

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

AMP Group Submission

Counsel Assisting's General Questions in Closing Submissions

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OVERVIEW

1. AMP welcomes the opportunity to provide a written submission in response to the policy questions that Counsel Assisting has posed to the industry as a whole.

2. Many of the questions posed by Counsel Assisting involve subjective judgements about the balance of benefits of a particular approach or how best to reconcile sometimes competing objectives. In setting out AMP's views in this submission our overriding focus is on how best to expand and give effect to the core objectives and principles underpinning the Future of Financial Advice (**FoFA**) reforms.
3. AMP regards the following four principles as critical to the future of the financial advice industry:
 - a. ensuring that the objectives of FoFA reforms come to fruition;
 - b. completing the transformation of financial advice into a fully professional industry;
 - c. developing and introducing technology to reduce the cost of financial advice, making it more accessible and ensuring compliance 'by design'; and
 - d. more adequately managing inherent conflicts of interest, particularly in relation to remuneration of advisers to ensure the interests of the client is paramount.

Implementation of FoFA

4. AMP is committed to ensuring that financial advice is compliant, accessible, affordable and available. AMP recognises that this will involve restoring AMP's co-operative and transparent relationship with ASIC and other regulators.
5. AMP has supported the many substantial and complex reforms to the financial services (and particularly the financial advice) sector including the introduction of the FoFA reforms and Stronger Super regime from 2013.
6. FoFA had two key objectives:
 - a. to improve the trust and confidence of Australian retail investors in the financial services sector; and
 - b. to ensure the availability, accessibility and affordability of high quality financial advice.

AMP supports both these objectives.

7. AMP supported the introduction of FoFA and would not wish to see a situation emerge where any new reforms that were introduced had an unintended consequence of undermining the objectives of the reforms.

8. On the other hand, the enhanced regulatory environment and its associated cost burden has had the impact of making advice less available, less accessible and less affordable for Australians, and means that the overwhelming majority of Australians are currently not receiving financial advice. These issues are relevant when considering legislative or regulatory change.
9. AMP notes that these regulatory changes have been taking place against a backdrop of significant shifts in the digital environment and the emergence of new technologies.
10. AMP considers that the FoFA reforms were well designed and that, together with the other reform measures that have been put in place such as Life Insurance Framework (**LIF**) and Financial Adviser Standards and Ethics Authority (**FASEA**). However, AMP also considers that more time is required before further regulatory measures are proposed.

Professionalisation of the Financial Advice Industry

11. The above legislative measures were designed to transform elements of the industry that were historically sales-based, with no barriers to entry, into a true profession. This has proved harder than anticipated, particularly in the context of a fast-changing policy, regulatory and political environment.
12. AMP is committed to the advice industry becoming a fully-fledged profession. AMP believes that this transformation will go a long way to eliminating many of the problems that currently exist.
13. A profession is characterised by the following key elements:
 - a. minimum standards of entry;
 - b. a code of ethics;
 - c. disciplinary consequences for misconduct;
 - d. continuous professional development; and
 - e. membership of a professional body.
14. AMP agrees that more has to be done to achieve the ultimate aim of a professional, respected and trusted financial advice profession which helps customers to achieve their financial goals. AMP has publicly supported a fee for service model as being

the best outcome for both the industry and for customers. AMP cannot achieve this overnight. This has been recognised by various governments of the day in developing the successive waves of reform.

15. AMP has supported the transition to a more professionalised industry throughout all the reforms over the last two decades. For example, AMP has publicly supported the LIF reforms and the new education and ethical qualifications to be introduced under the FASEA reforms.

Development and Implementation of Technology

16. AMP considers that technology will revolutionise the provision of financial advice in Australia in the following respects:
 - a. it will assist in the achievement of the FoFA objectives by reducing the cost of advice and making it more accessible;
 - b. it will ensure that advice provided to customers in similar circumstances is more consistent; and
 - c. it will also enhance compliance and make it easier by the operation of its underlying software.

It will therefore assist to restore trust and confidence in the financial advice industry.

Management of Conflicts of Interest

17. Despite the introduction of the FoFA reforms, which focused on conflicted remuneration, conflicts of interest remain in the financial advice industry. No structure will, of itself, eliminate conflicts of interest. What is important is the recognition, understanding and management of those conflicts of interest.
18. AMP has a number of policies in place to manage conflicts of interest at all levels within its organisation. These are described more fully in paragraphs 131 to 134 below.

RESPONSE TO QUESTIONS

Question 1

Do clients receive any meaningful benefit from ongoing service arrangements?

Counsel Assisting at TP1948.11-12

19. AMP considers that ongoing service arrangements provide benefits to customers. AMP's experience is that ongoing service relationships provide customers with a high level of comfort in their financial wellbeing and satisfaction. While advice can be one-off or transactional in nature, for many customers their preference and their best interests are served by maintaining an ongoing relationship with a financial adviser who can service their needs as they change over time.
20. For example, customers of AMP Advice Licensees' employed advisers have for the past 2 years provided a "net promoter score" of over 70,¹ meaning that these customers would refer their family and friends to receive advice from their adviser.
21. Importantly, the ongoing service model is an opt-in model. Customers need to make an active decision to opt-in to the arrangements. Alternatively, if a one-off fee for service arrangement is a customer's preferred option, then that option is also available and customers have the ability to negotiate a one-off agreed fee for service. AMP considers that customers should continue to have the option to pay the fee in instalments or upfront as they choose.
22. In addition, the current fee arrangement framework allows customers flexibility in the method of payment, for example, where appropriate, fees can be deducted from investments or superannuation balances, or paid for directly by the customer. It is obvious that if customers had to pay for advice out of their own pockets rather than out of their investments or superannuation, fewer would access it.
23. Under the FoFA reforms, ongoing service arrangements, agreed to and paid for by the customer, can only be put in place for a maximum of two years before the

¹ Net Promoter Score (**NPS**) is a tool which is widely used to measure customer satisfaction. It is calculated based on responses to questions where each question is scored on a scale of 0 to 10. Those who respond with a score of 9 to 10 are called **Promoters** and are considered likely to remain customers for longer and make referrals to others. Those who respond with a score of 0 to 6 are called **Detractors** and are less likely to refer. Responses of 7 and 8 are called **Passives**, and their behaviour is considered to be neutral (i.e. neither a Promoter nor a Detractor). NPS is calculated by subtracting the percentage of customers who are Detractors from the percentage of customers who are Promoters. Accordingly, a positive NPS indicates more Promoters than Detractors and the higher the score towards 100, the stronger the customer satisfaction.

customer needs to opt in, and therefore renegotiate and agree to, those arrangements continuing. If this does not occur, then the ongoing service arrangements terminate by default. For this reason, the term ongoing service arrangement is something of a misnomer.

24. AMP is concerned that, in the event that ongoing service arrangements were to be removed, advice would become less available, less tailored for the individual and less affordable.
25. Importantly, if a customer is unhappy with the arrangements and services provided at any time, they can either renegotiate or terminate the arrangements without penalty.
26. Typically, a current ongoing service arrangement would include the following components:
 - a. An annual face-to-face review with a customer, or the offer of a review. This annual review comprises several elements including:
 - i. a check of any changes in the customer's circumstances or goals
 - ii. an assessment of the ongoing appropriateness of the financial advice given; and
 - iii. a review of the products recommended and asset allocation.
 - b. In addition to the annual review an ongoing service arrangement usually includes:
 - i. regular ongoing personal interactions between the adviser and the customer;
 - ii. the ability for a customer to contact the adviser at any time throughout the year;
 - iii. the provision of information and services in relation to changed regulatory and legislative conditions – for example in the Federal Budget context or when legislation changes, such as changes to superannuation tax allowances were introduced; and
 - iv. the provision of research data or information to customers.

27. Ongoing service arrangements do not operate in isolation. They are supported by other legislative measures introduced under FoFA that require the adviser to:
- a. act in the customer's best interests (section 961B of the *Corporations Act* 2001 (Cth) (**the Corporations Act**));
 - b. prioritise the customer's interests over those of the adviser (section 961J of the *Corporations Act*);
 - c. ensure that the advice is appropriate (section 961G of the *Corporations Act*);
 - d. provide annual fee disclosure statements to customers (section 962G of the *Corporations Act*); and
 - e. ensure that the customer opts-in to the ongoing service arrangements every two years (section 962K of the *Corporations Act*).
28. AMP considers that the ongoing service arrangements framework introduced by FoFA provides flexibility for both customers and advisers.

Questions 2 and 3

To what extent does the continued legislative condoning of grandfathered commissions shape and influence the culture and attitudes of financial advice licensees, so as to create a disconnect between community expectations as to the charging of fees and the tolerance of licensees for the charging of fees for no or little service?

Should grandfathered commissions cease?

Counsel Assisting at TP1948.12-16

29. The issue of the grandfathering of pre-existing product sales commissions was considered by the Parliamentary Joint Committee on Corporations and Financial Services when it undertook its inquiry into Financial Products and Services in 2009.
30. Following discussions with the Minister at the time and as the legislation was being considered by the Parliament, a careful decision was made to retain pre-existing trail commissions for the following reasons:
- a. that reforms in general must be forward facing. Retrospective legislation is a fraught issue;

- b. Parliament generally cannot alter existing contractual obligations and may face constitutional issues should it try to do so. Banning pre-existing commissions could fall into this category; and
 - c. over time the grandfathered arrangements involving commissions will reduce as customers are transitioned to a post-FoFA arrangement as appropriate.
31. AMP considers that these reasons remain compelling and that the grandfathering arrangements provided for in the FoFA arrangements should remain in place.
32. It should be noted that grandfathered commissions are a payment, factored into the price of a product at the point of establishment and are a payment between a product manufacturer and the adviser who placed the product. Their existence does not then mean poor quality advice or substandard customer outcomes will result.
33. AMP is of the view that safeguards implemented at the transition points create a robust framework (e.g. legislated Product Replacement Tests as part of FoFA); and when coupled with an equally robust monitoring and supervision framework will ensure customers' interests are protected.

Question 4

Does vertical integration of platform operators with advice licensees service the interest of clients? If so, how?

Counsel Assisting at TP1953.28-30

34. Customers benefit from vertically integrated models. As ASIC stated in its Report 562 entitled *Financial advice: Vertically integrated institutions and conflicts of interest* (p 5):

Vertical integration can provide economies of scale and other benefits for both the financial institution and its customers. The economies of scale may allow customers to access advice at lower cost. Customers may choose to obtain both advice and financial products from a vertically integrated institution because of the convenience of a relationship with a single financial institution. They may also value the perceived safety of dealing with a large institution and have trust and confidence in the ability of the institution to both deliver the services and compensate them appropriately if required.

However, a vertically integrated business model also gives rise to an inherent conflict of interest. While the law permits this conflict to exist it must be managed appropriately.

35. AMP agrees with this statement from ASIC's and notes that there are multiple benefits of a vertically integrated institution including:
 - a. economies of scale which benefit customers;
 - b. potentially offering advice at lower cost;
 - c. convenience of a relationship with a single financial institution;
 - d. perceived safety of dealing with a large institution;
 - e. having access to different types of advice (e.g. phone; online; face-to-face) without having to renegotiate contracts;
 - f. having trust and confidence in the institution;
 - g. enabling alignment of advice licensing obligations with the vehicle of implementation (the platform) enhancing processes, controls and the ease of oversight; and
 - h. increased agility in the implementation of changes impacting advice and products; whereby a holistic and integrated response is more easily achieved.
36. In addition, AMP stands behind the advice that the Authorised Representatives (**ARs**) of the Advice Licensees provide to customers. When ARs make mistakes that affect a customer, AMP remediates that customer and has the resources to do so.
37. Customer choice is an important and valuable consideration. Different industry structures suit the needs of different customers. Vertically integrated companies provide benefits for some customers (such as a known brand, capital backing and security).
38. The key issue is not vertical integration *per se*, but that all conflicts of interests (conflicts exist in all models, whether vertically integrated or not) are appropriately managed.

39. Accordingly, legislation that may ban a particular industry structure may not meet the needs of some customers.

Question 5

Why should a platform operator continue to receive a fee or rebate from a fund manager calculated by reference to the value of client funds invested in the fund if that rebate is not wholly passed onto clients whose funds are the basis for the fee or rebate?

Counsel Assisting at TP1953.29-32

40. This is an issue designed ultimately to benefit customers who do not have access to institutional arrangements. However, it is a less significant issue in the post-FoFA environment as the arrangements are not a continuing commercial practice because AMP does not apply rebates to new funds invested (see Issue 3 in AMP's submission for Case Study 2: Investment Platform Fees dated 4 May 2018 at [50]-[54]).

Question 6

If platform operators continue to automatically deduct advice fees from clients' investments, why should the platform operator not be required to have controls in place to ensure that subdivision (b) of division (3) of part 7.7A of the Corporations Act 2001 (Cth) has been complied with? Put another way, why should platform operators not be expected to ascertain that there is a lawful entitlement on the part of fee recipients to the moneys that the operators automatically pay to the fee recipients at the expense of clients?

Counsel Assisting at TP1953.34-40

41. While AMP understands the intent of this suggestion, AMP does not consider that this is viable for platform product providers. The contract is established between a financial adviser and their customer. It is overseen by Advice Licensees. Platform operators originate products, undertake transactions and process payments under formal and substantiated instructions, but have no ability to review the adequacy of these arrangements.
42. It would be an onerous and costly exercise for a platform provider to put itself in a position where it was able to interrogate fully advice fees and judge their appropriateness before deducting fees via the platform. Further, it is 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.

43. See AMP's submission for Case Study 2: Investment Platform Fees dated 4 May 2018 at [10] and [12]-[28].

Questions 7 and 8

Do remuneration and incentive policies that reward financial advisers for revenue generated for a licensee or employer create an unacceptable risk that financial advisers will prioritise the generation of revenue over the licensee's obligation to provide financial services in a manner that is efficient, fair and honest over their own obligation to act in the best interests of the customer, and over their own obligation to prioritise the interests of the customer above their own interests and the interests of the licensee?

How can financial services licensees best incentivise the provision of good-quality financial advice, including in situations where the best advice for a customer is not to change anything at all?

Counsel Assisting at TP1959.19-29

44. AMP supports the licensee obligations in the Corporations Act along with the requirements that an adviser must act in the best interests of customers. AMP also supports the requirement that the adviser must prioritise the interests of the customer above the adviser's own and those of the Advice Licensee.
45. As with any remuneration and incentive scheme, good practice is to have a 'balanced scorecard' approach matched to the underlying objectives of the business, where individuals are rewarded on financial and non-financial attributes; and to have a suitable monitoring regime in place to identify any poor behaviour or sub-standard outcomes that may arise. In this regard, AMP has and continues to improve, its balanced scorecard which includes compliance measures and continuous education obligations in recognition schemes.
46. An adviser who fails to comply with the law will be subject to AMP's issues and consequence management framework which may include termination and reporting to ASIC.

47. In the post-FoFA environment, volume-based incentives are prohibited.²
48. In order to achieve the objective of incentivising advisers to provide quality advice, remuneration policies are used to help ensure that the rewards are related to achieving the objective of good financial advice for customers. This could include, by way of example, incentives linked to customer satisfaction and independent measures or ratings on quality advice (e.g. similar system to investor manager ratings).
49. If it is in the customer's best interests to remain in their current investments and insurance arrangements, then an adviser has an obligation to advise the customer not to change their financial portfolio. This outcome is required by the best interests duty.
50. AMP agrees that the industry should ensure remuneration structures remove any, or add additional, arrangements so that good quality advice is incentivised and that good compliance behaviour is rewarded.
51. AMP observes that all people working in all professions or trades should be required to act legally, ethically and morally. Trying to incentivise this outcome could be a poor reflection for all. Apart from the 'carrot' of positive compliance ('gate openers' to bonuses or benefits) there is always the 'stick' that serious breaches of the law can result in termination, banning and reporting to ASIC.

Question 9

How can financial services licensees best ensure that the results of routine compliance measures, such as compliance audits, are appropriately escalated so that potential risks to customers are identified and managed in a timely manner?

Counsel Assisting at TP1959.29-32

52. It is essential that compliance is a whole of business approach which includes risk culture, governance and oversight, as well as core business processes. To this

² Note that volume-based commissions are still permissible under the grandfathering provisions introduced under FoFA. In addition, volume-based commissions are still permissible in relation to life insurance products, up to defined caps.

end AMP has over the last 18 months set about a comprehensive review and enhancement of all of those aspects of our Advice Licensees.

53. Financial services licensees can best ensure that the results of routine compliance measures are appropriately escalated by adopting the following strategies and systems:
- a. appropriate resourcing of advice compliance and related functions;
 - b. automatic escalation of matters where the outcome of the routine compliance measures raise consistent or serious underperformance or instances of serious non-compliance, such as dishonest conduct;
 - c. participation of committees constituted by persons with appropriate expertise and independence, and of senior executives in reviewing, and being responsible for the oversight of, adviser breaches;
 - d. capacity for each of the compliance measures to facilitate escalation independently of an audit structure; and
 - e. automation, through an electronic system, of compliance systems with escalation frameworks included.
54. AMP's systems provide for these protections and escalation measures. In addition, AMP has continued to invest in and increased its resources in advice compliance.³
55. AMP's Audit Standards⁴ require an escalation of an adviser into AMP's consequence management framework, depending on the outcome of the adviser's audit. This process was demonstrated in the case studies considered by the Commission in Case Study 3: Inappropriate financial advice.⁵ AMP has also made, and is continuing to make, improvements to its audit process including the introduction of Audit 2.0.⁶

³ See generally Witness Statement of Anthony George Regan in response to Rubric 2-20 dated 11 April 2018 (**Regan Statement 2-20**) (Exhibit 2.171) and in particular at [100] to [116] (with the additional resources referenced at paragraph 104(e)).

⁴ AMP's Audit Standards are at tab 14 of Exhibit AGR-2 to Regan Statement 2-20 (**Exhibit AGR-2**) [AMP.6000.0007.3481].

⁵ Witness statement of Sarah Caroline Britt in response to Rubric 2-27 dated 10 April 2018 (**Britt Statement 2-27**) (Exhibit 2.161) sets out instances of the automatic escalation of advisers into AMP's consequence management framework based on the results of audits.

⁶ Regan Statement 2-20 at [108]-[113].

56. AMP has recently established dedicated and regular forums that are attended by appropriate senior executives (such as the Advice Breach Committee). In addition, AMP has established a Chief Risk Officer, Advice role and sub-roles to ensure independent oversight of compliance, coupled with an overall executive focus on risk management across AMP, and refinements to the composition of Advice Licensee boards.⁷
57. AMP's systems seek to facilitate increased self-reporting of compliance concerns (and associated consequences). This includes a focus on whistleblowing procedures and the development of these policies.⁸
58. AMP is also seeking to better integrate technology into the development and monitoring of advice. Goals 360, which is further described in this submission below, involves the data storage of client files so as to, in part, facilitate the use of technology in reviewing and escalating client files for assessment where required.

Question 10

Is it possible for financial services licensees to adequately monitor the quality of advice provided by employees and authorised representatives where that advice is provided in a manual environment?

Counsel Assisting at TP1969.26-28

59. A key point here is that as financial advice professionalise, the nature and extent of the monitoring required will change. With advisers becoming members of professional bodies, with enhanced training and courses in ethics, the level of misconduct may diminish. In these circumstances, the task before Advice Licensees may become less onerous, particularly with increased use of technology.
60. As with any professional licence to operate, quality management is conducted in three parts. Firstly, in the criteria and hurdles in place to first obtain the licence; secondly in the frameworks to continually demonstrate the capability and competence of the licensed individual; and thirdly in the detective monitoring put in place to periodically check adherence to the requisite standards (audits, complaints processes etc).

⁷ Regan Statement 2-20 at [104(b)] and [104(d)] sets out the increased outcomes in self-reporting experienced by AMP.

⁸ Regan Statement 2-20 at [104(f)] and [104(h)] sets out the increased outcomes in self-reporting experienced by AMP.

61. Historically, manual controls have been relied on to monitor compliance. AMP maintains a detailed enterprise risk management framework for this purpose, which has been outlined in its submissions and witness statements. In this industry, as in other industries, there is a 'spectrum of appropriate recommendations' for customers; and the need to apply professional judgement in formulating plans. It is the nature of this work that will see detective and manual controls continuing to play an important role.
62. That said, AMP holds the view that technology is a significant positive disruptive force in the provision of financial advice, creating the opportunity to build advice quality and compliance into the process and for technology to significantly enhance the application of judgement by qualified professionals.
63. Many licensees have attempted to build technological solutions to assist adviser compliance over the past two decades. Some of these technological solutions have worked for certain regulatory requirements. At times, the introduction of regulatory changes and reform has meant that technology and systems have not been able to be configured at pace to align with these changes. Consequently, it is often necessary to introduce 'manual work-arounds' to ensure compliance by certain dates.
64. However, it is important to note that, in the absence of suitable technological solutions, or their ability to keep up with new regulatory reforms, the overall framework is governed by AMP's enterprise risk management framework and embedded through manual or technological processes. While AMP strives for an outcome that ensures full compliance or detects where regulatory obligations have not been met in every case, it must be acknowledged that no system is 'fail proof'.
65. Like many, AMP believes that technology has developed, or is close to being developed, that will assist in embedding compliance into systems, including those used by advisers during fact-finding and other engagements with customers. In this regard, AMP is working with Salesforce, a world leading CRM system to implement an organisation wide solution with a broad range of functionality, reporting, and support for compliance requirements. It is a well-established and proven platform that is being adapted to meet the needs of AMP and the Australian regulatory environment.

66. These new technologies will perhaps provide a greater level of regulatory assurance across much of AMP's businesses including the customer interfaces with Authorised Representatives.
67. An example of this is Goals 360 which embeds compliance-by-design principles in its underlying software (referred to in more detail in paragraph 73 below).
68. However, as highlight above, no technology or system will be 'fail proof'. Human error or behaviour is always a factor that can never be removed. People who want to engage in misconduct will find a way to do so.
69. In addition, technology can introduce "systems risk" which occurs as a result of over-reliance on technology. That is, if a failure in a system control is detected, the number of impacted customers can increase exponentially, and can often result in widespread detriment, versus typically smaller cohorts of customers from manual systems. Notwithstanding this, new technological systems will provide better prevention and earlier detection.

Question 11

Are improvements in technology the only way to ensure that financial advisers provide quality advice?

Counsel Assisting at TP1969.30-31

70. AMP considers that there will always be a requirement for both technology and human knowledge and judgement in relation to advice. In other words, technology will not be the ultimate solution and will never completely replace human interaction. It is not, of itself, the only way to ensure that financial advisers provide quality compliant advice.
71. As a result, AMP considers that there is a need to invest in both technology and in the capability and experience of our financial advisers. Minimum education standards, once fully implemented and embedded will play a crucial role in ensuring high quality financial advice is being received by Australians.
72. Over the last several years AMP has invested heavily in Goals 360 which AMP believes will be a fundamental step change in the provision of advice in Australia. The aim of Goals 360 is to augment the traditional advice process to create a customer experience centred around a customer's goals using technology.

73. Goals 360 is a system designed to remove complexity and create a much simpler environment in which advisers can provide quality compliant advice. AMP hopes that this will make quality compliant financial advice accessible to more Australians as the advice system embeds compliance-by-design principles in its underlying software. This goal is consistent with the objectives of FoFA. It will drive consistency and a compliant end-to-end advice process and ensure robust advice document creation (e.g. Statements of Advice).
74. One of the reasons that AMP is committed to technological change, such as Goals 360 is that the three objectives to which both AMP and FoFA will eventuate:
- a. more accessible advice;
 - b. more affordable advice; and
 - c. more available advice.
75. AMP has, and continues to, engage with ASIC as it brings Goals 360 to market.
76. In addition, technology may assist with, for example, mandatory audit results and professional development training.
77. These investments in new technology will complement AMP's existing enterprise risk management framework, its supervision and monitoring processes, and its significant professional development and training program, all of which contribute to the provision of quality advice by its network of advisers.

Question 12

How should financial services licensees ensure that customers of their authorised representatives are adequately protected while the licensee investigates the conduct of the authorised representative?

Counsel Assisting at TP1969.31-33

78. Protecting customers is of the utmost importance to AMP. The Commission has received AMP's policies and submissions on this matter.
79. In addition, there are several control options that could be considered for implementation to further protect customers while investigations are underway including:
- a. the temporary suspension of an authorised representative. This prevents the provision of new advice being given while an investigation takes place;

- b. mandatory vetting of all advice for new and existing customers;
 - c. mandatory use of in-house paraplanning;
 - d. in-house servicing of the adviser's customers by the licensee (where that capability exists); and
 - e. Dual signatories to a Statement of Advice or Record of Advice before providing the advice to the customer.
80. The above measures are adopted by AMP from time to time; though it must be stated an investigation does not make a conviction, and due process is also required to ensure the adviser and their business is able to continue (without long term impact) where an investigation concludes no wrong-doing.
81. Licensees must always ensure that advisers who are alleged to have engaged in misconduct are afforded due process and fairness during the investigation.
82. Despite this, where it is ultimately determined that inappropriate or poor quality advice has been received by a customer, it is the obligation of the licensee to rectify this and set the customer right. While this doesn't remove any negative effects felt by the customer in the interim period, it will see the customer suitably protected through the remediated outcome.

Question 13

Taking into account that it may never be possible to reduce the risk to zero, what is an acceptable level of risk that customers will be provided with inappropriate advice?

Counsel Assisting at TP1969.34-36

83. AMP believes that reducing the risk that customers will be provided with inappropriate advice to zero is not achievable. This is because providing personal advice is often complex and subject to judgement. There is always the element that some advisers, like in all professions and trades, will make mistakes and/or do the wrong thing.
84. The introduction of technology such as AMP's Goals 360 will assist in reducing risk, as outlined in this submission.

85. AMP designs its enterprise risk management framework to try to ensure that personal advice is appropriate. AMP aims to detect and remedy those occasions when that objective is not achieved.
86. In these circumstances, AMP does not have a specific suggestion as to the acceptable level of risk other than we aim to keep it as low as possible. We are using continuous improvement techniques to try to improve on an ongoing basis.
87. There is a difficult trade off in endeavouring to reduce the risk to zero. Additional compliance can often come at a cost, and it is important to balance the impact on the accessibility, affordability and availability of advice.

Questions 14 and 15

What is an acceptable period of time after identifying that a client has been or may have been provided with inappropriate financial advice to inform the client of that fact?

What is an acceptable period of time after identifying that a client has been or may have been provided with inappropriate financial advice to remediate the client for any losses suffered?

Counsel Assisting at TP1976.30-35

88. As an industry, it is fair to say there is a one-time and extraordinary period of look-back remediation (e.g. following ASIC Report 499 *Financial Advice: fees for no service*) or 'catch-up' on the identification and remediation of inappropriate advice (seeing a recent increase in Advisers reported as a serious compliance concern). AMP considers this period extraordinary and specifically linked to the consequences and intentions of the FoFA reforms being embedded.
89. As such, AMP sees it is appropriate to consider its response to this question in two parts: firstly, what is reasonable in the ordinary course of business; and secondly what might be a suitable commitment to make as regards the in-flight and large-scale review and remediation efforts being undertaken across the industry.
90. Once it has been determined that a customer has received inappropriate advice, AMP envisages a timeframe where a customer is notified of this as soon as possible and within a period of not longer than 30 days.

91. It is difficult to specify an appropriate timeframe to remediate customers who have received inappropriate advice. This is because each customer's circumstance will be individual and the cases are often complex.
92. AMP understands and accepts that some of its remediation has not progressed as quickly as we would have wished. In order to address this, AMP has allocated additional resources to accelerate these programs (see AMP's submission for Case Study 3: Inappropriate Financial Advice dated 4 May 2018 at [60(a)]).

Questions 16 and 17

How should financial services licensees balance the need to ensure that employees are held responsible for misconduct against the risk that punishing poor behaviour will encourage employees to conceal that behaviour?

How should financial services licensees recognise and reward ethical conduct?

Counsel Assisting at TP1979.45-TP1980.2

93. These questions go to the heart of the culture of a company in terms of ethics, values and tolerated behaviour.
94. As AMP has indicated earlier, the professionalisation of the industry is a critical factor and increased professionalism of the sector should see the extent of misconduct diminish.
95. Misconduct is defined in the Royal Commission's Terms of Reference and referred to in AMP's Submission on Fees for No Service. That same definition is taken to apply to this question and AMP notes this can be accidental or deliberate.
96. When it comes to deliberate misconduct, AMP will not and does not tolerate illegal or unethical conduct.
97. AMP fully supports the establishment of FASEA including the introduction of an ethics course. AMP's values and systems are designed to minimise the risk of poor behaviour, however, no system or processes will ever be 'fail proof'.
98. No controls can ever safeguard against an individual deliberately breaking the law. For example, if someone wishes to act fraudulently in relation to a customer, it is likely they will attempt to do so notwithstanding the systems and processes that are in place to try to prevent it. Ideally, systems should prevent, or at least detect

it. However, that is a difficult, challenging and potentially impossible task, notwithstanding best intentions.

99. AMP is aware that people will try to conceal poor behaviour in all industries. Companies design systems to try to prevent and detect it. In these cases, it is often whistleblowers who draw the activity to attention. It is important to protect these whistleblowers and to independently and confidentially investigate their allegations. AMP has updated, and continues to update, its whistleblower policy to encourage people to speak up and to protect them when they do.
100. More broadly, licensees need a measured consequences framework that applies different responses for different types of misconduct and allows multiple avenues for the notification of misconduct, including whistleblowing. For example, employees who self-report misconduct will face different consequences (and potentially rewards depending on the situation) to those whose misconduct is not self-reported, but rather detected through the operation of normal systems. In addition, Advice Licensees must ensure they promote a strong culture within their businesses of open disclosure and improvement rather than just punishment.

Question 18

Are there particular characteristics of the financial advice industry that lead to there being a higher incidence of improper, unethical or dishonest conduct than in other industries? If so, what should be done to address that issue? What are those characteristics?

Counsel Assisting at TP1980.2-8

101. Unfortunately, all industries suffer from the incidence of improper, unethical or dishonest conduct. AMP is unaware of any statistics that would indicate that the overall misconduct levels in the advice industry are greater than in other sectors.
102. AMP notes that the Government has undertaken substantial reforms to increase the education standards of financial advisers through the introduction of FASEA.
103. AMP supported the increase in these standards, provided seed-funding to FASEA, and believes they will be an important piece in the transformation of the advice industry into a more regulated and trusted profession.
104. AMP believes that it should be compulsory for all advisers to be a member of a professional body, similar to those required in the fields of law, medicine, chartered

accounting, and that the professional bodies have Codes of Ethics, conduct processes and public reporting requirements. This would go a long way towards reducing the level of improper, unethical or dishonest conduct.

Questions 19 and 20

Are the steps required by the ABA reference checking and information sharing protocol adequate to protect the public when financial advisers transfer between licensees?

Should licensees be required to maintain a minimum degree of satisfaction as to the competence and integrity of applicants to become authorised representatives before authorising? If so, what form should that requirement take, and what minimum levels should be set?

Counsel Assisting at TP1984.44-TP1985.2

105. AMP supports all initiatives that will prevent or remove poor advisers from the industry.
106. AMP is disappointed that some advisers who have been terminated for misconduct have been one licensee are employed elsewhere in the industry. For many years AMP has tried to ensure its processes do not result in the employment of known poor advisers. This includes whether the adviser is exiting or entering an AMP Advice Licensee.
107. AMP strongly supported the introduction of the ABA reference checking protocol as a positive reform and believes it to be adequate for the purposes that it is designed to serve. As more licensees adopt the code, it will assist in helping ensure advisers with a poor history of compliance are not employed elsewhere in the industry. However, it is only one part of the toolbox to try to ensure that only quality advisers are employed, or 'transferred' between licensees and should be part of a broader assessment process which includes:
 - a. alignment to Standards Australia *Reference Checking in the Financial Standards Industry* HB322-2007; and
 - b. adherence to items in Table 11 of Appendix 2 to ASIC Report 515 *Financial advice: Review of how large institutions oversee their advisers*.
108. Another important element of the regime is reporting advisers to ASIC.

109. AMP welcomes strong enforcement action from ASIC in relation to advisers whose licensees allege they have serious compliance concerns. However AMP notes that ASIC is also required to provide procedural fairness to the advisers that licensees allege to have breached the law and this can take some time.
110. Nevertheless, suspension or banning orders have the ultimate effect of ensuring that advisers who have engaged in serious misconduct are removed from the industry. While ASIC is considering its enforcement action (including appeals), the ABA protocol on reference checking, when applied properly and extensively, will also assist in ensuring that such advisers are not employed elsewhere within the industry.
111. In relation to minimum competence and integrity requirements for Authorised Representative's, AMP notes the Government's recent reforms to establish FASEA. AMP supported these reforms, which will introduce new minimum degree education standards (subject to a transition period for existing advisers) and ethical training requirements.

Question 21

Are the general obligations set out in section 912A of the Corporations Act expressed at too high a level of generality to be capable of being effectively enforced? What alternative obligations would be more appropriate?

Counsel Assisting at TP1985.43-46

112. There are competing public policy principles that are a constant source of tension in developing the regulatory framework for the financial services industry (and indeed any industry).
113. The options are:
- a. flexible, principles based principal regulation (primary law) that is able to be adjusted to achieve the appropriate regulatory outcomes against a myriad of business frameworks (These will be supplemented by a regulation making power and regulator formal and informal guidance);
 - b. a 'black letter' law that specifies exactly how firms and individuals must operate in every separate circumstance; and
 - c. a combination or mixture of a and b above.

114. Over the years, successive governments have expressed a desire for the first option.
115. However, the current regulatory environment probably leans more towards the third option, given the detailed principal legal obligations in some areas as the regulatory framework has evolved, along with detailed regulatory guidance.
116. A 'regulatory framework style' which arguably results in the optimal outcome for customers, is one that policy makers have established with varying degrees of success.
117. At times, parts of the industry itself have also called for a more 'black letter law' approach to provide regulatory assurance to boards. The counter-argument is that a 'tick a box' approach does not result in boards and management adhering to the 'spirit' of the policy principles underpinning the legislative framework.
118. AMP believes that the current obligations are an appropriate balance between 'principles based' legislation and 'black letter - tick a box' law. There is substantial regulatory guidance provided by ASIC to assist licensees to understand and implement their obligations. Of course, there will be instances in relation to specific legislative requirements as to whether this balance has been achieved.

Questions 22, 23 and 24

Is the current division of responsibility for professional discipline of financial advisers between employers, ASIC and professional associations operating effectively to ensure that financial advisers face appropriate consequences for breaching their statutory and professional obligations?

Does that division of responsibility create gaps in the disciplinary system? If so, what are they?

Is it possible to implement a single system for professional discipline of financial advisers? Would structural changes to the financial advice industry be required to bring that about? Would a system of licensing at both an individual and an entity level be more appropriate than the existing system of licensing only at the entity level?

Counsel Assisting at TP1985.46-TP1986.9

119. AMP considers that a review of the regulatory framework for the professional discipline is warranted.

120. The regulatory framework was developed against a review of alternative approaches in comparable jurisdictions.
121. The Government of the day, and subsequently Parliament, decided that the best approach was the licensee/authorised representative model. This framework relied on licensees conducting, or attempting to conduct, initial regulation of their advisers. The model requires the licensee to report to ASIC any instances of serious misconduct.
122. The framework also envisaged industry associations, such as the Financial Planning Association performing a disciplinary role.
123. While improvements have, and continue to be made, in relation to consequence management, the removal of advisers from the industry who have engaged in serious misconduct has not happened as quickly as it should have happened. AMP is committed to working with ASIC to continue to make improvements in this regard.
124. AMP acknowledges that its Advice Licensees may have not viewed the relevant industry associations as the appropriate bodies to remove these individuals from the industry. Membership of an industry association is not a mandatory requirement to practice as a financial adviser. Individual licensees can mandate professional membership as a part of the employment contract. In future, membership could also be required by law.
125. AMP acknowledges that the system has not worked as it should.
126. AMP therefore welcomes a policy discussion with all government, regulatory, industry association and customer stakeholders on how AMP can improve this process. AMP will support any necessary reform to improve customer outcomes that will result in addressing these issues.

Questions 25 and 26

Is there a particular regulatory culture that has developed in relation to the regulation of the financial advice industry? What is that culture? And what has contributed to its development?

Has the existing regulatory culture in the financial advice industry contributed to the occurrence of misconduct in the financial advice industry? What changes in

regulatory culture might assist in reducing the incidence of misconduct in the financial advice industry?

Counsel Assisting at TP1986.11-16

127. AMP supports strong and respected regulators in the financial services industry.
128. However, no system or process implemented by regulators will reduce the risk of missing a particular issue to zero. Similarly, systems evolve and change to detect difference issues which are seen as priorities. These priorities can shift over time.
129. Despite the actions of a small number of individuals in some areas of its business, AMP takes all regulatory action seriously and is committed to restoring a co-operative and transparent relationship with ASIC and its other regulators.
130. AMP supports the regulatory reforms, including providing additional powers and resources to regulators, over many years. AMP supports further discussion on these issues.

Question 27

Can financial advisers effectively manage the conflicts of interest associated with providing advice as a representative of an institution that also manufactures financial products? Is it necessary to enforce the separation of products and advice?

Counsel Assisting at TP1986.23-25

131. The conflicts of interest, as described in the question, can be managed effectively as discussed above.
132. It is not necessary to enforce the separation of product manufacturing from financial advice. AMP agrees with the legal provisions that are designed to ensure that the inherent conflicts of interest are appropriately managed to ensure that the customer receives appropriate advice. These have been referred to in paragraphs 34 to 39 above.
133. Government intervention into industry models must be undertaken very cautiously. Customers receive benefits through vertically integrated structures. Other than economic arguments such as scale, there are major compliance and remediation benefits that are designed to protect customers.
134. Another benefit of vertical integration is the ability to develop more robust compliance and technological systems than those developed by individual advice practices. Small firms may be able to purchase third party platforms but these will

be relatively more costly and often less flexible than those purchased or developed on a larger scale. Advisers who have the backing of a large institution may benefit from the rapidly developing environment of inbuilt 'reg. tech'.

135. Furthermore, regulators benefit from the existence of large institutional licensees representing many individual ARs, rather than a large number of smaller or individual licensees being responsible for regular interaction with the regulator.

Question 28

Should the statutory carve-outs to the ban on remuneration, including the recent carve-out in relation to insurance commissions, be maintained. If so why?

Counsel Assisting at TP1986.25-27

136. The carve-outs, as passed by Parliament, regarding insurance commissions remain appropriate.
137. The issue was recently revisited by Parliament through the Life Insurance Reforms in 2017, which commenced on 1 January 2018.
138. AMP supported those reforms.