Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

AMP Group Submission

Case Study 2: Investment platform fees

4 May 2018

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

AMP Group Submissions
Case Study 2: Investment platform fees

OVERVIEW **1**
ISSUE 1 .... **2**
Preliminary observations 2
The role of Advisers on the one hand and Platform Product providers on the other 4
Supervision of and controls over advisers 5
The role of Platform Product providers 7
Community Standards 8
Specific conclusions and findings invited by Counsel Assisting 8
Technological systems 8
Other matters raised by Counsel Assisting 10
ISSUE 2 .... **12**
Preliminary Observations 12
Benchmarking and closing products 12
Transferring between products 13
Specific conclusions or findings invited by Counsel Assisting 13
ISSUE 3 .... **15**
Preliminary observations 15
Specific conclusions and findings invited by Counsel Assisting 16
GOING FORWARD **17**

OVERVIEW

1. This Submission addresses the three key issues identified by Counsel Assisting arising from the evidence provided to the Commission by John Keating, the Head of Platform Products, at AMP Limited. The three key issues identified were as follows:

   a. The absence of any controls in AMP's platforms to prevent advice fees being automatically deducted unless the customer had opted to continue paying ongoing advice fees;[1]

   b. The fact that as at 2015 AMP knew that there were customers who had been placed into two particular platforms and who were being charged uncompetitive fees for the platform. Related to this issue is the allegation that AMP's Platform

[1] T1948.25-43.

Product provider, NMMT Limited (**NMMT**), had taken no steps to either make the platforms cost competitive or put in place features that would enable those customers to be smoothly transitioned to a cost competitive platform;[2] and

c. The arrangements that existed between NMMT and certain fund managers pre-1 July 2013 under which a fee calculated by reference to a percentage of the total value of the funds invested in the fund by AMP was paid to NMMT by the fund manager. The concern that was raised seems to be that Mr Keating could not explain what benefit the fund managers derived from this payment to NMMT.[3]

2. Counsel Assisting then identified a series of conclusions which she submitted it was open to the Commissioner to find. AMP contends that none of these conclusions are in fact open on the evidence before the Royal Commission.

3. Each of those key issues is dealt with below in turn, in each case first with some general observations, and secondly, with a summary of the reasons why the conclusions proffered by Counsel Assisting are not in fact open on the evidence.

ISSUE 1

Preliminary observations

4. Wrap Platforms and Master Trusts (together, **Platform Products**) offer customers a range of investment options. They are intended to provide customers with a simplified, streamlined investment tool.[4]

5. It is important to distinguish between Approved Product Lists (**APLs**) of an AMP Advice Licensee (**Advice Licensees**) on the one hand, and the list of available investments able to be made through a Wrap Platform (**Investment Menu**) on the other. Each Wrap Platform has an "Investment Menu", rather than an APL.[5] APLs are different from Investment Menus, and are derived from a different process. This distinction is important for a number of reasons which include that:

a. APLs include non-AMP Platform Products;[6]

---

[2] T1948.43-T1949.26.

[3] T1949.28-36.

[4] For a description of Platform Products, see the Witness Statement of John Keating dated 9 April 2018 (Exhibit 2.69) (**Keating Statement**) at [14]-[24].

[5] cf. T1213.11-13 where Counsel Assisting seemed to conflate the two, or at least assumed that they were derived from the same process.

[6] AMP.6000.0056.6023.

b. AMP Platform Products are made available to third parties (ie non-AMP advisers); and

c. AMP Platform Products (as well as non-AMP Platform Products) include non-AMP Investment Products on their Investment Menus from which customers can choose. Indeed, non-AMP Platform Products include both AMP and non-AMP investment products on their Investment Menu.

6. Advisers, on behalf of each customer, therefore have a range of choices between AMP and non-AMP Platform Products and between AMP and non-AMP Investment Products within a particular Platform Product. This choice is provided through both the APL and an associated exception process. An adviser can provide advice on Platform Products (and investment products) which are not on its APL in the event the adviser considers that another product would suit a particular customer's best interests and there is a process to allow one off approval to be sought. Thousands of applications are made each year to the Head of Product Research in relation to the use of non-APL products (including Platform Products).[7] The vast majority of these are approved.

7. APLs exist in order to assist advisers in the advice process to meet their duties regarding personal advice: for example, the best interest duty which regulates the advice process, the appropriate advice duty which regulates the quality of advice provided and the conflicts priority duty which, in the event of a conflict, requires the financial adviser to prefer the customer's interests over their own, the interests of the Advice Licensees and their associates.

8. Each product available to AMP advisers through the APL is put through a thorough process of review which helps to ensure that it is a high-quality product.[8] The process provides significant efficiency benefits by centralising the extensive research task through the process described in the paragraphs referred to above in the Green Statement. It helps to ensure that consistent standards are applied by all advisers. That process does not exist to limit good quality products available to advisers. Hence it is possible, and indeed common, for advisers to advise on other products.[9] It reduces the risk of poor quality products being offered to customers and helps to

---

[7] T1238.22-32.

[8] See Witness Statement of Bradley John Green dated 12 April 2018 (Exhibit 2.4) (**Green Statement**) at [11]-[14] and [20]-[44].

[9] See Green Statement as referred to above and T1238.22-32.

ensure a regular review of the quality of the products on the APL, including AMP products. AMP products and non-AMP products alike are, for example, placed "on hold" or recommended as a "sell" when the research team considers this appropriate. The Benchmarking process supports the APL in the manner described in paragraph 82 of the Keating Statement.

9. It is not feasible for AMP's research team, let alone individual advisers, to review every single product on the market and, indeed, there are many competing products in the market which have virtually identical features, benefits and restrictions. The research team tries to ensure that the products on the APLs are representative of the range of products available on the market for the type of clients for which the Advice Licensees are likely to advise.[10]

The role of Advisers on the one hand and Platform Product providers on the other

10. It is important to properly understand the role that Platform Product providers such as NMMT play in the provision of financial advice to customers. That role is to provide an administration system for advisers and customers to facilitate the management and making of investments by, and on behalf of, customers. Other than through the development of the Investment Menu, Platform Product providers play no role is determining the investments made by customers. Part of the provision of the administration system is to facilitate payments between the customer and the adviser for services provided by the adviser to the customer. As Mr Keating explained in evidence, "*the platform collects the fees as per the agreement between adviser and customer, and passes those fees on to the advice licensee. And the controls, in terms of services for those fees, are managed through the advice licensee*".[11]

11. Each Wrap Platform Product has a cash account associated with it. As Mr Keating explained,[12] fees and any expenses are paid out of the cash account as a matter of priority, or, if insufficient cash is contained in the cash account, from liquidating investments as instructed by the customer. In either case, the customer is previously informed by the Adviser of this process which is further described in the Wrap Platform Product PDS and associated documents and can choose the source of the amounts to cover the fees and expenses.

[10] Green Statement at [12].
[11] T1220.1-4.
[12] T1219.22-39.

12. NMMT's role as a Wrap Platform Product provider, as with any Platform Product provider, is to provide the Wrap Platform Product, for which it charges fees as explained by Mr Keating in the Keating Statement[13] and as set out in Wrap Platform Product PDSs. Advice fees, and services provided by advisers, are matters for the contractual arrangements between advisers and customers.

Supervision of and controls over advisers

13. Generally speaking, AMP Advice Licensees impose the following controls over advisers, which include the provision of advice in respect of Platform Products:

    a. Each Advice Licensee has a series of Quality Advice Fundamentals (**QAFs**) relating to ongoing service, charging advice fees, Fee Disclosure Statements and opt-in requirements.[14] Advice Licensees are responsible for monitoring the advisers' compliance with relevant QAFs. The QAFs include the following:

        i. Alternative products & strategies. This QAF outlines the advisers' obligations in meeting the best interests duty by comparing and documenting the range of products and strategies that could satisfy a client's objectives as considered during the formulation of their advice.

        ii. Best Interests Duty / Reasonable basis for advice / Suitability Rule. This QAF outlines advisers' obligations under their best interests duty, including policy and guidance around the application of the safe harbour steps and conflicts priority rule. Prior to 2013, guidance was provided to advisers around ensuring a reasonable basis for advice and around managing conflicts through Professional Standards Manual policies (AMP Financial Planning Pty Limited (**AMPFP**), ipac Securities Limited, Hillross Financial Planning Limited (**Hillross**)) and QAFs and Advice Guidelines (Charter Financial Planning Limited).

        iii. Conflict of interest. This QAF provides guidance on identification and management of potential conflicts that may occur during the advice process and an adviser's relationship with their Advice Licensee and distribution channel.

        iv. Breach management / Issues & Consequences Management. This QAF outlines the issues and consequence management process outlining

[13] Keating Statement at [66]-[77].
[14] See Keating Statement at [67.5] and [76] and Green Statement at [15]-[19].

issue, client remediation guidelines and the application and management of consequences for each Advice Licensee.

v. Product Replacement. This QAF outlines the advisers' obligations and requirements in considering replacing a client's existing product. This QAF provides specific guidance around comparing and documenting products and around meeting Best Interests obligations.

As Mr Keating set out in the Keating Statement, each QAF covers the principle of the policy, consequences, practical guidance, examples and case studies where relevant, and references to other related material.[15]

b. It is a condition of the Advice Licensees' licenses that the Advice Licensees monitor and supervise the advisers operating under their license. The way that AMP Advice Licensees comply with these obligations includes by conducting adviser audit programmes. These adviser audit programmes are described in the Keating Statement at [67.4].[16]

c. Further, the Wrap Platforms may impose caps or maxima on advice fees that are deducted via the platform. This is a system control which restricts the amount that advisers may charge for products administered via the Wrap Platform. However, it is important to note that the products administered via the platform may only be a portion of a customer's overall investment, and the Platform Product provider has no control over the quantum of advice fees that an adviser charges for the rest of the customer's investment or for other advice.[17]

14. All advisers are, of course, subject to the duties in Part 7.7A of the *Corporations Act 2001* (Cth) (**Corporations Act**), including the obligations set out in paragraph 7 above. It is not, and has never been, the obligation of Platform Product providers to ensure compliance with these obligations. It is the obligation of Advice Licensees and the regulator.

[15] Copies of the relevant QAFs were exhibited at Exhibit "JPK-1" to Keating Statement (Exhibit 2.69) (**Exhibit JPK-1**), tab 6.
[16] See also T1220.17-21 and T1221.27-29 and paragraphs 10 and 11 and 44 to 46 of the AMP Group's Submission in relation to Case Study 3: Inappropriate financial advice.
[17] See T1218.1-44, T1239.10-18 and Keating Statement at [38], [67(b)] and [69(c)].

The role of Platform Product providers

15. As stated in paragraph 10 above, platforms exist to provide an administration system for advisers and customers to facilitate the management and making of investments by, and on behalf of, customers. One of the administration tasks undertaken is the deduction of advice fees. Advice fees are only deducted via a Product Platform if the customer has instructed the platform to do so. In respect of the automatic deduction of advice fees, the deduction of ongoing advice fees are turned off if the product provider is notified, whether by the customer, the adviser, or the Advice Licensee. There has never been any legal or regulatory obligation or policy proposals that Platform Product providers (who provide the technical solution which facilitates the investments) monitor each individual arrangement between advisers and their customers.

16. For a Platform Product provider to put itself in a position where it was able fully to interrogate advice fees and judge their appropriateness before it processed a deduction via the platform when it is authorised to do so by customers, it would need full visibility of all financial advice arrangements from affiliated and non-affiliated advisers. This would be an extraordinary requirement given the number of advisers (affiliated and non-affiliated), the number of customers and the number of fee transactions.[18] In addition, customers would suffer, because there would be additional cost in the system and upward pressure on fees. For affiliated advisers, this is the very level of integration that has been criticised as compromising the independence of financial advice and producing conflicts of interest.

17. What the Platform Product provider can do is monitor these fees to the extent practically achievable by a Platform Product provider to ensure that they are in accordance with the customers' instructions, which NMMT already does. It can set maximum fees that can be charged to customers, which NMMT already does. In circumstances where it has been told by a customer or an adviser or Advice Licensee to stop deducting a particular fee, it can and does action this request. Again, NMMT already does this.

---

[18] T1226.40-T1227.22 and AMP.6000.0065.0111 (page 17).

Community Standards

18. No comment was made about product providers, including Platform Product providers, having a role in monitoring advice fees in:

    a. the Corporations Amendment (Future of Financial Advice) Bill 2011 Explanatory Memorandum (House of Representatives); or

    b. the Corporations Amendment (Future of Financial Advice) Bill 2011 Replacement Explanatory Memorandum (House of Representatives); or

    c. the Corporations Amendment (Future of Financial Advice) Bill 2012 Revised Explanatory Memorandum (Senate),

    nor in either of the two other Supplementary Explanatory Memoranda relating to the Bill. ASIC Regulatory Guide 245 Fee Disclosure Statements (revised in March 2017) does not refer at all to a role for product providers in relation to advice fee disclosure statements or renewal notices.

19. There are a series of regulatory and AMP internal processes designed to ensure that advisers' regulatory obligations are met, as already described in paragraphs 13 and 14 above. These are distinct and separate from the obligations and actions taken by AMP Platform Product providers such as NMMT. Again, any action that is taken to further integrate the two is the very action that has been criticised as compromising the independence of financial advice and producing conflicts of interest.

20. It is very difficult to see how the operation of AMP's Platform Products could be found to fall below community standards in this context.

Specific conclusions and findings invited by Counsel Assisting

21. The specific conclusions or findings which Counsel Assisting submits it is open to the Commissioner to make in respect of the first issue appear to be found at T1950.11-T1951.28 (excluding T1950.15-17), although this passage refers to many matters which do not fall within the description of the first "*key issue*".

Technological systems

22. The first finding which is submitted is open is that the conduct of two AMP Advice Licensees and NMMT is below the standards expected by the community.[19] This

[19] T1950.11-13.

appears to be because, so it is said, "*NMMT has no technological systems to ensure it is only deducting fees to which AMP financial planners have a lawful entitlement*".

23. For a Platform Product provider such as NMMT to put itself in a position where it was able fully to interrogate advice fees and judge their appropriateness before it processed a deduction via the platform would be an onerous and costly exercise, and would ultimately increase the cost of administering the product. It is also not the appropriate control to achieve the compliance outcome given that Platform Providers provide their products to customers of many affiliated and non-affiliated advisers.

24. Counsel Assisting drew the Commissioner's attention to Mr Keating's acknowledgment that it was possible for such technological controls to be implemented on the platforms and that he did not give a reason why such technology had not been developed. Mr Keating's answers in this respect[20] were in specific response to whether or not the technology underpinning Platform Products was such that fees could be turned off every two years, thereby requiring specific action on the part of the adviser for automatic deduction of adviser fees to re-commence.

25. The first thing to note about that is that if such a requirement was only that the adviser provide relevant notice to the Platform Product provider, such measures are unlikely to be sufficient to prevent advisers who improperly charge fees without providing advice. The second noteworthy matter is that if express opt-in had to be provided by the customer to the Platform Product provider, then that is akin to introducing a new regulatory requirement, not currently in existence, which requires not only customers to provide advisers with express opt-in instructions every two years, but also Platform Product providers. This would be very onerous on customers.

26. Mr Keating made clear that it would be technologically possible to either require (at a cost) third party providers of technology systems to include such a mechanism, or to include such a mechanism in those Platform Products which AMP itself produces. But AMP is not aware of any suggestion that Platform Product providers are required to conduct such checks, in essence by way of monitoring the conduct of individual advisers.

27. As stated above, there has never been any legal or regulatory obligation or policy proposals that Platform Product providers monitor the arrangements between advisers and their customers, or that they act as a de facto regulator. No policy

[20] T1220.39-1222.9.

proposal has been made which could be said to give rise to such community standards. These arrangements are supervised by Advice Licensees, regulated internally at AMP in the manner described above and subject to ASIC's usual supervision of Advice Licensees.

28. For these reasons, there is nothing of which AMP is aware before the Commission to suggest that the fact that AMP as a Platform Product provider has no technological systems to ensure it is only deducting fees to which advisers have a lawful entitlement is contrary to the standards expected by the community of Platform Product providers.

Other matters raised by Counsel Assisting

29. Counsel Assisting then invited a series of conclusions which it is said explain the reason why such conduct has occurred.

30. One matter Counsel Assisting refers to is the AMP Advice Licensees APLs.[21] The nature and purpose of these APLs is described above. Considerable time, expense and research goes into their formulation. These are dealt with in detail in paragraphs 6 to 9 above. There is no evidence that the use of APLs creates a systemic risk of advisers failing to act in the best interests of their clients. AMP applies robust procedures in formulating its APLs as discussed above.

31. It does not follow, as Counsel Assisting appeared in her closing submissions to assume,[22] from the fact of vertical integration or from a predominance of AMP products on APLs, that customers are improperly advised or are not obtaining appropriate investment advice.

32. AMP does not therefore agree that "*it is open to the Commissioner to find that the interests of the client would be best served by the client only being invested in a platform if investment through the platform is <u>necessary</u> to meet the client's financial needs and objectives*" (emphasis added).[23] For the purpose of this response, AMP understands this in context to mean that a *necessity* test should be substituted for the usual *appropriateness* test when it comes to AMP advisers recommending to their customers AMP products. The appropriateness test is supported by substantial legislative and regulatory requirements and AMP generally and through the Advice

---

[21] T1950.30-T1951.3.

[22] For example, T1950.19-28 and T1951.17-19.

[23] T1950.26-29.

Licensees (by way in particular of APLs, Benchmarking, QAFs and audit processes) and AMP Platform Product providers (for example, by way of maximum advice fees) have in place many levels of supervision. Moreover, it is not clear what problems anticipated by Counsel Assisting are unique to instances of vertical integration, and why advisers should be dissuaded from recommending AMP Platform Products or Investment Products. There is no evidence before the Commission of real life instances of inappropriate advice in the context of Platform Products arising from vertical integration of which AMP is aware.

33. The assertion by Counsel Assisting that "*the limited benchmarking and guidance provided by AMP to its advice licensees has not been sufficient to overcome challenges presented by ownership by AMP of both the advice licensees and the platform operators*"[24] seems to AMP to be unfounded. AMP does not know what insufficiencies are said to have been established. Further, it does not regard its benchmarking process, the process of formulation of APLs and the various means by which Advice Licensees supervise their advisers, as being inadequate to address any potential conflict arising out of AMP owning both the Advice Licensees and the Platform Product providers.

34. Counsel Assisting refers to an alleged lack of competitive tension arising from vertical integration.[25] It is again not clear how the separation proposed would lead to Advice Licensees placing pressure on Platform Product providers "*to charge competitive fees and offer competitive features*". Indeed, there is no evidence before the Commission of which AMP is aware to suggest that AMP Product Platform providers do not charge competitive fees and offer competitive features. AMP Platform Products are, after all, placed on the general market and those open to new investors are available to customers of third party advisers on exactly the same terms and conditions as they are offered to AMP Advice Licensees' customers.

35. Further, the Advice Licensees' advisers, and AMP's Platform Product provider, operate in highly competitive markets: consumers have a choice as to institutional affiliation of their adviser and as to their individual adviser, as well as to Platform Product providers and Investment Product providers, bearing in mind that third party Platform Products and Investment Products are available to the Advice Licensees' advisers whether or not they are on the APLs subject only to the Research Team's

---

[24] T1951.17-19.
[25] T1951.6-19.

approval, which follows a review conducted with customer protection in mind (as set out in paragraphs 6 to 9 above).

ISSUE 2

Preliminary Observations

Benchmarking and closing products

36. AMP has mechanisms in place to "close" Platform Products to new investment by a Platform Product provider. However, these products continue to be available to existing customers and there may be a range of reasons why that customer wishes to remain in the product. These include access to features that are no longer available on contemporary products, insurance terms (both policy terms, including pre-existing conditions, and pricing terms) that could not be retained if the customer moved to a different product, legislative impacts on pension schemes and tax considerations relevant to the particular customer.[26] As Mr Keating said, there are practical reasons why customers may remain in such Platform Products.[27] The fact that customers remain in such Platform Products is not evidence of inappropriate advice or any kind of misconduct.

37. There are also mechanisms in place by which an Advice Licensee can change the rating of a product or remove it from the APL altogether. Again, when this occurs, these products may continue to be available to existing advice clients. The reasons why these products may continue to be made available to advice clients are similar to the reasons why a customer may wish to continue to remain in a product that is "closed" by the Platform Product provider.

38. AMP's Advice Licensees' Benchmarking Guidelines generally take three to five months to prepare.[28] The most recent versions, preparation of which commenced late last year, were introduced on 18 April 2018 and are attached. Mr Keating was not aware that these most recent versions were finally introduced when he gave evidence on that day. When new Benchmarking Guidelines are introduced, advisers are notified and they are published on a portal accessible by all advisers. If the rating of a particular Platform Product in the Benchmarking Guidelines has changed, there will typically be additional communications notifying advisers of this change in rating.

---

[26] See Keating Statement at [17] and [22], T1220.5-35.
[27] T1220.7.
[28] Benchmarking Guidelines are described in the Keating Statement at [79]-[83].

Depending on the rating, Benchmarking Guidelines also set a timeframe for the adviser to take steps in relation to that Platform Product, provided that doing so would be in the customer's best interest.[29]

Transferring between products

39. As to the ability to transfer between products, Platform Products each have different terms and conditions, and different associated fees all of which are set out in the PDSs and accompanying documents, in particular the Additional Information Booklet and the Investment Options booklet (which are not formally part of the PDS), along with the underlying investment product PDSs. Indeed, different options are available within many of the Wrap Products. A couple of examples of different features include different Investment Menus and whether or not the Wrap Platform Products allows for in-specie transfers between AMP and non-AMP platforms alike. The different options are normally reflected in the fees payable for the particular Wrap Product.

40. In relation to in-specie transfers, this is a mechanism which may help minimise the cost of transfers between investment products. However, this mechanism may not be available for every customer. For example, in-specie transfers will not provide tax relief when transferring between different superannuation funds, which is always the case when a customer chooses to move between different Platform Product providers. Furthermore, the ability to use in-specie transfers will depend on a range of factors, including the ability of the destination platform to facilitate it and the availability of the same asset(s). This type of advice is customer specific and is included in the advice provided by the adviser.

Specific conclusions or findings invited by Counsel Assisting

41. Counsel Assisting alleges that on the evidence, it is open to the Commissioner to find two potential statutory contraventions.

42. The **first** such submission is that AMPFP and Hillross, two AMP Advice Licensees, engaged in conduct that might have amounted to misconduct in two ways:

    a. by contravening section 912A(1)(a) of the Corporations Act by not doing "*all things necessary to ensure the financial services covered by their licence are provided efficiently, honestly and fairly*". This, it is said, arises from the failure to act in an efficient manner in identifying clients who remain in WealthView

[29] Keating Statement at [79]-[83]; Green Statement at [17(b)].

and PortfolioCare so as to advise them of the position with respect of those platforms and to, if necessary, facilitate any changes those clients may require as a result of becoming aware of that position;[30] and

b. by failing to act in an efficient manner in ascertaining whether WealthView or PortfolioCare remain uncompetitive or have become even more uncompetitive. This, it is said, arises from a failure to identify or audit financial advisers who are likely to be at risk of failing to provide advice in the best interests of the client, given that the advisers have clients who are still invested in AMP platforms known to be uncompetitive.[31]

43. As Mr Keating said under cross-examination,[32] the two relevant AMP Advice Licensees did not request from Mr Keating a list of the advisers who still had customers invested through either WealthView or PortfolioCare. As stated above, these products continue to be made available to existing customers. There are reasons why customers may choose to remain in these products other than for cost competitiveness, for example insurance terms (both policy terms and pricing terms) that could not be retained if the customer moved to a different product, legislative impacts on pension schemes and tax considerations relevant to the particular customer.

44. The fact that customers remain in such Platform Products is not evidence of inappropriate advice or any kind of misconduct. AMP's Benchmarking process is described above, and there is no evidence before the Commission of which AMP is aware of any defects in that process. Quite to the contrary, Counsel Assisting appears to rely on the Benchmarking Guidelines as reliably indicating various characteristics of products. As stated above, it should be noted that non-AMP advisers still have customers invested in WealthView and PortfolioCare as well as AMP advisers.

45. The **second** such submission is that "*AMP advice licensees may have contravened section 912A(1)(aa) of the Corporations Act by failing to have in place adequate arrangements to manage the conflicts of interest that arise from the recommending*

[30] T1949.43-47.
[31] T1950.1-6.
[32] T1231.5-13.

of AMP platforms by AMP authorised representatives".[33] No particulars of, or basis for, this allegation are provided.

46. AMP Advice Licensees have a number of control and supervisory arrangements to manage potential conflict situations. These include the QAFs, the APLs, the audit process and benchmarking as described in paragraphs 8, 13 and 38 above. It has not been specified what other arrangements she says Advice Licensees should have in place.

47. **Further**, Counsel Assisting says that it is open to the Commission to find that the same two Advice Licensees, as well as NMMT, have engaged in conduct below the standards expected by the community by continuing to derive fees from AMP clients who have been invested in uncompetitive platforms despite the fact that NMMT and the same two licensees know that these two platforms are not competitive on cost.[34]

48. There is no evidence before the Commission of which AMP is aware that those customers who remain in PortfolioCare and WealthView would have been better off by moving out of those products and into others. As explained above, there may be a range of reasons why it is appropriate for customers to remain in these products other than cost competitiveness. The fact that customers remain in such Platform Products is not evidence of inappropriate advice or any kind of misconduct.

49. The situation of customers who remain in PortfolioCare and WealthView will depend on their particular and individual circumstances. AMP's Advice Licensees have in place reasonable and adequate supervisory measures in respect of their respective advice licensees, as described in paragraphs 13 and 46 above to provide guidance to advisers in their networks to address the position of these customers.

ISSUE 3

Preliminary observations

50. The Commission heard evidence from Mr Keating that there were arrangements in place between NMMT and certain fund managers under which a rebate calculated by reference to the total funds under management in that fund manager's investment offering was paid to NMMT by the fund manager[35]. In circumstances where a new fund was added to a Wrap Platform's menu, or new money was received in relation

[33] T1950.8-11.
[34] T1950.15-17.
[35] T1235.43-T1237.9

to pre-July 2013 funds, it was Mr Keating's understanding that such arrangements were not subject to FoFA grandfathering provisions. Mr Keating's understanding in this regard is not correct. These arrangements are in fact the subject of the grandfathering provisions under the applicable regulations and NMMT is entitled to apply those grandfathering provisions to arrangements that fall within their scope. In any event, no new funds have been added to the relevant platforms since 1 July 2013 to which grandfathering provisions have been applied.

Specific conclusions and findings invited by Counsel Assisting

51. Counsel Assisting submitted that "*it is also unclear why a Platform Product provider ought receive and keep a rebate from a fund manager based on the value of funds invested by the clients in one of the fund manager's funds*".[36] It is said that "*for these grandfathered arrangements relied upon by AMP, the Platform Product provider appears to give nothing for the fees or rebates that it receives from the fund's manager*".[37] This ignores the fact that these rebates are taken into account in determining the level of fees AMP as Platform Product provider charges in order to make its Platform Product (available to third party advisers as well as to AMP Advice Licensee Advisers) competitive as well as profitable. In other words, if rebates were not obtained, it is likely that other Platform Product fees would have been higher.

52. As stated above, AMP Platform Products must be competitive in order to remain on AMP Advice Licensee APLs, and in any event compete, even in the case of AMP Advice Licensees, with non-AMP Platform Products. Advisers are, of course, bound by all of the regulatory and internal guidelines referred to in paragraphs 13 and 14 above, and are subject to the audits conducted by Advice Licensees referred to in paragraph 13(b) above.

53. This issue again seems to be attributed to an alleged lack of "*vertical separation of advice licensee from platform operator*",[38] since, it is alleged, in a more competitive environment there would be pressure on the Platform Product provider to pass on any rebate to the clients whose funds are the basis for the rebate. This is to ignore not only the matters set out in the previous paragraph, but also the multiple levels of competition in a highly competitive market. In particular, there is immense

[36] T1951.18-22.
[37] T1951.26-29.
[38] T1951.24-27.

competition at institutional level, specific adviser level, Platform Product level, as well as at Investment Product level.

54. The submission that NMMT “gives nothing” for the rebates in question is also contrary to the evidence. The rebate is payable by the fund manager for the distribution of their managed investment scheme on the platform.[39] Pursuant to these arrangements, NMMT also provides services such as the deposit of application monies into the fund managers nominated account[40] and monthly reporting and platform statistics.[41]

55. To the extent that a criticism has been made that by doing so NMMT’s conduct in this respect has fallen below community standards (which is not clear), that criticism cannot be justified. This cannot be the case where it has acted consistently with legislation, including grandfathering provisions provided for in the legislation. If Parliament had a contrary view, it would have not so provided.

GOING FORWARD

56. AMP is developing a new advice system called Goals 360. It is a key enterprise strategy that aims to focus on a wholesale, rather than incremental, improvement to the advice business.

57. The cornerstone philosophy of Goals 360 is that goals-based advice can provide customers with a strong opportunity to achieve their life goals. The aim is to augment the traditional advice process to create a customer experience centred around a customer’s goals.

58. Our goals-based advice, Goals 360, is a world leading system designed to remove complexity and create a much simpler environment in which advisers can provide quality compliant advice. We hope that this will make quality compliant financial advice accessible to more Australians. The Goals 360 advice system embeds compliance by design principles in its underlying software. It will drive consistency and compliance through the end to end advice process (e.g. system assisted advice scoping) and ensure robust advice document creation (i.e. Statement of Advice) enabling the adviser to design advice to meet specific client expectations and goals. AMP has and will continue to engage with ASIC as it brings Goals 360 to market.

[39] Keating Statement at [89(b)].
[40] See for example AMP.6000.00547828 and AMP.6000.00547844.
[41] T1234.43-45.

59. There are a number of activities across AMP in 2018 that fall under the banner of ‘compliance by design’. Collectively these activities will help strengthen the Advice business’ risk management framework and enable the full benefits of ‘compliance by design’ to be realised.

60. AMP has engaged an external consultant to validate components of the ‘compliance by design’ exercise to support the design of the controls and reporting that will support meeting compliance obligations on an ongoing basis.

61. To date, AMP has focused on improving processes for determining customers’ objectives (goals), including trading-off the impact of actions (advice strategies) on the achievability of these goals. Record keeping is electronic, with a web-based fact find (customer profile) and storage of key information and advice documents.

62. In 2018/2019, AMP will develop the advice document generation process and advice product recommendations as part of Goals 360 and this will also be included in the ‘compliance by design’ framework.

63. AMP’s intent is to have the ‘compliance by design’ framework complete by 2019.

4 May 2018