disclosure Statements (**FDSs**);

(c) says that depending on the specific AMP Financial Adviser and the terms of the agreed ongoing fee arrangement, the arrangements typically provided for the payment of fees in return for services that might include some or all of:

(i) access to the AMP Financial Adviser where required;

(ii) an offer of a full or partial review of the customer's portfolio at a determined frequency;

(iii) a full or partial annual review of the customer's portfolio;

(iv) the provision of educational material such as regular newsletters, invitations to seminars, industry events, information regarding the impact of the Federal budget, information regarding legislative changes and information regarding policy updates;

(v) receipt and review of investment correspondence;

(vi) access to special investment opportunities;

(vii) assistance with liaising with organisations such as Centrelink;

(viii) a direct share portfolio service at discounted brokerage rates;

(ix) ongoing advice in relation to superannuation strategies and timing of contributions;

(x) zero switching fees when investments needed to be changed; and/or

(xi) 24-hour internet access to investments information;

(d) says that the fees referred to in subparagraph 24(c) above were as agreed between the AMP Financial Adviser and the customers, but were generally calculated using one of the following three methods:

(i) as an ongoing service fee calculated as a percentage of the value of the investment financial products the subject of the advice given by the AMP Financial Adviser; and

(ii) as a fixed fee via a financial product typically charged as a set amount or by reference to an hourly rate, and paid by the customer to the Advice Licensee (for example, by cheque or electronic transfer), which retained its licensee fee before paying the remainder to the AMP Financial Adviser;

(e) in the period after 1 July 2013, in respect of grandfathered accounts (that is ongoing fee arrangements entered into prior to the FOFA reforms), an amount additional to the ongoing commission paid by the financial product issuer to the AMP Financial Adviser, calculated as a percentage of the value of the customer's investment products;

(f) says that during the Relevant Period, and at least following the FOFA reforms, the ongoing fee arrangements referred to in subparagraph 24(c) above contained a statutory term that they would lapse every two years, unless an opt-in-renewal notice was received from the customer or a new arrangement was negotiated;

(g) says that the ongoing fee arrangements referred to in subparagraph 24(c) above were all required to be expressly disclosed by the AMP Financial Adviser to the customers, such disclosures typically set out in the OFAs, SOAs or FDSs;

(h) says further that the ongoing fee arrangements referred to in subparagraph 24(c) above were, in practice, also disclosed to customers through investment statements provided to them at least annually throughout the Relevant Period; and

(i) otherwise denies the allegations in paragraph 24.

25. In answer to the allegations in paragraph 25 of the CLS, AMP:

(a) says that prior to and during the Relevant Period, AMP Financial Advisers who were Authorised Representatives had certain "register rights" in relation to their customers (**client register rights**) pursuant to the terms of an agreement between the Authorised Representative and the Advice Licensee (**Authorised Representative Agreement**);

(b) says that the client register rights referred to in subparagraph 25(a) above included:

(i) the right to contact and provide advice and other financial services to the customer;

(ii) the right to access the customer's files and records; and

(iii) in certain cases, the right to receive certain payments when they were made, including ongoing service fees; and

(c) otherwise denies the allegations paragraph 25.

26. In answer to the allegations in paragraph 26 of the CLS, AMP:

(a) says that during the Relevant Period, where an AMP Financial Adviser intended to cease to be an Authorised Representative of an Advice Licensee, the AMP Financial Adviser could request that the relevant Advice Licensee purchase, or buy-back, the AMP Financial Adviser's client register rights for value (**buy-back rights**);

Particulars

i. The buy-back rights were generally set out in each AMP Financial Adviser's Authorised Representative Agreement with the Advice Licensee for which the AMP Financial Adviser was an Authorised Representative.

ii. The circumstances in which an AMP Financial Adviser who was an Authorised Representative of an Advice Licensee had buy-back rights included that:

1. the AMP Financial Adviser had to have operated his or her financial planning practice for a minimum period (generally four years) before the AMP Financial Adviser was entitled to the buy-back rights;

2. the AMP Financial Adviser had to have notified the Advice Licensee within a minimum notice period (generally at least 6 months up to 18 months) of his or her intention to leave the Advice Licensee and exercise buy-back rights;

3. the AMP Financial Adviser had to have terminated his or her Authorised Representative Agreement with the Advice Licensee and surrendered all rights under that Authorised Representative Agreement; and

4. the AMP Financial Adviser had to have agreed to the terms outlined in the Advice Licensee's "BOLR Undertaking Form", including a term that the AMP Financial Adviser must not approach customers for the purpose of advising them on financial planning matters, or work in the financial planning industry, for a period of (generally) 3 years.

(b) says that pursuant to the arrangements referred to in subparagraph 26(a) above, the AMP Financial Adviser could not rely on the buy-back rights without giving a period of notice, which varied from 6 to 18 months (**BOLR Notice Period**);

(c) says that pursuant to the arrangements referred to in subparagraph 26(a) above, during the BOLR Notice Period, the Advice Licensee would attempt to assist the AMP Financial Adviser to complete a transfer of his or her client register rights (including ongoing service fees) in respect of some or all of the AMP Financial Adviser's customers to another AMP Financial Adviser;

(d) says that pursuant to the arrangements referred to in subparagraph 26(a) above, if a transfer of the kind referred to in paragraph 26(c) above did not occur within the BOLR Notice Period, the AMP Financial Adviser was entitled to exercise their buy-back rights and the Advice Licensee would act as a "buyer-of-last-resort" and purchase, or buy-back, the AMP Financial Adviser's client register rights;

(e) says that the arrangements referred to in subparagraphs 26(a) to 26(d) above were known by different names across the Advice Licensees, and the subject of different "Practice Documents" or policies for each Advice Licensee, but for convenience AMP adopts the term **BOLR Policy** to describe the arrangements as they applied to each Advice Licensee for the purpose of this Response; and

<u>Particulars</u>

i. At AMPFP, the arrangements were known as Buyer of Last Resort (**BOLR**) and were also set out in the Register and Buyer of Last Resort (BOLR) Policy of AMPFP dated 1 July 2012 and amendments to that policy, thereafter superseded by a revised BOLR Policy dated 1 June 2017.

ii. At Charter, the arrangements were known as Enhanced Buyout Option (**EBOO**) and were also set out in the Standard Practices – Buy Out Option Policy of Charter.

iii. At Hillross, the arrangements were known as Enhanced Buy-Back (**EBB**) and were also set out in the Terms and Conditions Manual for Register and Buy-Back of Hillross dated June 2013.

(f) otherwise denies the allegations in paragraph 26.

27. In answer to the allegations in paragraph 27 of the CLS, AMP:

(a) says that the purchase prices of client register rights by the Advice Licensees were determined by reference to valuation of the client register rights. Methodologies for the valuation varied but included the following methodology:

(i) was prescribed by the policies or "Practice Documents" describing each Advice Licensee's BOLR Policy; and

(ii) was typically reflected as a multiple of annual ongoing revenue received by the AMP Financial Adviser in respect of their financial planning practice in the 12 months prior to the date of the valuation (which comprised recurrent revenue to which the AMP Financial Adviser's practice was entitled in relation to the client register rights being transferred, including permissible commissions, renewal income and ongoing service fees); and

Particulars

By way of example, the valuation methodology (described as the "RV") for the purchase of client register rights by AMPFP in the period 1 July 2012 to 1 July 2017 was set out in the AMPFP BOLR Policy document with an effective date of 1 July 2012, and as subsequently amended in the intervening period, as well as the AMPFP BOLR Policy for the period 1 July 2017 onwards.

(b) otherwise denies the allegations in paragraph 27.

28. In answer to the allegations in paragraph 28 of the CLS, AMP:

(a) says that during the Relevant Period, where client register rights were purchased by an Advice Licensee pursuant to a BOLR Policy, those client register rights were typically placed in the "BOLR Pool" pending those client register rights being allocated to a new AMP Financial Adviser who was an Authorised Representative of the Advice Licensee;

(b) says that when client register rights were placed in the BOLR Pool, because the Advice Licensees could not replicate the service previously agreed between the AMP Financial Adviser and the customer, the BOLR Policy of the Advice Licensee required an adjustment to any ongoing service fees to which the customer was subject at the settlement of the transaction between the AMP Financial Adviser and the Advice Licensee, such that any uplift that had been agreed between the customer and the AMP Financial Adviser beyond the financial product commission

only rate, was removed so that, in circumstances where customers were not being provided with financial services, they were not paying ongoing service fees in respect of those financial services;

(c) says that, in some cases, where client register rights were purchased by an Advice Licensee pursuant to a BOLR Policy, those client register rights were quarantined outside the BOLR Pool:

(i) with the intention that those client register rights would be allocated by the Advice Licensee to another identified AMP Financial Adviser or other identified AMP Financial Advisers; or

(ii) for the purpose of enabling those client register rights to be more readily identified and allocated by the Advice Licensee to an appropriate AMP Financial Adviser or AMP Financial Advisers;

(d) says that the circumstances referred to in subparagraph 28(c) above was described from time to time as **Ring-fencing**;

(e) says that Ring-fencing was common in the financial services industry; and

(f) otherwise denies the allegations in paragraph 28.

29. In answer to the allegations in paragraph 29 of the CLS, AMP:

(a) in respect of client register rights that were transferred into a BOLR Pool:

(i) repeats subparagraph 28(b) above; and

(ii) says the customers the subject of those client register rights typically did not receive advice services from any AMP Financial Planner so long as the client register rights remained in a BOLR Pool;

(b) says that where client register rights were Ring-fenced, the customers the subject of those client register rights typically did not receive any advice services from any AMP Financial Adviser pending those client register rights being allocated to a new AMP Financial Adviser or new AMP Financial Advisers; and

(c) otherwise denies the allegations in paragraph 29.

III ALLEGED ADMISSSIONS BY AMP

(A) Admissions made by AMP to the Royal Commission

30. AMP admits the allegations in paragraph 30 of the CLS.

31. AMP admits the allegations in paragraph 31 of the CLS.

32. In answer to the allegations in paragraph 32 of the CLS, AMP:

    (a) says that by email dated 7 March 2018 addressed to the solicitors for AMP in respect of the Royal Commission, the Royal Commission requested that a witness statement be prepared by AMP addressing questions for the purpose of the AMP case study;

    (b) says that on 28 March 2018, in response to the request referred to in subparagraph 32(a) above, AMP provided a draft witness statement of Regan entitled "Rubric 2-4". This draft witness statement was signed by Regan and a final version was provided to the Royal Commission on 11 April 2018 and published on the Royal Commission's website on or about 16 April 2018;

    (c) says that on 12 April 2018, Regan was summonsed to attend to give evidence at the second round of hearings conducted by the Royal Commission;

    Particulars

    Summons to Regan to give evidence before the Royal Commission dated 12 April 2018.

    (d) says that on 16 and 17 April 2018, Regan gave oral evidence before the Royal Commission; and

    (e) otherwise does not admit the allegations in paragraph 32.

33. In answer to the allegations in paragraph 33 of the CLS, AMP:

    (a) repeats paragraph 32 above; and

    (b) otherwise does not admit the allegations in paragraph 33.

34. In answer to the allegations in paragraph 34 of the CLS, AMP:

    (a) in answer to the allegations in subparagraph 34.1:

        (i) repeats subparagraphs 28(a) and (b) above;

(ii) says that Regan gave evidence to the effect that for approximately 10 years up to November 2016, an exception to the BOLR Policy existed, such exception as described in subparagraphs 34(a)(iii) to 34(a)(v) below and referred to as the **90 Day Exception**;

Particulars

Witness Statement of Anthony George Regan dated 11 April 2018 at paragraph 166.

(iii) says it was the fact during the Relevant Period, and Regan gave evidence to the effect, that the 90 Day Exception was not formally documented in the written BOLR Policies for each Advice Licensee but rather was implemented from time to time by AMPFP and Hillross throughout the Relevant Period;

Particulars

Witness Statement of Anthony George Regan dated 11 April 2018 at paragraph 165.

(iv) says it was the fact, and Regan gave evidence to the effect, that the application of the 90 Day Exception meant that AMPFP and Hillross continued to charge some customers, whose client register rights were in the BOLR Pool, fees pursuant to the ongoing service fee arrangements between the customer and the outgoing AMP Financial Adviser for a period, typically, of up to 90 days provided, generally, that:

(A) an incoming AMP Financial Planner had been identified to purchase the client register rights of an outgoing AMP Financial Planner;

(B) the transaction could not complete before the BOLR Notice Period expired; and

(C) a request had been made for the 90 Day Exception to operate, such request to be made to a person within AMPFP or Hillross who purported to have authority to approve the operation of the 90 Day Exception, and that person did, in fact, approve the operation of the 90 Day Exception;

(v) says that it was the fact, and Regan gave evidence to the effect that, the 90 Day Exception ceased to be applied from November 2016; and

Particulars

i. On 15 November 2016, a direction from Morgan was given to all Advice Licensees that the 90 Day Exception was to cease to operate immediately. That direction was contained in an email from Morgan to various AMP staff dated 15 November 2016 at 5:17pm.

ii. Thereafter, AMP commissioned Deloitte to perform a review to provide assurance that the 90 Day Exception had, in fact, ceased in November 2016, and all affected customers had been identified. Deloitte provided that assurance in a report titled "Phase 1 Look-Back Report" on 24 November 2017.

(vi) otherwise denies the allegations in subparagraph 34.1;

(b) in answer to the allegations in subparagraph 34.2:

(i) says that AMP's Advice Business serviced between 1.3 million and 1.7 million customers in each of the years between 2012 and 2017;

(ii) says that in the Relevant Period, the 90 Day Exception was applied 39 times, affecting approximately 2,188 customer accounts;

(iii) repeats subparagraphs 28(a) and (b) and subparagraph 34(c) below;

(iv) says that it was the fact, and Regan gave evidence to the effect, that there were 39 instances of the 90 Day Exception being deployed across the Advice Licensees and, in those 39 instances, those customers were charged ongoing service fees notwithstanding that while their client register rights remained in the BOLR Pool they were not provided with the services for which the fees were charged; and

Particulars

i. Witness Statement of Anthony George Regan dated 11 April 2018 at paragraphs 166, 167 and 170.

ii. Royal Commission transcript of hearing on 17 April 2018 at P-1199.37 to P-1199.38.

(v) otherwise denies the allegations in subparagraph 34.2;

(c) in answer to the allegations in subparagraph 34.3:

(i) says that in respect of the approximately 2,188 customer accounts that were subject to the 39 instances of the 90 Day Exception being applied during the Relevant Period referred to in subparagraph 34(b) above, those customers were charged ongoing service fees without being provided with the services to which those fees related;

(ii) says that:

(A) the approximately 2,188 customer accounts that were subject to the 39 instances of the 90 Day Exception being applied during the Relevant Period referred to in subparagraph 34(b) above have been identified;

(B) the customers of those 2,188 customer accounts were charged a total amount of approximately $376,000 for those services; and

(C) those customers have been paid compensation of approximately $422,000 pursuant to a remediation program commenced by AMP in or around May 2015; and

(iii) otherwise denies the allegations in subparagraph 34.3;

(d) in answer to the allegations in subparagraph 34.4:

(i) repeats subparagraphs 28(c) to 28(f) and 34(b)(i) above;

(ii) says that it was the fact that during the Relevant Period, in respect of approximately 1,209 customer accounts whose client register rights were Ring-fenced, those customers were charged ongoing service fees without being provided the services to which the fees related;

(iii) says that of the approximately 1,209 customer accounts whose client register rights were Ring-fenced referred to in subparagraph 34(d)(ii) above, the total amount of the ongoing service fees they were charged is estimated to be approximately $145,000;

(iv) says that it was the fact that in respect of the approximately 1,209 customer accounts whose client register rights were Ring-fenced referred to in paragraph 34(d)(ii) above:

(A) all of those customers have been identified;

(B) at least 98% of those customers have been allocated to a new AMP Financial Adviser; and

(C) those customers have been or will be paid compensation of approximately $168,000 pursuant to a remediation program that was commenced by AMP by at least 3 May 2017;

(v) otherwise denies the allegations in subparagraph 34.4;

(e) in answer to the allegations in subparagraph 34.5, refers to the evidence given by Regan at the Royal Commission and otherwise denies the allegations in that subparagraph;

(f) in answer to the allegations in subparagraph 34.6, refers to the evidence given by Regan at the Royal Commission and otherwise denies the allegations in that subparagraph;

(g) in answer to the allegations in subparagraph 34.7:

(i) says that Regan gave evidence to the effect that the first time AMP had informed ASIC of "the 90 day business practice" was by letter sent by AMP to ASIC on 17 October 2016;

<u>Particulars</u>

i. Witness Statement of Anthony George Regan dated 11 April 2018 at paragraphs 279-280.

ii. Royal Commission transcript on 17 April 2018 at P-1121.20 to P-1121.22.

(ii) says that the letter stated, in respect of a particular customer the subject of the letter, that while that customer's register rights were in the BOLR Pool, that customer's ongoing service arrangement was not terminated and "this was in accordance with the business practice adopted during this period, that if the transfer to the incoming practice was scheduled within a short period of time (e.g. 90 days or less), then the ongoing service arrangement was not terminated"; and

<u>Particulars</u>

i. Witness Statement of Anthony George Regan dated 11 April 2018 at paragraphs 279-280.

ii. Royal Commission transcript on 17 April 2018 at P-1121.20 to P-1121.22.

(iii) otherwise denies the allegations in subparagraph 34.7;

(h) in answer to the allegations in subparagraph 34.8:

(i) says that in a letter to ASIC dated 3 May 2017, AMP reported that:

(A) "there may be instances where customers who were subject to a BOLR or other licensee buy back transaction were never transferred to the BOLR (or Other Licensee Buy Back equivalent) pool ("Buy Back Pool") and/or subsequently transferred to a new servicing adviser/practice"; and

(B) "Further investigations were undertaken into the buy-back transactions for each of the Licensees and the preliminary findings of that investigation are that there are customers who should have been transferred to the Buy Back Pool but due to inadequate arrangements, this did not occur. This means that these customers may have continued to be charged ongoing service fees where no service was provided";

(ii) admits that the letter of 3 May 2017 referred to in subparagraph 34(h)(i) above was the first time AMP informed ASIC of the charging of fees for no services under Ring-fencing (to the extent that the circumstances so described are admitted in this Response); and

Particulars

i. Letter from AMP to ASIC dated 3 May 2017.

ii. AMP Group Submission to the Royal Commission on "Case Study 1: Fees for no service" dated 4 May 2018 at paragraphs 27 to 28.

(iii) otherwise denies the allegations in subparagraph 34.8;

(i) in answer to the allegations in subparagraph 34.9:

(i) refers to the evidence given by Regan at the Royal Commission in respect of the communications between AMP and ASIC;

(ii) says that in the period from 16 April 2015, ASIC has been conducting a detailed investigation in respect of AMP pursuant to its statutory investigatory powers in respect of the charging of fees for no service and that the investigation is ongoing;

Particulars

i. ASIC Media Release 15-081MR, "Update on Wealth Management Project - Investigation into charging of advice fees without providing advice", dated 16 April 2015.

ii. Letter from ASIC to AMP dated 12 June 2015.

(iii) says that during the course of that investigation, ASIC issued numerous notices for the production of documents by AMP;

(iv) says that the number of separate misrepresentations said to have been made by AMP to ASIC was overstated by Counsel Assisting the Royal Commission;

Particulars

AMP Group Submission to the Royal Commission on "Case Study 1: Fees for no service" dated 4 May 2018 at paragraph 30.

(v) says that in the 4 May 2018 AMP Submissions, AMP admitted it made seven misrepresentations (in twelve communications) to ASIC in the course of ASIC's investigation between 27 May 2015 and 3 May 2017;

Particulars

AMP Group Submission to the Royal Commission on "Case Study 1: Fees for no service" dated 4 May 2018 at paragraph 30.

(vi) says that those misrepresentations were identified in the Clayton Utz Report which was provided to ASIC on 16 October 2017 and was exhibited to the draft Regan Witness Statement provided to the Royal Commission on 28 March 2018;

Particulars

AMP Group Submission to the Royal Commission on "Case Study 1: Fees for no service" dated 4 May 2018 at paragraph 30.

(vii) says that those misrepresentations comprised:

(A) the characterisation of the failure to "dial down" ongoing service fees as an "administrative error";

(B) the representation that the 90 Day Exception had ceased in January 2014;

(C) that ongoing service fees did not involve a fee for personal service;

(D) that AMP was satisfied that customers were informed that services would be terminated once they entered the BOLR Pool;

(E) that AMP had not identified any systemic issue regarding the provision of ongoing service by AMP Financial Advisers;

(F) the failure to advise ASIC of Ring-fencing; and

(G) the failure to advise ASIC that a previous potential breach had been internally identified by AMP in 2011;

(viii) notwithstanding the misrepresentations admitted at subparagraph 34(i)(v) above, says that ASIC was not misled in a material sense (as set out in paragraph 56 below) in respect of the charging of fees for no service in circumstances where:

(A) the majority of cases in which fees were charged for no service during the Relevant Period were in fact caused by administrative or process error (such as the failure of manual systems to turn off fees or a breakdown in communications between different parts of the organisation);

Particulars

AMP Group Submission to the Royal Commission on "Case Study 1: Fees for no service" dated 4 May 2018 at paragraph 17.

(B) the issue of process or administrative errors leading to fees being charged for no service for customers in the BOLR Pool was first breach reported to ASIC by AMPFP in January 2009;

Particulars

AMP Group Submission to the Royal Commission on "Case Study 1: Fees for no service" dated 4 May 2018 at paragraph 18.

(C) AMP informed ASIC of the existence of the 90 Day Exception on 31 August 2015;

Particulars

Letter from AMP to ASIC dated 31 August 2015.

(D) the entire subject matter of ASIC's investigation concerns the charging of fees for no service, and the investigation has to date involved ASIC issuing notices for the production of documents by AMP and requiring compulsory examination of numerous current and former employees of AMP;

Particulars

AMP Group Submission to the Royal Commission on "Case Study 1: Fees for no service" dated 4 May 2018 at paragraph 5.

(E) ASIC was well advanced in its investigation at the time the Royal Commission commenced and ASIC had, as a result of the investigation, a detailed understanding of the charging of fees for no service, independent and irrespective of the misrepresentations referred to in subparagraph 34(i)(vi) above;

Particulars

AMP Group Submission to the Royal Commission on "Case Study 1: Fees for no service" dated 4 May 2018 at paragraph 5.

(F) the charging of fees for no service was extensively addressed in the Clayton Utz Report referred to in subparagraph 34(i)(vi) above, which was available to ASIC in ASIC's investigation and was the basis for the cross-examination of Regan at the Royal Commission, and contained serious adverse findings in respect of the charging of fees for no service;

Particulars

AMP Group Submission to the Royal Commission on "Case Study 1: Fees for no service" dated 4 May 2018 AMP Submissions at paragraphs 4 and 57.

(G) having regard to ASIC's investigation, ASIC was either aware of the 90 Day Exception Information and the Ring-fencing Information during some or all of the Relevant Period or, if it was not, the fact that it was not aware of that information could not have caused ASIC to be misled, as that information was not material in the sense, and for the reasons, set out in paragraph 56 below;

(H) the matters raised at the Royal Commission in respect of the charging of fees for no service were known by ASIC prior to the time that Regan was cross-examined before the Royal Commission and those matters were the subject of ASIC's investigation;

(I) as at 22 June 2018, ASIC had not determined whether any misrepresentations had been made to it by AMP in respect of the charging of fees for no service relevant to ASIC's investigation; and

(J) to the extent that ASIC was misled in respect of any aspect of the charging of fees for no service (which is denied), ASIC could not have been misled following its receipt of the Clayton Utz Report on 16 October 2017, which report was exhibited to the draft witness statement of Regan provided to the Royal Commission on 28 March 2018; and

(ix) otherwise denies the allegations in subparagraph 34.9; and

(j) in answer to the allegations in subparagraph 34.10:

(i) says that on 25 May 2017 AMP informed ASIC that it intended to commission an investigation into the circumstances surrounding the implementation of the 90 Day Exception, and would share the findings of that investigation with ASIC;

(ii) says that on 5 June 2017 the Board of AMP appointed Clayton Utz to conduct an investigation and to produce a report for the Board;

(iii) says that it was the fact, and Regan gave evidence to the effect, that the Clayton Utz Report was produced to the Board at a meeting on 16 October 2017, and presented to ASIC later that day;

(iv) says that the Clayton Utz Report was forensic and detailed, and contained serious adverse findings in respect of certain AMP employees, as well as its systems, processes, culture and governance;

(v) says that at no time did Clayton Utz raise concerns with the Board about the accuracy of the report or the manner in which it had been prepared;

(vi) says that Counsel Assisting's questions to Regan, which suggested or implied that more than 700 emails had been exchanged between AMP and Clayton Utz about the content of the Clayton Utz Report, overstated the number of those communications because:

(A) the spreadsheets tendered by Counsel Assisting which listed the approximately 700 emails produced to the Royal Commission by AMP identified emails and their attachments as separate documents, resulting in emails and their attachments being counted as two documents, when they were a single communication;

(B) the approximately 700 emails produced to the Royal Commission included numerous calendar invitations, acceptances and rejections;

(C) communications between Clayton Utz and AMP prior to 25 August 2017, being the date on which the first draft of the Clayton Utz Report was provided to AMP, primarily related to scheduling interviews, providing documents and other factual information, rather than any substantive interaction regarding the Clayton Utz Report; and

(D) the balance of the documents, excluding the documents referred to in subparagraphs 34(j)(vi)(A) to (C) above (255 documents), included duplicates, progress updates and communications of an administrative nature, such that the number of documents comprising substantive interactions as to the contents of the Clayton Utz Report was significantly overstated;

(vii) says that AMP shared the whole of the Clayton Utz Report with ASIC, including the underlying legal advices examined in the Clayton Utz Report, rather than limiting its communications with ASIC to the findings of the Clayton Utz Report;

(viii) says that ASIC was not required to accept or rely on any of the findings in the Clayton Utz Report, and was free to, and in fact did, continue with its investigation;

(ix) says that Clayton Utz was a member of AMP's external legal panel, and was acting for AMP (as ASIC was aware) in relation to ASIC's fees for no service investigation and that, accordingly, there could be no expectation, by AMP or ASIC, that any report prepared by Clayton Utz could have been intended to be independent within the meaning of ASIC Regulatory Guide 112;

(x) says that the letter of engagement between AMP and Clayton Utz contemplated day-to-day interactions between Clayton Utz and specified AMP representatives, as well as direct escalation to the Chairman of the Board if need be, as described in the following terms:

> <u>*Instructions and Communications*</u>
>
> *The day-to-day interactions between Clayton Utz and the AMP Board for instructions and other specific communications are to occur through Jack Regan (Group Executive, Advice) and Brian Salter (Group General Counsel) as the relevant members of the Group Leadership Team (GLT); and Larissa Baker Cook (Head of Litigation and Dispute Resolution) acting on behalf of Brian Salter from time to time. If at any time during the investigation any issues of concern arise regarding a GLT or AMP Board member, Clayton Utz is to deal directly with* [the Chairman] *on any such issues.*

<u>Particulars</u>

Letter of instruction from Brenner to Clayton Utz dated 5 June 2017.

(xi) says that the letter of instruction referred to at subparagraph 34(j)(x) above was provided to ASIC on 16 October 2017 together with the Clayton Utz Report;

(xii) says that Clayton Utz did not make any changes to the report as a result of communications with AMP that Clayton Utz did not agree with. In fact, Clayton Utz had carefully verified the accuracy of the statements in the report; and

(xiii) otherwise denies the allegations in subparagraph 34.10.

Particulars

AMP Group Submission to the Royal Commission on "Case Study 1: Fees for no service" dated 4 May 2018 at paragraphs 31-35, 36, 38-44, 55-57 and 100.

(B) Other admissions by AMP

35. In answer to the allegations in paragraph 35 of the CLS, AMP repeats subparagraphs 34(b), 34(c) and 34(d) above.

36. In answer to the allegations in paragraph 36 of the CLS, AMP:

(a) repeats paragraph 34 above;

(b) says that it was not part of AMP's policies to charge customers fees for no service; and

(c) otherwise denies the allegations in paragraph 36.

37. In answer to the allegations in paragraph 37 of the CLS, AMP:

(a) repeats subparagraph 34(i) and paragraphs 35 and 36 above; and

(b) otherwise denies the allegations in paragraph 37.

38. In answer to the allegations in paragraph 38 of the CLS, AMP:

(a) repeats subparagraph 34(i) above; and

(b) otherwise denies the allegations in paragraph 38.

IV ALLEGED SHARE PRICE DECLINE

39. In answer to the allegations in paragraph 39 of the CLS, AMP:

    (a) in answer to the allegations in subparagraph 39.1:

        (i) says that insofar as subparagraph 39.1 pleads a "substantial" decline in price and does not specify the period over which that decline is alleged to have occurred, it is inadequate, ambiguous, vague and embarrassing;

        (ii) says that in the period after 15 April 2018, AMP's share price both increased and decreased at various points in time; and

        (iii) otherwise denies the allegations in subparagraph 39.1;

    (b) admits the allegations in subparagraph 39.2 but says that Meller had previously (on 26 March 2018) announced his intention to resign as the CEO of AMP by the end of 2018; and

        Particulars

        AMP ASX announcement dated 26 March 2018.

    (c) admits the allegations in subparagraphs 39.3 to 39.5.

V ALLEGED INFORMATION OF WHICH AMP WAS AWARE

(A) Fees for no service

40. In answer to the allegations in paragraph 40 of the CLS, AMP:

    (a) repeats subparagraph 34(a) above; and

    (b) otherwise denies the allegations in paragraph 40.

41. In answer to the allegations in paragraph 41 of the CLS, AMP:

    (a) repeats paragraph 40 above;

    (b) says that to the extent the matters described as particulars of paragraph 41 of the CLS allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon;

(c) says that:

(i) by letter dated 25 May 2018 (**AMP's 25 May 2018 Letter**), AMP requested further and better particulars of paragraph 41; and

(ii) by letter dated 8 June 2018 (the **Plaintiff's 8 June 2018 Letter**), the Plaintiff responded to that request for further and better particulars, but did not provide an adequate response to the request; and

(d) otherwise denies the allegations in paragraph 41.

42. In answer to the allegations in paragraph 42 of the CLS, AMP:

(a) repeats subparagraphs 28(c) to 28(e) above; and

(b) otherwise denies the allegations in paragraph 42.

43. In answer to the allegations in paragraph 43 of the CLS, AMP:

(a) repeats paragraph 42 above;

(b) says that to the extent the matters described as particulars of paragraph 43 of the CLS allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon;

(c) says that:

(i) by AMP's 25 May 2018 Letter, AMP requested further and better particulars of paragraph 43; and

(ii) by the Plaintiff's 8 June 2018 Letter, the Plaintiff responded to that request for further and better particulars, but did not provide any adequate response to the request; and

(d) otherwise denies the allegations in paragraph 43.

(B) Misleading ASIC

44. In answer to the allegations in paragraph 44 of the CLS, AMP:

(a) repeats subparagraph 34(i) and paragraphs 37 and 38 above; and

(b) otherwise denies the allegations in paragraph 44.

45. In answer to the allegations in paragraph 45 of the CLS, AMP:

(a) repeats paragraph 44 above;

(b) says that to the extent the matters described as particulars of paragraph 45 of the CLS allege that a person or persons had actual knowledge of a particular matter, or ought reasonably to have become aware of a particular matter, such an allegation is not a particular and should be pleaded with precision as a material fact if it is to be relied upon;

(c) says that:

(i) by AMP's 25 May 2018 Letter, AMP requested further and better particulars of paragraph 45; and

(ii) by the Plaintiff's 8 June 2018 Letter, the Plaintiff responded to that request for further and better particulars, but did not provide an adequate response to the request; and

(d) otherwise denies the allegations in paragraph 45.

(C) The Clayton Utz Report

46. In answer to the allegations in paragraph 46 of the CLS, AMP:

(a) in answer to the allegations in subparagraph 46.1:

(i) repeats subparagraph 34(j) above; and

(ii) otherwise denies the allegations in subparagraph 46.1; and

(b) in answer to the allegations in subparagraphs 46.2 and 46.3:

(i) repeats subparagraphs 34(j) and 46(a) above; and

(ii) otherwise denies the allegations in subparagraphs 46.2 and 46.3.

47. In answer to the allegations in paragraph 47 of the CLS, AMP:

(a) repeats subparagraphs 34(j), 46(a) and (b) above;

(b) admits that the final version of the Clayton Utz Report was provided to the Board of AMP on 16 October 2017; and

(c) otherwise denies the allegations in paragraph 47.

VI ALLEGED BREACH OF CONTINUOUS DISCLOSURE OBLIGATIONS

(A) Alleged 90 Day Exception Information Contravention

48. In answer to the allegations in paragraph 48 of the CLS, AMP:

    (a) in answer to the allegations in subparagraph 48.1:

        (i) repeats paragraph 40 above; and

        (ii) otherwise denies the allegations in subparagraph 48.1;

    (b) in answer to the allegations in subparagraph 48.2:

        (i) repeats paragraph 40 and subparagraph 48(a) above;

        (ii) says that to the extent the Plaintiff relies on matters or information which it alleges AMP or officers of AMP ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act;

        (iii) says that:

            (A) to the extent the 90 Day Exception Information (as pleaded) existed (which is denied); and

            (B) to the extent the 90 Day Exception Information (as pleaded) was information of which AMP was aware (which is denied);

            (C) the 90 Day Exception Information was not information that as and from the commencement of the Relevant Period, a reasonable person would expect to have a material effect on the price or value of AMP Shares, within the meaning of section 674(2)(c) of the Corporations Act, including because:

                (1) the 90 Day Exception Information related to the charging of fees for no service in the limited circumstances and on the limited occasions referred to in subparagraphs 34(a) to 34(c) above;

                (2) the 90 Day Exception Information related to fees being charged for no service in respect of only approximately 2,188 customer accounts (relating to 39 transactions) during the Relevant Period, in circumstances where AMP's

Advice Business serviced between 1.3 million and 1.7 million customers in each of the years between 2012 and 2017;

(3) the total fees charged for no service in respect of the 90 Day Exception Information was approximately $376,000, a financially immaterial amount;

(4) the 90 Day Exception Information was first disclosed by AMP to ASIC in October 2016 and was information the subject of ASIC's ongoing investigation from that time, as set out in subparagraph 34(i) above;

(5) the 90 Day Exception Information related to circumstances that ceased to exist in November 2016;

(6) the customers charged fees in respect of the 90 Day Exception Information were remediated by AMP pursuant to the remediation program referred to in subparagraph 34(c)(ii) above;

(7) AMP's conduct in charging fees for no service, had been the subject of an ongoing industry-wide investigation and report by ASIC in October 2016;

Particulars

ASIC Report 499, "Financial Advice: Fees for no service" dated October 2016.

(8) AMP's conduct in charging fees for no service was canvassed extensively during the Royal Commission hearing on 16 April 2018 (including during Regan's cross-examination), without causing any material price reaction in AMP Shares during the course of that day; and

Particulars

Royal Commission transcript of hearing on 16 April 2018 at P-1053.9 to P-1099.35.

(9) in view of the matters raised above, throughout the Relevant Period, the risk that the matters the subject of the

90 Day Exception Information would cause any significant financial or other consequences for AMP or financially significant regulatory outcomes, was low; and

(iv) otherwise denies the allegations in subparagraph 48.2;

(c) in answer to the allegations in subparagraph 48.3:

(i) repeats paragraph 40 above;

(ii) says that to the extent the 90 Day Exception Information (as pleaded) was information:

(A) that existed (which is denied); and

(B) was information of which AMP was aware (which is denied),

the 90 Day Exception Information was not information that as and from the commencement of the Relevant Period would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of AMP Shares, within the meaning of section 677 of the Corporations Act including for the reasons identified in subparagraph 48(b)(iii) above; and

(iii) otherwise denies the allegations in subparagraph 48.3; and

(d) in answer to the allegations in subparagraph 48.4:

(i) repeats paragraph 40 above;

(ii) says that to the extent the 90 Day Exception Information (as pleaded) existed (which is denied), and to the extent the 90 Day Exception (as pleaded) was information of which AMP was aware (which is denied):

(A) the 90 Day Exception Information was not information that as at and from the commencement of the Relevant Period a reasonable person would expect to have a material effect on the price or value of AMP Shares, within the meaning of ASX Listing Rule 3.1, including for the reasons outlined in subparagraph 48(b)(iii) above; and

(B) even if the 90 Day Exception Information was information that a reasonable person would expect to have a material effect on the price or value of AMP Shares, within the meaning of ASX Listing

Rule 3.1, then the 90 Day Exception Information was within an exception to ASX Listing Rule 3.1 by reason of ASX Listing Rule 3.1A because:

(1) the 90 Day Exception Information as pleaded:

(i) comprised information that was insufficiently definite to warrant disclosure; and/or

(ii) was generated for the internal management purposes of AMP;

(2) the 90 Day Exception Information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and

(3) a reasonable person would not have expected AMP to disclose the 90 Day Exception Information,

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to the 90 Day Exception Information; and

(iii) otherwise denies the allegations in subparagraph 48.4.

49. In answer to the allegations in paragraph 49 of the CLS, AMP:

(a) repeats paragraphs 40, 41 and 48 above; and

(b) otherwise denies the allegations in paragraph 49.

50. In answer to the allegations in paragraph 50 of the CLS, AMP:

(a) repeats paragraphs 40, 41, 48 and 49 above; and

(b) otherwise denies the allegations in paragraph 50.

51. AMP denies the allegations in paragraph 51 of the CLS.

(B) Alleged Ring-fencing Information Contravention

52. In answer to the allegations in paragraph 52 of the CLS, AMP:

(a) repeats subparagraphs 28(c) to 28(f) and paragraphs 42, 43 and 48 above;

(b) says that to the extent the Plaintiff relies on matters or information which it is alleged AMP or officers of AMP ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act;

(c) says that to the extent the Ring-fencing Information (as pleaded):

(i) existed (which is denied); and

(ii) was information of which AMP was aware (which is denied),

that information:

(iii) was not information that as at and from the commencement of the Relevant Period, a reasonable person would expect to have a material effect on the price or value of AMP Shares, within the meaning of section 674(2)(c) of the Corporations Act, including because:

(A) the Ring-fencing Information related to the charging of fees for no service in the limited circumstances and on the limited occasions referred to in subparagraph 34(d) above;

(B) the Ring-fencing Information related to fees being charged for no service in respect of only approximately 1,209 customer accounts during the Relevant Period, in circumstances where AMP's Advice Business provided services to between 1.3 million and 1.7 million customers in each of the years between 2012 and 2017;

(C) the total fees charged for no service in respect of the Ring-fencing Information is estimated to be approximately $145,000, a financially immaterial amount;

(D) the Ring-fencing Information was first disclosed by AMP to ASIC on 3 May 2017 and was information the subject of ASIC's ongoing investigation from that time, as set out in subparagraph 34(i) above;

<u>Particulars</u>

Letter from AMP to ASIC dated 3 May 2017.

(E) the customers charged fees in respect of the Ring-fencing Information have been or will be paid compensation by AMP

pursuant to the remediation program referred to in subparagraph 34(d)(iv) above;

(F) AMP's conduct in charging fees for no service had been the subject of an industry wide investigation and report by ASIC in October 2016;

Particulars

ASIC Report 499, "Financial Advice: Fees for no service" dated October 2016.

(G) AMP's conduct in charging fees for no service was canvassed extensively during the Royal Commission hearing on 16 April 2018 (including during Regan's cross-examination), without causing any material price reaction in AMP's shares during the course of that day; and

Particulars

Royal Commission transcript of hearing on 16 April 2018 at P-1053.9 to P-1099.35.

(H) in view of the matters raised above, throughout the Relevant Period, the risk that the matters the subject of the Ring-fencing Information would cause any significant financial consequences for AMP or financial significant regulatory outcomes, was low; and

(iv) was not information that as at and from the commencement of the Relevant Period would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of AMP Shares, within the meaning of section 677 of the Corporations Act including for the reasons outlined in subparagraph 52(c)(iii) above;

(d) says that to the extent the Ring-fencing Information (as pleaded) existed (which is denied), and to the extent the Ring-fencing Information (as pleaded) was information of which AMP was aware (which is denied):

(i) the Ring-fencing Information was not information that as and from the commencement of the Relevant Period a reasonable person would expect to have a material effect on the price or value of AMP Shares, within the meaning of ASX Listing Rule 3.1 including for the reasons outlined in subparagraph 52(c)(iii) above; and

(ii) even if the Ring-fencing Information was information that a reasonable person would expect to have a material effect on the price or value of the AMP Shares, within the meaning of ASX Listing Rule 3.1, then the Ring-fencing Information was within an exception to ASX Listing Rule 3.1 by ASX Listing Rule 3.1A because as at and from the commencement of the Relevant Period:

(A) the Ring-fencing Information as pleaded:

(1) comprised information that was insufficiently definite to warrant disclosure; and/or

(2) was generated for the internal management purposes of AMP;

(B) the Ring-fencing Information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and

(C) a reasonable person would not have expected AMP to disclose the Ring-fencing Information,

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to the Ring-fencing Information; and

(e) otherwise denies the allegations in paragraph 52.

53. In answer to the allegations in paragraph 53 of the CLS, AMP:

(a) repeats subparagraphs 28(c) to 28(e) and paragraphs 42, 43, 48 and 52 above; and

(b) otherwise denies the allegations in paragraph 53.

54. In answer to the allegations in paragraph 54 of the CLS, AMP:

(a) repeats subparagraphs 28(c) to 28(e) and paragraphs 42, 43, 48, 52 and 53 above; and

(b) otherwise denies the allegations in paragraph 54.

55. AMP denies the allegations in paragraph 55 of the CLS.

(C) Alleged Misleading of ASIC Information Contraventions

56. In answer to the allegations in paragraph 56 of the CLS, AMP:

(a) repeats subparagraph 34(i) and paragraph 44 above;

(b) admits that the Misleading of ASIC Information (to the extent that it existed, which is denied) was not generally available until 16 April 2018, within the meaning of sections 674(2)(c) and 676(2) of the Corporations Act, including because ASIC's ongoing investigation is confidential;

Particulars

Email from Cathie Armour (ASIC) to Salter dated 25 January 2018.

(c) says that to the extent the Plaintiff relies on matters or information which it is alleged AMP or officers of AMP ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act;

(d) says that to the extent the Misleading of ASIC Information (as pleaded):

(i) existed (which is denied); and

(ii) was information of which AMP was aware (which is denied),

the Misleading of ASIC Information:

(iii) was not information that as and from the commencement of the Relevant Period, a reasonable person would expect to have a material effect on the price or value of AMP Shares, within the meaning of section 674(2)(c) of the Corporations Act, including because:

(A) ASIC was not misled in relation to the nature of the charging of fees for no services in the circumstances set out in subparagraph 34(i) above; and

(B) the information concerned regulatory dealings between AMP and ASIC of a kind that are not ordinarily the subject of disclosure by way of ASX announcement;

Particulars

Email from Cathie Armour (ASIC) to Salter dated 25 January 2018.

(iv) was not information that as and from the commencement of the Relevant Period would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of AMP Shares, within the meaning of section 677 of the Corporations Act including for the reasons outlined in subparagraph 56(d)(iii) above;

(e) says that to the extent the Misleading of ASIC Information (as pleaded) existed (which is denied), and to the extent the Misleading of ASIC Information (as pleaded) was information of which AMP was aware (which is denied):

(i) the Misleading of ASIC Information was not information that as and from the commencement of the Relevant Period a reasonable person would expect to have a material effect on the price or value of AMP Shares, within the meaning of ASX Listing Rule 3.1 including for the reasons outlined in subparagraph 56(d)(iii) above; and

(ii) even if the Misleading of ASIC Information was information that a reasonable person would expect to have a material effect on the price or value of AMP Shares, within the meaning of ASX Listing Rule 3.1, then the Ring-fencing Information was within an exception to ASX Listing Rule 3.1 by ASX Listing Rule 3.1A because:

(A) the Misleading of ASIC Information as pleaded:

(1) comprised information that was insufficiently definite to warrant disclosure; and/or

(2) was generated for the internal management purposes of AMP;

(B) was confidential and the ASX had not formed the view that the information had ceased to be confidential; and

(C) a reasonable person would not have expected AMP to disclose the Misleading of ASIC Information,

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to the Misleading of ASIC Information; and

(f) otherwise denies the allegations in paragraph 56.

57. In answer to the allegations in paragraph 57 of the CLS, AMP:

(a) repeats subparagraph 34(i) and paragraphs 44 and 56 above; and

(b) otherwise denies the allegations in paragraph 57.

58. In answer to the allegations in paragraph 58 of the CLS, AMP:

(a) repeats subparagraph 34(i) and paragraphs 44, 56 and 57 above; and

(b) otherwise denies the allegations in paragraph 58.

59. AMP denies the allegations in paragraph 59 of the CLS.

(D) Clayton Utz Report Information Contravention

60. In answer to the allegations in paragraph 60 of the CLS, AMP:

(a) repeats subparagraph 34(j) and paragraphs 46 and 47 above;

(b) admits that the Clayton Utz Report Information (to the extent that it existed, which is denied) was not generally available until 16 April 2018, within the meaning of sections 674(2)(c) and 676(2) of the Corporations Act;

(c) says that to the extent the Plaintiff relies on matters or information which it alleged AMP or officers of AMP ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act;

(d) says that to the extent the Clayton Utz Report Information (as pleaded):

(i) existed (which is denied); and

(ii) was information of which AMP was aware (which is denied),

that information:

(iii) was not information that as at 16 October 2017, a reasonable person would expect to have a material effect on the price or value of AMP Shares, within the meaning of section 674(2)(c) of the Corporations Act including for the reasons outlined in subparagraph 34(j) above, including because:

(A) Clayton Utz did not make any changes to the Clayton Utz Report that Clayton Utz did not agree with. In fact, Clayton Utz had carefully verified the accuracy of statements made in the report;

(B) the Clayton Utz Report is lengthy, detailed, contains serious adverse findings, and is uncompromisingly direct and comprehensive in its assessment of the matter;

(C) ASIC has been aware of the Clayton Utz Report since it was commissioned on 5 June 2017 and provided to ASIC on 16 October 2017; and

Particulars

AMP Group Submission to the Royal Commission on "Case Study 1: Fees for no service" dated 4 May 2018 at paragraph 35.

(D) the independence or otherwise of the Clayton Utz Report has not been a significant part of ASIC's investigation; and

(iv) was not information that as at 16 October 2017 would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of AMP Shares, within the meaning of section 677 of the Corporations Act including for the reasons set out in subparagraph 60(d)(iii) above;

(e) says that to the extent the Clayton Utz Report Information (as pleaded) existed (which is denied), and to the extent the Clayton Utz Report Information (as pleaded) was information of which AMP was aware (which is denied):

(i) the Clayton Utz Report Information was not information that as at 16 October 2017 a reasonable person would expect to have a material effect on the price or value of AMP Shares including for the reasons set out in subparagraph 60(d)(iii) above, within the meaning of ASX Listing Rule 3.1; and

(ii) even if the Clayton Utz Report Information was information that a reasonable person would expect to have a material effect on the price or value of the AMP Shares, within the meaning of ASX Listing Rule 3.1, then the Clayton Utz Report Information was within an exception to ASX Listing Rule 3.1 by ASX Listing Rule 3.1A because:

(A) the Clayton Utz Report Information as pleaded:

(1) comprised information that was insufficiently definite to warrant disclosure; and/or

(2) was generated for the internal management purposes of AMP;

(B) was confidential and the ASX had not formed the view that the information had ceased to be confidential; and

(C) a reasonable person would not have expected AMP to disclose the Clayton Utz Report Information,

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to the Clayton Utz Report Information; and

(f) otherwise denies the allegations in paragraph 60.

61. In answer to the allegations in paragraph 61 of the CLS, AMP:

(a) repeats subparagraph 34(j) and paragraphs 46, 47 and 60 above; and

(b) otherwise denies the allegations in paragraph 61.

62. In answer to the allegations in paragraph 62 of the CLS, AMP:

(a) repeats subparagraph 34(j) and paragraphs 46, 47, 60 and 61 above; and

(b) otherwise denies the allegations in paragraph 62.

63. AMP denies the allegations in paragraph 63 of the CLS.

(E) The Disclosure Contraventions were continuing

64. AMP denies the allegations in paragraph 64 of the CLS.

VII ALLEGED MISLEADING OR DECEPTIVE CONDUCT

(A) AMP's public statements

65. In answer to the allegations in paragraph 65 of the CLS, AMP:

(a) says that it will rely on the terms of the statements referenced in Schedule 3 to the CLS for their full force and effect; and

(b) otherwise denies the allegations in paragraph 65.

(B) Continuous Disclosure Representation

66. In answer to the allegations in paragraph 66 of the CLS, AMP:

(a) denies that the statements at Schedule 3 to the CLS, paragraphs 2 to 28, give rise to the Continuous Disclosure Representation, and on that basis, denies the allegations made in paragraph 66 of the CLS;

(b) says that AMP complied with its continuous disclosure obligations throughout the Relevant Period; and

(c) says, further or in the alternative, that to the extent the Continuous Disclosure Representation was made (which is denied), any such representation was a representation of opinion for which AMP had reasonable grounds.

67. In answer to the allegations in paragraph 67 of the CLS, AMP:

(a) repeats paragraph 66 above; and

(b) otherwise denies the allegations in paragraph 67.

68. In answer to the allegations in paragraph 68 of the CLS, AMP:

(a) repeats paragraphs 66 and 67 above; and

(b) otherwise denies the allegations in paragraph 68.

69. In answer to the allegations in paragraph 69 of the CLS, AMP:

(a) repeats paragraphs 48 to 68 above; and

(b) otherwise denies the allegations in paragraph 69.

70. In answer to the allegations in paragraph 70 of the CLS, AMP:

(a) repeats paragraphs 65 to 69 above; and

(b) otherwise denies the allegations in paragraph 70.

71. AMP denies the allegations in paragraph 71 of the CLS.

(C) Risk Management Representation

72. In answer to the allegations in paragraph 72 of the CLS, AMP:

    (a) denies that the statements at Schedule 3 to the CLS, paragraphs 29 to 38, give rise to the Risk Management Representation and on that basis, denies the allegations made in paragraph 72 of the CLS;

    (b) says that if the alleged Risk Management Representation was made (which is denied), it was a statement of opinion for which AMP had reasonable grounds;

    (c) says that if the alleged Risk Management Representation was made (which is denied), any such representation should be read in its proper context and did not convey that AMP's systems would unfailingly guarantee that there would not be instances in which AMP did not comply with relevant regulatory requirements; and

    (d) otherwise denies the allegations in paragraph 72.

73. In answer to the allegations in paragraph 73 of the CLS, AMP:

    (a) repeats paragraph 72 above; and

    (b) otherwise denies the allegations in paragraph 73.

74. In answer to the allegations in paragraph 74 of the CLS, AMP:

    (a) repeats paragraphs 72 and 73 above; and

    (b) otherwise denies the allegations in paragraph 74.

75. In answer to the allegations in paragraph 75 of the CLS, AMP:

    (a) repeats paragraphs 40, 42, 44, 46, 48 to 64 and 72 to 74 above; and

    (b) otherwise denies the allegations in paragraph 75.

76. In answer to the allegations in paragraph 76 of the CLS, AMP:

    (a) repeats paragraphs 72 to 75 above; and

    (b) otherwise denies the allegations in paragraph 76.

77. AMP denies the allegations in paragraph 77 of the CLS.

(D) Ethical Standards Representation

78. AMP admits the allegations in paragraph 78 of the CLS and says that:

    (a) the Ethical Standards Representation was a statement of opinion for which it had reasonable grounds; and

    (b) the Ethical Standards Representation should be read in its proper context and did not convey that AMP would unfailingly guarantee that it had in all circumstances complied with the letter of the law, but rather that it was committed to complying with the law.

79. In answer to the allegations in paragraph 79 of the CLS, AMP:

    (a) repeats paragraph 78 above; and

    (b) otherwise admits the allegations in paragraph 79.

80. In answer to the allegations in paragraph 80 of the CLS, AMP:

    (a) repeats paragraph 78 above; and

    (b) otherwise admits the allegations in paragraph 80.

81. In answer to the allegations in paragraph 81 of the CLS, AMP:

    (a) repeats paragraphs 40, 42, 44, 46, 48 to 64, 65 to 71 and 72 to 77 above;

    (b) says that throughout the Relevant Period, AMP was committed to conducting its business ethically and within the spirit and letter of the law as is reflected in the Ethical Standards Representation read in its proper context as pleaded at subparagraph 78(b) above;

    (c) says that such a commitment by AMP is reflected by matters including:

        (i) by the customer remediation in respect of customers who were charged fees for no services by the operation of the 90 Day Exception and Ring-fencing such that:

            (A) in respect of the customers affected by the 90 Day Exception, all of the customers so affected during the Relevant Period have been identified and remediated by AMP or the relevant Advice Licensee; and

Particulars

i. AMP Group Submission to the Royal Commission on "Case Study 1: Fees for no service" dated 4 May 2018 at paragraph 26.

ii. Witness Statement of Anthony George Regan dated 11 April 2018 at paragraphs 133 and 178.

iii. Deloitte "Phase 1 Look-Back Report" dated 24 November 2017.

(B) in respect of the customers affected by Ring-fencing:

(1) all of those customers have been identified;

(2) at least 98% of those customers have been allocated to a new AMP Financial Adviser; and

(3) the process to remediate those customers who paid ongoing service fees whilst Ring-fenced has commenced; and

Particulars

Witness Statement of Anthony George Regan dated 11 April 2018 at paragraph 188.

(ii) by the actions of the Board of AMP in forming a Board Committee to work with a subcommittee of the GLT to oversee and implement a program of work to address the issues arising from the Clayton Utz Report; and

Particulars

i. AMP Group Submission to the Royal Commission on "Case Study 1: Fees for no service" dated 4 May 2018 at paragraph 59.

ii. Witness Statement of Anthony George Regan dated 11 April 2018 at paragraph 37.

iii. Minutes of AMP Board meeting of 16 October 2017.

(d) otherwise denies the allegations in paragraph 81.

82. AMP admits the allegations in paragraph 82 of the CLS and repeats paragraphs 65 and 78 to 79 above.

83. AMP denies the allegations in paragraph 83 of the CLS.

VIII ALLEGED UNCONSCIONABLE CONDUCT

84. In answer to the allegations in paragraph 84 of the CLS, AMP:

(a) in answer to the allegations in subparagraph 84.1:

(i) repeats subparagraphs 34(b) to 34(d) and paragraph 35 above; and

(ii) otherwise denies the allegations in subparagraph 84.1;

(b) in answer to the allegations in subparagraph 84.2:

(i) repeats subparagraph 84(a) above;

(ii) says that:

(A) all of the customers who were charged fees pursuant to the 90 Day Exception during the Relevant Period have been identified and remediated by AMP or AMP's Advice Licensees;

Particulars

i. Witness Statement of Anthony George Regan dated 11 April 2018 at paragraphs 133 and 178.

ii. AMP Group Submission to the Royal Commission on "Case Study 1: Fees for no service" dated 4 May 2018 at paragraph 26.

iii. Email from Morgan to various AMP staff dated 15 November 2016 at 5:17pm.

iv. Deloitte Phase 1 Look-Back Report dated November 2017.

(B) in respect of the customers whose client register rights were Ring-fenced during the Relevant Period:

(1) all of those customers have been identified;

(2) at least 98% of those customers have been allocated to a new AMP Financial Adviser; and

(3) the process to remediate those customers who paid ongoing service fees whilst Ring-fenced has commenced; and

Particulars

Witness Statement of Anthony George Regan dated 11 April 2018 at paragraph 188.

(iii) otherwise denies the allegations in subparagraph 84.2;

(c) in answer to subparagraph 84.3, says that, the primary rationales behind the 90 Day Exception and Ring-fencing were to allow client register rights to which the exceptions were subject to be quarantined rather than being disaggregated by transfer into the BOLR Pool. This allowed the client register rights, and their inherent value, to be transferred:

(i) without the need for an incoming AMP Financial Adviser to negotiate new ongoing service fees with the customers so affected;

(ii) in the case of registers which were peculiar to a particular region or ethnic group, to an appropriate AMP Financial Adviser who had the requisite language, cultural skills and experience to service customers with specific needs;

(iii) in the case of Ring-fencing, in a manner which maintained a specific register with a specific valuation; and

Particulars

i. Witness Statement of Anthony George Regan dated 11 April 2018 at paragraphs 166-167, 171-173 and 184.

ii. AMP Group Submission to the Royal Commission on "Case Study 1: Fees for no service" dated 4 May 2018 at paragraphs 20-21 and 27.

(iv) otherwise denies the allegations in subparagraph 84.3;

(d) in answer to the allegations in subparagraph 84.4:

(i) repeats subparagraph 34(e) above; and

(ii) otherwise denies the allegations in subparagraph 84.4; and

(e) denies the allegations in subparagraph 84.5.

85. In answer to the allegations in paragraph 85 of the CLS, AMP says that:

(a) by AMP's 25 May 2018 Letter, AMP requested further and better particulars of paragraph 85;

(b) by the Plaintiff's 8 June 2018 Letter, the Plaintiff responded to that request for further and better particulars;

(c) to the extent the Plaintiff's 8 June 2018 Letter alleges that customers of AMP Financial Advisers who were charged fees without being provided some services by Advice Licensees were vulnerable to AMP's Advice Licensees and not in a position to protect their own interests by reason of those customers being retail customers, that matter alone does not make those customers vulnerable or unable to protect their own interests;

(d) says that to the extent the Plaintiff's 8 June 2018 Letter alleges that customers of AMP Financial Advisers who were charged fees for no services by Advice Licensees were vulnerable to AMP's Advice Licensees and not in a position to protect their own interests by reason of those customers being unaware of the fact that they were being charged fees without being provided some services by AMP and/or the Advice Licensees:

(i) repeats subparagraphs 24(g) and 24(h) above with respect to the disclosure of ongoing fee arrangements to such customers by AMP Financial Advisers; and

(ii) does not admit that all of the customers who were the subject of the 90 Day Exception and Ring-fencing were unaware; and

(e) otherwise denies the allegations in paragraph 85.

86. In answer to the allegations in paragraph 86 of the CLS, AMP:

(a) repeats paragraphs 34 to 38, 40 to 47, 50, 54, 58, 62, 84 and 85 above; and

(b) otherwise denies the allegations in paragraph 86.

IX CAUSATION, INCLUDING INDIRECT (MARKET-BASED) CAUSATION

87. In answer to the allegations in paragraph 87 of the CLS, AMP:

    (a) admits subparagraphs 87.1 and 87.2 of the CLS;

    (b) does not admit subparagraph 87.3; and

    (c) otherwise denies the allegations in paragraph 87.

88. AMP denies the allegations in paragraph 88 of the CLS.

89. In answer to the allegations in paragraph 89 of the CLS, AMP says that:

    (a) by AMP's 25 May 2018 Letter, AMP requested further and better particulars of paragraph 89;

    (b) by the Plaintiff's 8 June 2018 Letter, the Plaintiff responded to that request for further and better particulars, but did not provide an adequate response to the request;

    (c) insofar as the particulars provided by the Plaintiff's 8 June 2018 Letter allege that the decline in the price of AMP Shares pleaded at paragraph 39 of the CLS was caused or materially contributed to by the 90 Day Exception Information, the Ring-fencing Information, the Misleading of ASIC Information and the Clayton Utz Report Information on 16 April 2018 at the Royal Commission, those particulars are inadequate, ambiguous, vague and embarrassing; and

    (d) otherwise denies the allegations in paragraph 89.

90. AMP denies the allegations in paragraph 90 of the CLS.

91. AMP denies the allegations in paragraph 91 of the CLS.

X LOSS AND DAMAGE

92. In answer to the allegations in paragraph 92 of the CLS, AMP:

    (a) says that to the extent that the Plaintiff or any Group Member establishes liability as alleged in the CLS (which is denied):

        (i) shares in AMP remained capable of being traded on 16 April 2018 and at all relevant times thereafter;

(ii) the Plaintiff and Group Members could have sold any AMP shares or other interests in AMP shares they held at any time on or after 16 April 2018;

(iii) on the Plaintiff's claim, all information said to found the Plaintiff's and Group Members' claims was known or knowable from 16 April 2018; and

(iv) to the extent that the Plaintiff or any Group Member suffered loss or damage after 15 April 2018, that loss or damage:

(A) arose as a result of the Plaintiff's or Group Members' failure to mitigate their loss or damage; and/or

(B) arose as a result of the Plaintiff's or Group Members' failure to sell any AMP shares or interests in AMP shares that they held from 16 April 2018; and

(v) any loss or damage to which the Plaintiff or a Group Member is entitled (which is denied) is limited to the loss or damage assessed as at 15 April 2018 or shortly thereafter;

(b) says that if the Plaintiff establishes the existence of each of the items of information on which she relies (which is denied) and that such information was misleading or deceptive or should have otherwise been disclosed to the ASX (which is denied), had that information been disclosed at the times of contravention alleged by the Plaintiff, there would not have been any material decline in AMP's share price; and

(c) otherwise denies the allegations in paragraph 92.

D QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

93. AMP says there are no questions appropriate for referral to a Referee.

E STATEMENT AS TO WHETHER THE PARTIES HAVE ATTEMPTED MEDIATION; AND WHETHER THE CROSS-DEFENDANT IS WILLING TO PROCEED TO MEDIATION AT AN APPROPRIATE TIME

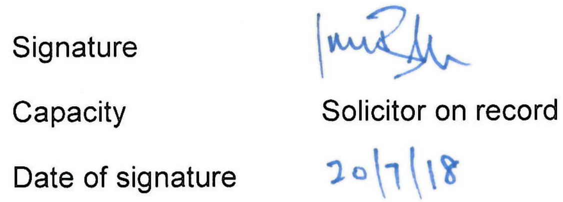
94. The parties have not attempted formal mediation.

95. AMP is willing to proceed to mediation at an appropriate time.

SIGNATURE OF LEGAL REPRESENTATIVE

I have advised the defendant that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity Solicitor on record

Date of signature 20/7/18

AFFIDAVIT VERIFYING

Name	David Anthony Cullen
Address	33 Alfred Street, Sydney NSW 2000
Occupation	Group General Counsel and Company Secretary
Date	20 July 2018

I, David Anthony Cullen, say on oath:

1. I am the Group General Counsel and Company Secretary of the defendant in these proceedings and I am authorised to make this affidavit on the defendant's behalf.

2. I believe that the allegations of fact in the Commercial List Response are true.

3. I believe that the allegations of fact that are denied in the Commercial List Response are untrue.

4. After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the Commercial List Response are true.

SWORN at SYDNEY

Signature of deponent ________________

Name of witness LARISSA BAKER COOK

Address of witness 33 ALFRED STREET SYDNEY NSW 2000

Capacity of witness SOLICITOR

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

1 I saw the face of the deponent. [OR, delete whichever option is inapplicable]
~~I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.~~

2 I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]
~~I have confirmed the deponent's identity using the following identification document~~:

____

Identification document relied on (may be original or certified copy)+

Signature of witness ________________

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

+ "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011 or refer to the guidelines in the NSW Department of Attorney General and Justice's "Justices of the Peace Handbook" section 2.3 "Witnessing an affidavit".

SCHEDULE 1

Paragraph 14(d)(i) – Caprioli

During the Relevant Period, Caprioli was a director of the following subsidiaries of AMP:

1. AMP Advice Holdings Pty Ltd from 22 September 2015 to 5 December 2016;
2. AMP Bank Limited from 31 December 2013 to 5 December 2016;
3. IPAC Group Services Pty Ltd from 12 March 2014 to 5 December 2016
4. IPAC Securities Limited from 1 January 2014 to 5 December 2016;
5. NMMT Limited from 27 October 2011 to 5 June 2014; and
6. SMSF Administration Solutions Pty Ltd from 22 August 2011 to 4 September 2012.

Paragraph 15(c)(i) – Guggenheimer

During the Relevant Period, Guggenheimer was a director of the following subsidiaries of AMP:

1. Arrive Wealth Management Pty Limited from 28 March 2014 to 16 March 2015;
2. AMP Advice Holdings Pty Ltd from 22 September 2015 to 15 December 2017;
3. AMP Direct Pty Ltd from 20 May 2016 to 15 December 2017;
4. AMP Finance Pty Limited from 2 October 2003 to 15 December 2017;
5. AMP Financial Planning Pty Limited from 16 May 2006 to 15 December 2017;
6. AMP GBS Limited from 2 October 2003 to 15 December 2017;
7. AMP Lending Services Pty Limited from 16 March 2005 to 20 April 2016;
8. AMP Planner Register Company Pty Limited from 30 May 2014 to 15 December 2017;
9. CBD Financial Planning Pty Limited from 28 March 2014 to 20 May 2015;
10. Charter Financial Planning Limited from 4 September 2015 to 15 December 2017;
11. Genesys Group Holdings Pty Limited from 4 September 2015 to 15 December 2017;
12. Genesys Group Pty Limited from 4 September 2015 to 15 December 2017;
13. Genesys Holdings Pty Ltd from 4 September 2015 to 15 December 2017;
14. Genesys Wealth Advisers Limited from 4 September 2015 to 15 December 2017;
15. Hillross Alliances Pty Ltd from 28 March 2014 to 6 October 2016;
16. Hillross Financial Services Limited from 28 March 2014 to 15 December 2017;
17. Hillross Innisfail Pty Limited from 28 March 2014 to 13 May 2015;
18. IPAC Group Services Pty Ltd from 22 August 2017 to 15 December 2017;

19. IPAC Securities Limited from 22 August 2017 to 15 December 2017;

20. Jigsaw Support Services Limited from 4 September 2015 to 15 December 2017;

21. Priority One Financial Services Pty Limited from 25 September 2003 to 15 December 2017;

22. Quadrant Securities Pty Ltd from 4 September 2015 to 15 December 2017; and

23. SMSF Advice Pty Limited from 1 August 2017 to 15 December 2017.

Paragraph 17(d)(i) – Meller

During the Relevant Period, Meller was a director of the following subsidiaries of AMP:

1. AMP Bank Limited from 2 April 2002 to 31 December 2013;

2. AMP Financial Investment Group Holdings Limited from 28 March 2002 to 31 December 2013;

3. AMP Life Limited from 19 October 2007 to 20 April 2018;

4. IPAC Securities Limited from 30 March 2011 to 31 December 2013; and

5. The National Mutual Life Association of Australasia Limited from 30 March 2011 to 20 April 2018.

Paragraph 19(c)(i) – Paff

During the Relevant Period, Paff was a director of the following subsidiaries of AMP:

1. AMP Direct Pty Ltd from 3 July 2015;

2. AMP Financial Planning Pty Limited from 4 September 2015;

3. Charter Financial Planning Limited from 11 August 2015 to 26 March 2018;

4. Genesys Group Holdings Pty Limited from 4 September 2015;

5. Genesys Group Pty Limited from 4 September 2015;

6. Genesys Holdings Pty Limited from 15 July 2015;

7. Genesys Wealth Advisers Limited from 11 August 2015;

8. Hillross Financial Services Limited from 4 September 2015 to 20 March 2018;

9. Hillross Wealth Management Centre Melbourne Pty Ltd from 25 June 2009 to 16 March 2015;

10. IPAC Group Services from 22 August 2017;

11. IPAC Securities Limited from 22 August 2017;

12. Jigsaw Support Services Limited from 11 August 2015;

13. Quadrant Securities Pty Ltd from 11 August 2015; and

14. SMSF Advice Pty Limited from 29 September 2016 to 1 August 2017.

Paragraph 20(b)(i) – Regan

During the Relevant Period, Regan was a director of the following wholly owned subsidiaries of AMP:

1. AMP Advice Holdings Pty Ltd from 5 December 2016;
2. AMP Direct Pty Ltd from 4 December 2017;
3. AMP Financial Planning Pty Limited from 4 December 2017;
4. AMP GBS Limited from 15 December 2017;
5. AMP Planner Register Company Pty Limited from 15 December 2017;
6. Charter Financial Planning Limited from 4 December 2017;
7. Genesys Group Holdings Pty Limited from 4 December 2017;
8. Genesys Holdings Pty Ltd from 4 December 2017;
9. Genesys Wealth Advisors Limited from 4 December 2017;
10. Hillross Financial Services Limited from 4 December 2017;
11. IPAC Group Services Pty Ltd from 5 December 2016;
12. IPAC Securities Limited from 5 December 2016;
13. Jigsaw Support Services Limited from 4 December 2017;
14. Quadrant Securities Pty Ltd from 4 December 2017; and
15. SMSF Advice Pty Limited from 4 December 2017.